



AGENDA

REGULAR MEETING OF THE HEMET CITY COUNCIL

March 12, 2013

6:00 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 Council's 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 Krupa, Milne and Wright, Mayor Pro Tem Smith and Mayor Youssef

Work Study

Discussion regarding these items, with possible direction to staff

1. Heart Health Institute – Heart Disease Awareness and Prevention – Gino Zaporosky
2. Western Riverside Council of Governments (WRCOG) Year-End Review – Rick Bishop, Executive Director
3. Riverside County Transportation Commission (RCTC) Highway 79 Realignment - Cathy Bechtel

REGULAR SESSION

7:00 p.m.

City of Hemet City 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

Presentation

4. CR&R's Presentation of the "Business Recycling of the Year" Award
 5. Certificate of Achievement to Michael Suder, Special Olympics Silver Metal Winner in Field Hockey
-

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 lecture. When the Mayor calls your turn give your last name, and address, then begin speaking. You will have three minutes at that time to address the Council.

Consent Calendar

6. **Recommendation by Mayor Youssef** – Planning Commission Re-Appointment
 - a. Re-appoint John Gifford to Seat 3 on the Planning Commission with a term to end April 2015.
7. **Recommendation by Mayor Youssef** – Traffic and Parking Commission Re-Appointment
 - a. Re-appoint Donald Funkhouser to Seat 3 on the Traffic and Parking Commission with a term to end April 2015.
8. **Recommendation by Mayor Youssef** – Park Commission Appointment
 - a. Appoint Edd Burden to Seat 3 on the Park Commission with a term to end April 2015.
9. **Receive and File** – Warrant Registers
 - a. Warrant registers for February 21, 2013 and March 5, 2013. Payroll for the period of February 4, 2013 to February 17, 2013 was \$560,884.18.
10. **Recommendation by Engineering** – Traffic and Parking Commission Recommendations
 - a. Install "2-Hour Parking" Signs on Harvard Street, from Florida Avenue to Latham Avenue.
Recommendation to approve the request and install "2-Hour Parking" signs.
11. **Recommendation by Administrative Services Department** – Service Agreements with Time Water Cable to provide enhanced Internet Access at City Hall & Library

- a. Authorize the Interim City Manager to execute two service agreements with Time Warner Cable for enhanced fiber optic internet access at both City Hall and the Public Library
12. **Recommendation by Community Investment Department – CAL-HOME Grant 2013 Application**
- a. Adopt a resolution authorizing the submittal of an application to the California State Department of Housing and Community Development for funding under the CAL-HOME Program; and if selected the execution of the standard agreement and any amendments thereto, and of any related documents necessary to participate in the CAL-HOME Program.
Resolution Bill No. 13-007
13. **Recommendation by Public Works - Purchase of Two (2) Ford F250 Trucks**
- a. Award of bid to Gosch Ford in the amount of \$59,860.75 (Fifty Nine Thousand Eight Hundred Sixty dollars and Seventy Five cents) for the purchase of two Ford F250 trucks to be funded from 380-9000-5400; and
 - b. Authorization for the Interim City Manager to execute a purchase order for the same.
14. **Recommendation by Public Works – Park Commission Recommendations**
- a. Tree Removal Request: 621 Snead Drive – Flame Tree (1)
Recommendation to deny request; schedule tree for trimming; and schedule a root prune with property owner’s agreement.
 - b. Tree Removal Request: 607 E. Acacia Avenue – Washington Fifer (1)
Recommendation to deny request.

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 our 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.

Discussion/Action Item

15. **Sixth Amendment to Stetson Crossing Purchase and Sale Agreement –** John Jansons, Community Investment Director
 - a. Authorize the Interim City Manager to execute a Sixth Amendment to the Stetson Crossing Purchase and Sale Agreement for real property commonly known as Stetson Crossing
 16. **Special Events Ad-Hoc Committee for Fiscal Year 2013/14 –** John Jansons, Community Investment Director
 - a. Appoint two Council Members to the Special Events Ad-Hoc Committee to consider fiscal year 2013/14 special events funding requests.
 17. **International Council of Shopping Centers Trade Show and Annual Conference (RECON) –** John Jansons, Community Investment Director
 - a. Appoint two representatives of the Council to attend RECON in May 2013;
 - b. Approve the direct expenditures in the amount of approximately \$24,000.
 18. **Municipal Code Amendment 13-001 pertaining to Social Hosts and Loud and Unruly Gatherings –** Deanna Elliano, Community Development Director
 - a. Introduce, read by title only and waive further reading of an ordinance establishing Article V of Chapter 46 of the Hemet Municipal Code regarding the regulation of Social Hosts and Loud and Unruly Gatherings; and
 - b. Direct staff to file a Notice of Exemption in compliance with the California Environmental Quality Act. **Ordinance Bill No. 13-006**
-

City Council Reports

19. CITY COUNCIL REPORTS AND COMMENTS
 - A. Council Member Krupa
 1. Traffic and Parking Commission
 2. Riverside Conservation Authority (RCA)
 3. Ramona Bowl Association
 4. Indian Gaming Distribution Fund
 5. Riverside Transit Agency (RTA)
 - B. Council Member Milne
 1. Library Board
 2. League of California Cities
 3. Riverside County Habitat Conservation Agency (RCHCA)
 4. Riverside Transit Agency (RTA)
 5. Riverside Conservation Authority (RCA)

- C. Council Member Wright
 - 1. Park Commission
 - 2. Planning Commission
 - 3. Indian Gaming Distribution Fund
 - 4. Riverside County Habitat Conservation Agency (RCHCA)
 - 5. Ramona Bowl Association

- D. Mayor Pro Tem Smith
 - 1. League of California Cities
 - 2. Riverside County Transportation Commission (RCTC)
 - 3. Western Riverside County of Governments (WRCOG)
 - 4. Public Safety Update
 - 5. National League of Cities

- E. Mayor Youssef
 - 1. Western Riverside County of Governments (WRCOG)
 - 2. Riverside County Transportation Commission (RCTC)
 - 3. Disaster Planning Commission

- F. Ad-Hoc Committee Reports
 - 1. Crime Stoppers Plus Ad-Hoc Committee
 - 2. Hemet ROCS Citizens Advisory Committee (CAC)
 - 3. CDBG Ad-Hoc Committee

- G. Interim City Manager Bradley
 - 1. Manager's Reports
 - 2. Letter in Support of SB 337, Request to Relinquish Portions of Highway 74

Continued Closed Session

City Attorney Continued Closed Session Report

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, March 26, 2013 at 7:00 p.m. for consideration of items placed on that agenda. The next regular meeting will be held April 9, 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.



Staff Report

TO: Honorable Mayor and Members of the City Council
FROM: Mayor Youssef
DATE: March 12, 2013
RE: Planning Commission Re-Appointment

RECOMMENDATION:

Mayor Youssef respectfully recommends that the City Council re-appoint John Gifford to Seat 3 on the Planning Commission, with a term to end April 1, 2015.

BACKGROUND:

Mr. Gifford has lived in the Community for over 18 years. Mr. Gifford will bring 25 years of experience in management, environmental compliance and land use planning to the Planning Commission. Mr. Gifford has been a member of key technical and policy committees within the environmental community throughout his career. I strongly recommend Mr. Gifford's re-appointment for Seat 3 on the Planning Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Youssef".

Robert Youssef
Mayor

From the Desk of

John E. Gifford

Date: February 1, 2013

To: Ms. Sarah McComas, City Clerk
Mr. Robert Youssef, Mayor
City of Hemet

Re: Planning Commission Appointment

Ms. McComas, Honorable Mr. Mayor:

I am very proud of the work the Hemet Planning Commission has been able to accomplish over the past 4 years. Each Commissioner has diligently approached their duties to be the City's "gate keepers" in both the type of growth we will have and in the quality of those developments. Together we have, and are, helping to improve our community through responsible planning direction and to set an example for those who follow. It is my true desire to see that work and focus continue. Therefore, I respectfully submit my application to the Planning Commission for another term.

Yours very truly:

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

John Gifford



CITY OF HEMET
Application for Appointment
to Volunteer Commissions/Board/Committee

COMMISSION/BOARD/COMMITTEE that you wish to apply for:

Planning Commission

NAME: JOHN GIFFORD

ADDRESS: 40310 TWIN SPRINGS RD

CITY: HEMET, CA ZIP: 92544

TELEPHONE: 951-925-2646

Past Experience and/or Education: Planning Commission - Hemet.
29 yrs Planning/Environmental Professional.

Other Boards and/or Commissions on which you have served: STAG Board.
Hemet Planning Commission

Organizations you have belonged to APA, AWWA, AEP.

How long have you lived in the community? 20 years _____ months

On a separate sheet of paper, please describe briefly why you wish to be appointed to this Commission.

Return to:
City Clerk
City of Hemet
445 E. Florida Avenue
Hemet, CA 92543

[Signature] 2-1-13
Signature Date

All applicants must be residents of the City of Hemet or Sphere of Influence when applicable. The Library Board and Planning Commission members are required to file the California Fair Political Practices Commission Statement of Economic Interests as outlined in the City of Hemet's Conflict of Interest Code.



Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Robert Youssef, Mayor

DATE: March 12, 2013

RE: Traffic and Parking Commission Re-appointment

RECOMMENDATION:

Mayor Youssef respectfully recommends that the City Council re-appoint Donald Funkhouser to Seat 3 on the Traffic and Parking Commission, with a term to end April 2015.

BACKGROUND:

Mr. Funkhouser has lived in the community for over 6 years. Mr. Funkhouser is the current President of the Seven Hills Property Owner's Association. His past experience in law enforcement and background in Safety has been as asset on the Commission.

ANALYSIS:

Mr Funkhouser's desire to help keep the community safe and attractive has been a valuable asset on the commission. I highly recommend his re-appointment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Youssef".

Robert Youssef
Mayor



CITY OF HEMET
Application for Appointment
to Volunteer Commissions/Board/Committee

COMMISSION/BOARD/COMMITTEE that you wish to apply for:

Traffic Commission

NAME: Ronald J. Funkhouser

ADDRESS: 1270 Sequoia Circle

CITY: Hemet ZIP: 92545

TELEPHONE: 951-652-7073

Past Experience and/or Education: Current President of Seven Hills Property Owner's Assoc. Oregon College of Education - Law Enforcement, Police Officer, Salem, Oregon

Other Boards and/or Commissions on which you have served: City of Hemet Traffic & Parking Commission. Vision Planning Board for Discovery Christian Church, Moreno Valley, CA; Seven Hills Mens Golf Club Assoc.

Organizations you have belonged to Salem Oregon Police Officers Assoc. Hemet ER's Lodge, Discovery Christian Church, Silverton, Oregon Volunteer Fire Dept.

How long have you lived in the community? 6 years 9 months

On a separate sheet of paper, please describe briefly why you wish to be appointed to this Commission.

Return to:
 City Clerk
 City of Hemet
 445 E. Florida Avenue
 Hemet, CA 92543


 _____ 3-11-13
 Signature Date

All applicants must be residents of the City of Hemet or Sphere of Influence when applicable. The Library Board and Planning Commission members are required to file the California Fair Political Practices Commission Statement of Economic Interests as outlined in the City of Hemet's Conflict of Interest Code.



Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Mayor Youssef

DATE: March 12, 2013

RE: Park Commission Appointment

RECOMMENDATION:

Mayor Youssef respectfully recommends that the City Council appoint Edd Burden to Seat 3 on the Park Commission, with a term to end April 1, 2013.

BACKGROUND:

Mr. Burden has lived in the Community for over 8 years. Mr. Burden's volunteer time with the Office on Aging and the Riverside Parks & Recreation will be an asset on the Commission. Mr. Burden understands the needs of the City's seniors, youth and disabled residents. strongly recommend Mr. Burden's appointment for Seat 3 on the Park Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Youssef".

Robert Youssef
Mayor



CITY OF HEMET
Application for Appointment
to Volunteer Commissions/Board/Committee

COMMISSION/BOARD/COMMITTEE that you wish to apply for:

PARK COMMISSION / TRAFFIC & PARKING COMMISSION

NAME: Edd Burden

ADDRESS: 2312 Begonia Ct

CITY: Hemet CA ZIP: 92545

TELEPHONE: 951-658-3012

Past Experience and/or Education: 33YRS Dow Jones INC (12)

AB Hudson High school selma Ala

1958- 5YRS Selma Times Journal (7)YRS

Other Boards and/or Commissions on which you have served: OFFICE ON

AGING 5YRS ASDE PARKS & REC-

APPROX 10YRS OR MORE

Organizations you have belonged to ASDE FAITH Temple Church

Men's dept Head 10YRS Elder 25YRS

How long have you lived in the community? 5 years 6 months

On a separate sheet of paper, please describe briefly why you wish to be appointed to this Commission.

Return to:
 City Clerk
 City of Hemet
 445 E. Florida Avenue
 Hemet, CA 92543

Edd Burden 2-24-10
 Signature Date

All applicants must be residents of the City of Hemet or Sphere of Influence when applicable. The Library Board and Planning Commission members are required to file the California Fair Political Practices Commission Statement of Economic Interests as outlined in the City of Hemet's Conflict of Interest Code.

5/10

2-24-10

Why I would like serve on

PARK Commission / TRAFFIC & PARKING Commission

to be a part the growth in Hemet

Include understanding the needs

For seniors & our young people

that need our support

AS well AS support (disabled)

For a clean & healthy community

looking to future

Thank you

BOB BUDEN



Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Rita Conrad, Deputy City Manager/Administrative Services;
Ron Bradley, Interim City Manager *RB*

DATE: March 12, 2013

RE: Warrant Register

The City of Hemet's warrant registers dated February 21, 2013 and March 5, 2013 are currently posted on the City's website in the Finance Department section, under *Financial Information*. Payroll for the period of February 4, 2013 to February 17, 2013 was \$560,884.18.

CLAIMS VOUCHER APPROVAL

"I, Rita Conrad, Deputy City Manager/Administrative Services, do hereby certify that to the best of my knowledge and ability, that the warrant register posted on the city's website is a true and correct list of warrants for bills submitted to the City of Hemet, and the payroll register through the dates listed above, and that there will be sufficient monies in the respective funds for their payment."

Respectfully submitted,

Rita Conrad

Rita Conrad
Deputy City Manager/Administrative Services

RC: mh

CITY OF HEMET
VOUCHER/WARRANT REGISTER
FOR ALL PERIODS

CLAIMS VOUCHER APPROVAL

I, RITA CONRAD, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND ABILITY, THAT THE WR POSTED ON THE CITY WEBSITE IS A TRUE AND CORRECT LIST OF WARRANTS FOR BILLS SUBMITTED TO THE CITY OF HEMET THROUGH THE DATES LISTED ABOVE, AND THAT THERE WILL BE SUFFICIENT MONIES IN THE RESPECTIVE FUNDS FOR THEIR PAYMENT.

RITA CONRAD
DEPUTY CITY MANAGER/ADMINISTRATIVE SERVICES



AGENDA # 10

Staff Report

To: Honorable Mayor and Members of the City Council

From: Jorge Biagioni, Director of Engineering/City Engineer;
Ronald E. Bradley, Interim City Manager *REB*

Date: March 12, 2013

Subject: Traffic and Parking Commission Recommendation
From its regular meeting of February 12, 2013

ITEM 1: INSTALL "2-HOUR PARKING" SIGNS ON HARVARD STREET, FROM FLORIDA AVE. TO LATHAM AVE.

BACKGROUND: A petition from Mr. Mark Davis, owner of "Mark's Hydroponics and Organic Gardening", and signed by owners and customers of retail businesses along Harvard Street has requested the installation of the "2-Hour Parking" signs on the subject area.

Mr. Davis indicates that employees from businesses on North Harvard Street park their vehicles along the street, leaving very few parking spots for customers.

ANALYSIS:

The "2 Hour Parking" restriction allows the renewal of people using the parking spots in areas where there is a constant traffic of customers, visitors, etc. This section of Harvard Street is suited for such kind of parking regulation because the City provides public parking in a lot located on the east side of Harvard, between Florida Avenue and Latham Avenue.

RECOMMENDED ACTION:

That the City Council approves the Traffic and Parking Commission's recommendation to install signs with the "2-Hour Parking" restriction.

FISCAL IMPACT: No impact to the General Fund. The work for this item will be performed by City forces, and will be funded by the existing operating budget in the Gas Tax Fund No. 221-4200-2450.

Respectfully submitted,

Jorge Biagioni
Director of Engineering/City Engineer

Fiscal review,

Rita Conrad
Finance Director



AGENDA # 11

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Rita Conrad, Deputy City Manager/Director of Administrative Services,
Ronald Bradley, Interim City Manager *RB*

DATE: March 12, 2013

RE: Service Agreements with Time Warner Cable to provide enhanced Internet access
at City Hall & Library

RECOMMENDED ACTION:

That the City Council authorize the Interim City Manager to execute two service agreements with Time Warner Cable for enhanced fiber optic Internet access at both City Hall and the Public Library.

BACKGROUND:

Internet connectivity is currently provided to City Hall and the Library through three separate connections provided by TW Telecom. Two of these were established in 2009 and provide 10Mbps primary Internet access at City Hall and the Library. A third 6Mbps connection was established at the Library for public wireless access in late 2011. These connections are provided to the City over copper telephone cable between Verizon's central office and each facility.

Due to our increased reliance on Internet-based resources, we have exceeded the capacity provided by these connections. This reliance on Internet access has sharply increased as we replace software resources previously hosted on-site with cloud-based and software-as-a-service (SaaS) contracts. At City Hall we have also seen an increase in Internet use related to technology projects throughout the City which rely on mobile access to City resources. At the Library, use of video-based web sites providing both entertainment and educational content are in high demand. Rapid use and adoption of laptops, "smart" cellular phones and tablet devices at both locations have also pushed the City's current Internet capacity to its limits.

As our current connections are made over copper telephone cable, our options for increasing their capacity are limited. Additionally, the copper telephone cables used to provide these

connections have been problematic due to the age of the cables. Copper phone lines are slowing being phased out in favor of fiber optic lines. Fiber optics offers higher capacity and increased dependability.

Additionally important is the need for a secondary or back-up connection to the Internet. Both Telephone Service Providers and Cable TV Providers offer the line capacity needed to provide for high speed dedicated Internet access. Leveraging Internet connectivity from both service providers offers us a level of redundancy against infrastructure failures or outages.

PROJECT DESCRIPTION:

Enter into a three year agreement with Time Warner Cable for installation of a 100Mbps fiber optic dedicated Internet access (DIA) connection at City Hall and a 50 Mbps fiber optic dedicated Internet access (DIA) connection at the Library. Both connections will be installed at each facility using dedicated fiber optic cable.

In addition, both agreements provide the first cable-TV drop free at either location for the term of each agreement. This extends this service (currently provided under the City's franchise agreement with Time Warner Cable) beyond the franchise agreement's expiration date of August 2013.

ANALYSIS:

The City looked to its peers for recommendations. We gathered information related to providers, line speed and overall satisfaction of service received by other government Information Technology (I.T.) Departments who are part of the MISAC (Municipal Information Systems Association of California) group. MISAC serves as an advisory body to the League of California Cities and the Government Technology Conference. All City of Hemet Information Technology I.T. Staff are members of MISAC.

We also reviewed the recent Internet connection installed at the Hemet Police Department by Time Warner Cable. It was performing well within the parameters of its service agreement and providing a reliable level of Internet connectivity.

COORDINATION & REVIEW:

On February 27, 2013, the I.T. Department, Purchasing Office, Assistant City Manager and City Attorney reviewed the two proposed service agreements from Time Warner Cable. It was determined that both Time Warner Cable service agreements met all requirements and needs of the City.

CONSISTENCY WITH ADOPTED GOALS, PLANS, AND PROGRAMS:

There are several technology related projects underway as part of Fiscal Year 2013-2013. These focus around public access to City resources and increased productivity through use of mobile technology. Increasing our Internet access capacity will ensure we have the Internet resources available to meet the goals of both current and future technology projects.

FISCAL IMPACT:

The new City Hall 100 Mbps connection will be \$94,462.20 over three years, \$31,487.40 annually. This will be paid out of account 680-1930-2200. (The current 10 Mbps circuit will remain in place as a backup. Annual cost of the existing 10 Mbps circuit is \$21,100.80.) Total annual cost of all City Hall Internet circuits is: \$52,588.20. \$53,000.00 was budgeted City Hall Internet service for this is FY 12/13.

The new Library 50 Mbps connection will be \$61,342.20 over three years and \$20,447.40 annually, which is \$279 less than the current 10 Mbps connection (which will be disconnected) provided by TW Telecom at a cost of \$20,726.40 annually. The existing 6 Mbps circuit will remain in place as a backup until that contract expires in December 2014. Annual cost of the 6 Mbps circuit is \$ 11,174.88. Total annual cost of Library Internet circuits is: \$31,622.28. This amount will need to be budgeted for the next two fiscal years. When the contract for the 6 Mbps circuit expires in FY 2014-2015, there will be additional savings of \$11,174.88. Public Internet access at the Library has been paid out of Library donations account (account # 110-2080).

Respectfully submitted,



Rita Conrad
Deputy City Manager/DAS

Approved as to form:



Eric S. Vail
City Attorney

Attachment(s): Time Warner Service Agreement-Library
Time Warner Service Agreement-City Hall



Service Agreement

This Time Warner Cable Business Class Service Agreement (“**Service Agreement**”) in addition to the Time Warner Cable Business Class Terms and Conditions (“**Terms and Conditions**”) and any Time Warner Cable Business Class Service Orders (each, a “**Service Order**”), constitute the “**Master Agreement**” by and between customer identified below (“**Customer**”) and Time Warner Cable (“**TWC or Operator**”) and is effective as of the date last signed below.

Time Warner Cable Information

Time Warner Cable

Street: 17777 Center Court Dr.
City: Cerritos
State: CA
Zip Code: 90703

Contact: Enrico Diaz
Phone: 562-677-0402
Cell Phone: 714-719-0622
Fax: 704-697-4790

Customer Information

Customer Name (Exact Legal Name): **Account Number** **Federal Tax ID**
City of Hemet

Billing Address:
445 E . Florida Avenue,
Hemet, CA 92543

Billing Contact Name: **Phone** **Fax**
Scott Underwood 951-765-3765

Authorized Contact: **Phone:** **Fax:**
Scott Underwood 951-765-3765

Agreement

THIS SERVICE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS ATTACHED HERETO. SUCH TERMS AND CONDITIONS ARE INCORPORATED HEREIN BY THIS REFERENCE. BY EXECUTING THIS SERVICE AGREEMENT BELOW, CUSTOMER ACKNOWLEDGES THAT: (1) CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS, INCLUDING SECTION 21 THEREOF, WHICH PROVIDES THAT THE PARTIES DESIRE TO RESOLVE DISPUTES RELATING TO THE TIME WARNER BUSINESS CLASS SERVICES AGREEMENT THROUGH ARBITRATION; AND (2) BY AGREEING TO ARBITRATION, CUSTOMER IS GIVING UP VARIOUS RIGHTS, INCLUDING THE RIGHT TO TRIAL BY JURY.

By signing and accepting below you are acknowledging that you have read and agree to the terms and conditions outlined in this document.

Electronic Signature Disclosure

Authorized Signature for Time Warner Cable

Authorized Signature for Customer

By: _____

By: _____

Name (printed): _____

Name (printed): _____

Title: _____

Title: _____

Date: _____

Date: _____



Business Class Customer Service Order

Account Executive: Enrico Diaz
 Phone: 562-677-0402
 Cell Phone: 714-719-0622
 Fax: 704-697-4790
 Email: enrico.diaz@twcable.com

Customer Information		
Business Name: City of Hemet		Customer Type: Government
Federal Tax ID	Tax Exempt Status	Tax Exempt Certificate #
Billing Address 445 E . Florida Avenue. Hemet, CA 92543		Account Number
Billing Contact	Billing Contact Phone	Billing Contact Email Address
Authorized Contact Scott Underwood	Authorized Contact Phone: 951-765-3765	Authorized Contact Email Address sunderwood@cityofhemet.org
Technical Contact	Technical Contact Phone	Technical Contact Email Address

Internet Access Service Order Information				
Site Name	Address Location	Location Type	Service Description / Bandwidth (List all Services for Each Location)	Customer Requested Due Date
City Hall	445 E Florida Ave., Hemet, CA	Hub	DIA Internet Access over Fiber	ASAP

Service Category	Monthly Recurring Charges	Non-Recurring Charges	Initial Order Term
1) DIA Internet Access 100Mb x 100Mb	\$2,520.00	\$0.00	36 Months
1) DNS Hosting	\$3.95	\$0.00	
1) 61 Static IP's Scope	\$100.00	\$0.00	36 Months
*Gross Total	\$2,623.95	\$0.00	36 Months
E-Rate Discount			
CTF Discount			
*Net Total	\$2,623.95	\$0.00	36 Months

Special Terms

Term:

- 3 Year Term

Data:

- 1 DIA Internet Access 100Mbps
- 61 Static IP's
- DNS Hosting <https://dns-email.twcbc.com/>
- Scalable Upgrade Bandwidth up to 10Gigs
- 1 Gig Ethernet Hand-off, Managed Switch
- Customer Support 24x7, 888-881-5303

CATV:

- First Responders/Fire Department may continue receiving 1st CATV Drop GRATIS
- Term to be co-terminus with this agreement

Installation:

- Installation Fee Waived

The services, products, prices and terms identified on this Service Order constitute Time Warner Cable's offer to provide such services on such terms. Until Customer has accepted this offer by signing as appropriate below, Time Warner Cable reserves the right to rescind this offer at any time, at its sole discretion.

The Agreement shall be renewable for successive terms unless at least thirty (30) days prior to the expiration of the then - current term, either party notifies the other party of such party's intent not to renew this Agreement. Agreement term and corresponding monthly billing will commence on actual service installation date. Agreement locks in rate for the Time Warner Cable Business Class services for term of contract. Cable television and Work-at-home services are subject to annual price change.

Electronic Signature Disclosure

By signing and accepting below you are acknowledging that you have read and agree to the terms and conditions outlined in this document.

Authorized Signature for Time Warner Cable

Authorized Signature for Customer

Printed Name and Title

Printed Name and Title

Date Signed

Date Signed

Time Warner Cable Business Class Terms and Conditions

1.0 AGREEMENT.

These Time Warner Cable Business Class Terms and Conditions (“**Terms and Conditions**”), and any Time Warner Business Class Service Orders (as described in Section 2.2 below) are hereby incorporated into the Time Warner Cable Business Class National Service Agreement or the Time Warner Cable Business Class Service Agreement, as the case may be, (“**Service Agreement**”) and constitute the “**Master Agreement**” by and between Customer and TWC (collectively, the “**Parties**” or each individually a “**Party**”) for the services specified on Service Orders (“**Services**”). The attachments to these Terms and Conditions (“**Attachments**”) further describe TWC’s services and are hereby incorporated by reference. The Attachments may set forth additional terms and conditions for the applicable Service. “**TWC**” means the Time Warner Cable Inc.-affiliated entity that is providing the Services.

2.0 SERVICES AND SERVICE ORDERS.

2.1 Subject to the terms and conditions of the Master Agreement (including, without limitation, Customer’s compliance with its obligations set forth in Section 5), TWC shall provide Customer with the Services in accordance with any Service Order entered into by the Parties. Customer understands and agrees that certain Services may not be available in all TWC service areas and that TWC, upon entering into a Service Order with Customer may, at its own discretion, utilize one or more of its affiliates or third parties to deliver the Services (“**Third Party Services**”). The Third Party Services may be subject to additional terms and conditions. Unless otherwise set forth, TWC shall use commercially reasonable efforts to provide the Services seven (7) days a week, twenty four (24) hours a day, excluding scheduled maintenance, required repair and events beyond TWC’s reasonable control.

2.2 Customer shall request Services hereunder by issuing to TWC one or more proposed service and/or work order(s) (in the form provided or approved by TWC) or via a mutually agreed electronic order entry system. Upon TWC’s acceptance of a proposed service and/or work order(s), such proposed service and/or work order(s), shall be deemed a “**Service Order**” hereunder and shall be deemed incorporated into the Master Agreement. A proposed service and/or work order shall be deemed accepted upon the earlier of (a) TWC’s acceptance of such proposed service and/or work order in writing; or (b) TWC’s commencement of delivery of the Service(s) set forth in such proposed service and/or work order.

3.0 SERVICE & EQUIPMENT INSTALLATION.

Customer shall obtain and maintain, or ensure that each Customer employee or branch office to whom the Services will be provided, or who shall use the Service (each, an “**End User**”), shall obtain and maintain throughout the Term, such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, TWC personnel to install, deliver, operate and maintain the Services and TWC Equipment (as defined in Section 4 below) at Customer’s and any Customer End User’s facilities. Customer shall permit TWC reasonable access to the Customer and any End User facilities at any time as needed to install, configure, upgrade, maintain or remove the TWC Equipment and other Service components collocated at Customer’s or an End User’s facilities. Customer shall make and maintain throughout the Term all reasonable site preparations necessary to permit the installation, maintenance and operation of the Service and any TWC Equipment as specified by TWC and that is required to provide the Services hereunder. In addition, Customer will provide TWC with floor space, rack space, other space and clean power as is reasonably necessary for the installation and operation of TWC Equipment at the Customer locations identified in a Service Order. Customer shall not charge TWC, and shall ensure that TWC does not incur, any fees or expenses whatsoever in connection with Customer’s provision of space, power, or access as described herein, or otherwise in connection with Customer’s performance of its obligations pursuant to this Section 3; and any such fees or expenses charged by a Customer End User shall be borne solely by Customer. Provided that Customer properly performs all necessary site preparation and provides TWC with all required consents, TWC shall use commercially reasonable efforts to install the Service in accordance with the requested Service start date indicated on a Service Order. TWC shall provide Customer with a completion notice (“**Completion Notice**”) upon completion of the installation of a Service. In the event that TWC is unable to install the Service in accordance with the agreed upon schedule as a result of (i) Customer’s (or its End User’s) failure to deliver any required materials, support or information to TWC; or (ii) TWC not being able to obtain access to equipment or software at the installation location as necessary for installation of the Service, then Customer shall pay TWC the standard installation fee as identified on the applicable Attachment hereto for any installation trip made by TWC and an additional installation fee for each subsequent trip necessitated to perform the Service installation. Interconnection of the Services and TWC Equipment with Customer’s or an End User’s equipment will be performed by Customer unless otherwise agreed in writing between the Parties. With respect to any Services for which Customer will seek any discounts under the E-Rate Program administered by the Schools and Libraries Division of the Universal Administrative Company (USAC) or the California Teleconnect Fund (collectively, the “**Discounts**”), Customer acknowledges that TWC will not begin installation of any TWC Equipment or otherwise incur costs to provide such Services under a Service Order unless and until Customer notifies TWC that either (i) Customer has received confirmation of applicable Discounts or (ii) Customer elects to pay the Gross Monthly Service Charges set forth on the Service Order in full.

4.0 SUPPORT & MAINTENANCE.

TWC shall use commercially reasonable efforts to maintain the TWC-provided and installed equipment, including as applicable, any cabling, cable modems, related splitters, routers or other items, (collectively, “**TWC Equipment**”) on TWC’s side of the demarcation points used by TWC to provide the Service. Notwithstanding any contrary provision set forth in the Master Agreement, equipment

and services on Customer's side of the demarcation points, as well as any other Customer-provided equipment, are the responsibility of Customer. TWC shall provide a telephone number and email address for inquiries and remote problem support for the Service. All such Customer support shall be provided only to Customer's designated personnel, as mutually agreed upon by TWC and Customer. Customer is responsible for all communications and interfaces with its End Users. In no event shall TWC be responsible for providing support for any network, equipment or software not provided and installed by TWC or for issues or problems beyond its control. Notwithstanding anything to the contrary in the foregoing, TWC shall use commercially reasonable efforts to restore any cable cuts on the TWC network and shall keep Customer reasonably advised of such restoration progress. Customer agrees to provide routine operational Service support for TWC Equipment and Service components collocated at Customer's or an End User's facility, including without limitation by performing reboots, as requested by TWC.

5.0 CUSTOMER OBLIGATIONS.

5.1 Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the terms of the Master Agreement. Customer agrees not to resell or redistribute (whether for a fee or otherwise) the Service, or any portion thereof, or make any use of the Service other than for Customer's internal business purposes, unless otherwise agreed in writing by TWC. Customer shall ensure that its End Users' use of the Service, if any, shall comply with all applicable laws and regulations and terms of the Master Agreement and any applicable Terms of Use (which are incorporated herein by this reference). "**Terms of Use**" means all applicable Service policies, including without limitation acceptable use policies, and other terms and conditions established by TWC and available on the TWC web site, www.twcbc.com/legal, as may be modified from time to time by TWC, in its sole discretion. TWC may audit Customer's use of the Service remotely or otherwise, to ensure Customer's compliance with the Master Agreement.

5.2 Customer shall ensure that all TWC Equipment at Customer's and Customer's End Users' facilities remains free and clear of all liens and encumbrances and Customer shall be responsible for loss or damage to the TWC Equipment while at Customer's or an End User's facilities. As between the Parties, Customer is solely responsible for: (a) all use (whether or not authorized) of the Service by Customer, an End User or any person or entity, which use shall be deemed Customer's use for purposes of this Agreement; (b) all content that is viewed, stored or transmitted via the Service; and (c) all third party charges incurred for merchandise and services accessed via the Service, if any. Customer agrees to conform its equipment and software, and to ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by TWC.

6.0 TERM.

The Master Agreement shall commence on the date of the last signature on the Service Agreement (the "**Effective Date**") and shall remain in effect for the term specified in the Service Agreement, or if no term is specified, until the expiration or termination of all Service Orders (the "**Term**"). The term for the applicable Service shall be set forth in the Service Order ("**Initial Order Term**") and shall remain in effect until expiration as set forth in the Service Order. Unless otherwise specified in the Service Agreement, if the Customer continues to receive Services after the expiration of the Initial Order Term, the Services shall renew on a month to month basis on the same terms and conditions ("**Renewal Order Term**", collectively with Initial Order Term, "**Order Term**"). The fees for the Renewal Order Term shall be as set forth in Section 7.

7.0 PAYMENT.

For each Service, Customer agrees to pay TWC all recurring and non-recurring charges, fees and taxes, (which may include Service installation and activation charges, measured and usage-based charges, local, long distance, directory assistance and operator services calling charges, and equipment and facilities charges) (collectively the "**Service Charges**") as set forth on the Service Order in accordance with the following payment terms: Service Charges will be billed to Customer on a monthly basis, and are payable within thirty (30) days after the date appearing on the invoice. If Customer and any Services purchased under this Master Agreement are eligible for Discounts, then as a courtesy to Customer, TWC will submit invoices to Customer net of Discounts and bill the balance to the government agencies administering the Discounts, all as set forth on the applicable Service Order. Customer shall apply for all applicable Discounts for each year of the Term and provide to TWC satisfactory evidence of the continuation of each Discount for such years. If TWC does not receive such confirmation, then TWC shall have the right to bill the Gross Monthly Service Charges for the applicable Services to Customer. TWC will not defer any charges while Customer awaits reimbursement, subsidy, discount or credit from any third party or government entity, and Customer shall have the obligation to pay all charges regardless of the status of any such reimbursement, subsidy, discount or credit. TWC shall have the right to increase Service Charges for each Service after the initial Order Term for such Service upon thirty (30) days written notice to Customer. TWC may charge a standard late fee for any amounts which are not paid when due, which amount shall not exceed one percent of the monthly Service Charges or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts. If TWC fails to present a charge in a timely manner, such failure shall not constitute a waiver of the charges for the fees to which it relates and Customer shall pay such invoice in accordance with these payment terms.

8.0 TAXES.

8.1 Customer shall pay all federal, state, and local taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of the Master Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable. TWC shall have the right to recover from Customer the amount of any state or local fees, charges or taxes arising as

a result of this Agreement that are imposed on TWC or TWC's services, or measured on TWC's receipts. Such fees or taxes shall be invoiced to Customer in the form of a surcharge included on Customer's invoice. TWC shall be responsible for and shall pay all taxes measured by TWC's net income. To the extent that a dispute arises as to which Party is liable for fees or taxes under the Master Agreement, Customer shall bear the burden of proof in showing that the fee or tax is imposed upon TWC's net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the fee or tax indicating that the fee or tax is based on TWC's net income. Customer shall be responsible for providing TWC any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under the Master Agreement. To the extent such documentation is held invalid for any reason, Customer agrees to reimburse TWC for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation.

8.2 Customer acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services TWC provides and, consequently, uncertainty about what fees, taxes and surcharges are due from TWC and/or its customers. Customer agrees that TWC has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Customer. Customer hereby waives any claims it may have regarding TWC's collection or remittance of such fees, taxes and surcharges. Customer understands that it may obtain a list of the fees, taxes and surcharges that TWC currently collects or passes through by writing to TWC at the following address and requesting same: Time Warner Cable, 7800 Crescent Executive Drive, Charlotte, North Carolina, 28217; Attention: Subscriber Tax Inquiries.

9.0 PROPRIETARY RIGHTS AND CONFIDENTIALITY.

9.1 TWC's Proprietary Rights. All materials including, but not limited to, any TWC Equipment (including related firmware), software, data and information provided by TWC, any identifiers or passwords used to access the Service or otherwise provided by TWC, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by TWC to provide the Service (collectively "**TWC Materials**") shall remain the sole and exclusive property of TWC or its suppliers. Customer shall acquire no interest in the TWC Materials by virtue of the payments provided for herein. Customer may use the TWC Materials solely for Customer's use of the Service. Customer may not disassemble, decompile, reverse engineer, reproduce, modify or distribute the TWC Materials, in whole or in part, or use them for the benefit of any third party. All rights in the TWC Materials not expressly granted to Customer herein are reserved to TWC. Customer shall not open, alter, misuse, tamper with or remove the TWC Equipment as and where installed by TWC, and shall not remove any markings or labels from the TWC Equipment indicating TWC (or its suppliers) ownership or serial numbers.

9.2 Confidentiality. Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the TWC Materials and any other information and materials provided by TWC in connection with this Agreement, that are identified or marked as confidential or are otherwise reasonably understood to be confidential, including but not limited to the content of this Agreement.

9.3 Software. If software is provided to Customer hereunder, TWC grants Customer a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term.

10.0 MONITORING, EQUIPMENT UPGRADES AND MODIFICATIONS.

TWC has the right, but not the obligation, to upgrade, modify and enhance the TWC Equipment (including related firmware) and the Service and take any action that TWC deems appropriate to protect the Service and its facilities. TWC has the right to add to, modify or delete any provision of the Terms of Use. TWC will notify Customer of any material adverse change to the Terms of Use or Service descriptions by posting such modified Terms and Conditions (including the Terms of Use) or Service description on the TWC web site or by email, or, if applicable, in the appropriate TWC tariff. Upon the effectiveness of any addition, modification or deletion, Customer's continued use of the Services shall constitute Customer's consent to such addition, modification or deletion, and agreement to continue to be bound by the Master Agreement. In any event, if TWC modifies the Services or the Terms of Use and such modification has a material adverse impact on Customer's ability to use the Service, Customer may, within the thirty (30) day period following the date of such modification, terminate, without penalty, that portion of the Service Order relating to the affected Service.

11.0 TERMINATION.

Either Party may terminate a Service Order; (a) upon thirty (30) days written notice of the other Party's material breach, provided that such material breach is not cured within such thirty (30) day period; or (b) immediately, in the event that the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its debtors, initiates any proceeding seeking general protection from its creditors, or is removed or delisted from a trading exchange. In addition, in the event that Customer fails to comply with any applicable laws or regulations, the terms of the Master Agreement or the Terms of Use, TWC may upon thirty (30) days written notice suspend or discontinue any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, TWC may immediately terminate or suspend Customer's or its End User's use of the Service if such use is determined by TWC, in its sole discretion, to be resulting in a material degradation of the TWC network, until such time as such degradation has been remedied. TWC will use

commercially reasonable efforts to assist Customer in remedying such degradation. In the event of a suspension, TWC may require the payment of reconnect or other charges before restarting the suspended Service. Upon the termination or expiration of the Master Agreement and the Service Order(s) hereunder: (i) TWC's obligations hereunder shall cease; (ii) Customer shall promptly pay all amounts due and owing to TWC for Service delivered prior to the date of termination or expiration, and any deinstallation fees identified in the Service Order(s), if any; (iii) Customer shall promptly cease all use of any software provided by TWC hereunder, and shall return such software to TWC; and (iv) Customer shall return to TWC or permit TWC to remove, in TWC's discretion, the TWC Equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall be responsible for reimbursing TWC for the reasonable and documented costs of the repair or replacement, at TWC's discretion, of any TWC Equipment not returned in accordance with this Section 11. In addition, notwithstanding anything to the contrary herein, upon early termination of a Service Order by Customer for any reason other than as set forth in Section 11(a) or 11(b) above or by TWC for any reason set forth in Section 11(a) or 11(b) above, Customer shall promptly pay TWC the full amount of the Service Charges that Customer would have been charged for the remainder of the Initial Term or the then-current renewal term. Notwithstanding the foregoing, Customer or TWC may immediately terminate the applicable Service Order without penalty if after entering into such Service Order, TWC conducts a site survey and learns that the construction costs will require a material increase in the Service Charges. The foregoing shall be in addition to any other rights and remedies that TWC may have under the Master Agreement or at law or equity.

Notwithstanding the foregoing, if, after the initial award of a Discount and TWC has provisioned a Service, any Discount for a subsequent year is reduced, eliminated, or otherwise not available, then Customer shall promptly notify TWC in writing that it, or the end user school district, is no longer eligible to receive the Discount and that such ineligibility did not result from any act or failure by Customer or the school districts using the Services. This Master Agreement shall remain in full force and effect and Customer shall continue to pay TWC an amount equal to the Service Charges, plus applicable taxes and fees, less an amount equivalent to the Discount. TWC shall continue to provide the Services, but may, in its sole discretion, reduce the bandwidth provided to the Customer, or the end user school district, to account for the decreased amount being paid for the Services. Customer shall, and shall cause the school districts to, use their best efforts to reinstate all applicable Discounts or find another source of funds to ensure that TWC receives the total Service Charges anticipated for the applicable Initial Order Term.

12.0 INDEMNIFICATION.

Customer agrees to defend, indemnify and hold harmless TWC, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against third party claims, liabilities, damages and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to: (a) the use of the Service, including but not limited to a breach of Section 5 herein; (b) personal injury or property damage caused by the negligence or willful misconduct of Customer or its employees or agents; (c) any fees, fines or penalties incurred by TWC as a result of Customer's violation of the 10% Rule as set forth in Attachment D; or (d) breach of the terms governing any use of music services provided as part of the Service.

13.0 DISCLAIMER OF WARRANTY.

CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND USES THE SAME AT ITS OWN RISK. TWC EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE AND TWC EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. EXCEPT AS SPECIFICALLY SET FORTH IN THE MASTER AGREEMENT, THE SERVICE, TWC EQUIPMENT AND TWC MATERIALS ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY TWC, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. TWC DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, BE UNINTERRUPTED, SECURE, ERROR FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATE OR INFORMATION OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. EXCEPT AS SET FORTH IN THE MASTER AGREEMENT, TWC DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT PROVIDED BY TWC WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE SERVICE MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR AN END USER'S COMPUTER SYSTEM OR EQUIPMENT (INCLUDING NETWORK EQUIPMENT) OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR THAT RESULTS FROM, CUSTOMER'S OR ITS END USERS' USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO, CUSTOMER'S OR END USERS' SENDING OR RECEIVING, OR UPLOADING OR DOWNLOADING, OR ATTEMPTS TO DO SAME, OF SUCH DATA, MATERIAL OR TRAFFIC. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TWC'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT AND TWC DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

14.0 LIMITATION OF LIABILITY.

IN NO EVENT SHALL TWC BE LIABLE TO CUSTOMER, AN END USER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT, REGARDLESS OF WHETHER TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TWC'S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY)) SHALL BE LIMITED TO THE FEES PAID OR OWED BY CUSTOMER UNDER THE SERVICE ORDER THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL TWC'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER HEREUNDER. TWC SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES ARISING AS A RESULT OF THE UNAVAILABILITY OF THE SERVICE, INCLUDING THE INABILITY TO REACH 911 OR OTHER EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO CUSTOMER-PROVIDED EQUIPMENT, FACILITIES OR SERVICES.

15.0 DISCLOSURE OF CUSTOMER INFORMATION.

Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Telecommunications Act (the "**Telecommunications Act**"), the Federal Cable Communications Act (the "**Cable Act**"), the Electronic Communications Privacy Act, and, to the extent applicable, state laws and regulations. Customer proprietary network information and personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in Attachment B (Voice Services), the Subscriber Privacy Notice, and, if applicable, in TWC's tariff, which are incorporated herein by reference. The Subscriber Privacy Notice is available at www.twcbc.com/legal. In addition to the foregoing, Customer hereby acknowledges and agrees that TWC may disclose Customer's and its employees' personally identifiable information as required by law or regulation, or the American Registry for Internet Numbers ("**ARIN**") or any similar agency, or in accordance with TWC's Subscriber Privacy Notice or, if applicable, tariff. In addition, TWC shall have the right (except where prohibited by law notwithstanding Customer's consent), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril.

16.0 FORCE MAJEURE.

Notwithstanding anything to the contrary contained herein, a Party shall have no liability to the other hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, natural disaster, regulation or governmental acts, fire, civil disturbance, weather, or any unauthorized access to or destruction or modification of the Service, in whole or in part (each a "**Force Majeure Event**"). Notwithstanding anything to the contrary herein, Customer may terminate the affected Service Order(s) in its entirety and without penalty if a Force Majeure Event continues for more than ten (10) consecutive days and prevents TWC from delivering the Service under such Service Order(s).

17.0 REGULATORY AND LEGAL CHANGES, POLE ATTACHMENT AND CONDUIT CHARGES, TARIFFS.

In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any new application of or increase in any government- or quasi-government-imposed fees or charges that increases the costs or other terms of TWC's delivery of Service to Customer, or, in the event of any increase in pole attachment or conduit charges applicable to any facilities used by TWC in providing the Service, Customer acknowledges and agrees that TWC may pass through to Customer any such increased fees or costs, but only to the extent of the actual increase, provided TWC notifies Customer at least thirty (30) days in advance of the increase. In such case, and if such increase materially increases the fees or charges due by Customer hereunder for the applicable Service, Customer may, within thirty (30) days after notification of such increase, terminate the affected Service without incurring termination liability, provided Customer notifies TWC at least fifteen (15) days in advance of Customer's requested termination date. Further, in the event that TWC is required to file tariffs or rate schedules with a regulatory agency or otherwise publish its rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, and TWC is required under applicable law to apply those rates to Customer's purchase of Service under the Master Agreement, then the terms set forth in the applicable tariff or rate schedule shall govern TWC's delivery of, and Customer's use or consumption of the Service. In addition, if TWC determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then TWC may terminate the Master Agreement and any affected Service Orders without liability, by giving Customer thirty (30) days prior written notice or any such notice as is required by law or regulation applicable to such determination.

17.1 The Master Agreement, its Attachments and the Service Order(s) are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which TWC provides the Services. If any provision of the Master Agreement, the Attachments, or the Service Order(s) contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of the Master Agreement, the Attachments, and/or the Service Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided hereunder, then such law or regulation will take priority over the relevant provision of the Master Agreement, the Attachments, and the Service Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in the Master Agreement, nothing contained in the Master Agreement shall constitute a waiver by TWC of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.

18.0 ENTIRE AGREEMENT.

The Master Agreement, including without limitation all attachments that are attached hereto and incorporated herein by this reference, sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the Parties with respect to such subject matter.

19.0 ORDER OF PRECEDENCE.

Each Service shall be provisioned pursuant to the terms and conditions of the Master Agreement. In the event that TWC permits a Customer to use its own standard purchase order form to order the Service, the Parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect. To the extent that the terms of any Service Agreement or Service Order are inconsistent with the terms of these Terms and Conditions, the terms of the Service Agreement then the terms of the Service Order shall control.

20.0 COMPLIANCE WITH LAWS.

As between the Parties, TWC will obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to TWC's operation and provision of the Services as contemplated herein, and Customer will obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to Customer's use of the Services as contemplated herein. Unless specified otherwise in the Master Agreement, each Party will give all notices, pay all fees and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified herein.

21.0 ARBITRATION.

EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT SHALL BE BROUGHT IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK AND SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THE MASTER AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THE MASTER AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRABILITY OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

22.0 MISCELLANEOUS.

The interpretation, validity and enforcement of the Master Agreement, and all legal actions brought under or in connection with the subject matter of the Master Agreement, shall be governed by the law of the State of California. In the event that any portion of the Master Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth herein and the remainder of the Master Agreement shall remain in full force and effect. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Customer may not assign the Master Agreement without the prior written consent of TWC, and any assignment in violation of this Section shall be null and void. TWC may assign its rights and obligations under the Master Agreement including, without limitation, in whole or in part, to any affiliate without the prior written approval of or notice to Customer. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of TWC herein may accrue to, or be fulfilled by, any affiliate, as well as by TWC and/or its subcontractors. Customer may not issue a press release, public announcement or other public statements regarding the Master Agreement without TWC's prior written consent. Excluding any third party claims, claims under the Master Agreement must be initiated not later than two (2) years after the claim arose. There are no third party beneficiaries to the Master Agreement. The Parties to the Master Agreement are independent contractors. Any notice under the Master Agreement shall be given in writing and shall be deemed to have been given when actually received by the other Party. Notices shall be delivered to Customer and TWC at the respective addresses set forth above, or to such other address as is provided by one Party to the other in writing. Notices to TWC shall include a cc to: Time Warner Cable Inc., 60 Columbus Circle, New York, New York, 10023, Attn: General Counsel, Fax: (212) 364-8254. The provisions of sections 7, 8, 9, 11, 12, 13, 14, 15, 17.1, 18, 19, 21 and 22 and the Attachments shall survive the termination or expiration of the Master Agreement. The Master Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Attachment A

Business Class Cable TV Service ("Cable TV Service")

Cable TV Service: If Customer selects to receive the Cable TV Service, TWC shall provide Basic and Standard Cable services. Customer understands and agrees that premium program services, such as HBO, Cinemax, Showtime, and The Movie Channel, may not be received or shown on any television receivers located in any public areas, such as lounges, dayrooms, visiting areas or other common areas used by groups or the general public, nor shall Customer authorize or approve of any copying, taping or duplicating thereof.

TWC shall have the right to add, modify, or delete channel line-ups.

Customer's use of the Cable TV Service is subject to the following additional terms and conditions:

In the event that changes in technology require the use of specialized equipment to continue to receive Cable TV Services, TWC agrees to provide such equipment and Customer agrees to pay for such equipment at the same rate charged by TWC to commercial customers in the municipality in which Customer's property receiving the Cable TV Service is located.

In the event that any TWC audit reveals that Customer's usage of the Cable TV Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage.

The monthly service charges set forth in a Service Order for Cable TV Service do not include applicable taxes, regulatory fees, franchise fees and public access fees. Notwithstanding anything to the contrary in this Agreement, the monthly service charges for the Cable TV Service are subject to change in accordance with commercial Cable TV rate increases applied to commercial customers.

Attachment B

Business Class Phone Service and Business Class PRI Service (collectively, "Voice Services")

Business Class Phone Service: If Customer selects to receive the Business Class Phone Service, Customer will receive telephone service consisting of one or more telephone lines and a variety of features, as described more fully in the applicable Service Order.

Business Class PRI Service: If Customer selects to receive the Business Class PRI Service, Customer will receive voice and call processing services via a full or fractional DS-1 level Primary Rate Interface ("PRI") connection to Customer's private branch exchange ("PBX") or other equipment facilities and services ("Customer-provided equipment" or "CPE"), and a variety of features, as described more fully in the applicable Service Order.

Customer's use of the Voice Services is subject to the following additional terms and conditions:

- Customer acknowledges that the voice-enabled cable modem used to provide Business Class Phone Service and the integrated access device ("IAD") used to provide the Business Class PRI Service are electrically powered and that the Voice Services, including the ability to access 911 services and alarm, security, medical and other monitoring services, may not operate in the event of an electrical power outage or a TWC network service interruption. Customer also acknowledges that, in the event of a power outage at Customer or any End User's facility, any back-up power supply provided with a TWC-provided voice-enabled cable modem or IAD may enable service for a limited period of time or not at all, depending on the circumstances, and that the use of a back-up power supply does not ensure that the Voice Service will be available in all circumstances.
- The location and address associated with the Voice Service will be the address identified on the Service Order. Customer is not permitted to move TWC Equipment from the location and address in which it has been installed or to access the Voice Service from a remote location. If Customer's network enables access to the Voice Service from a remote location or moves a voice-enabled cable modem or IAD to an address different than that identified on the Service Order, calls from such modem or IAD to 911 will appear to 911 emergency service operators to be coming from the address identified on the Service Order and not the remote location or new address. Customer consents to TWC's disclosure of Customer's name, address and or/telephone number in response to 911 and similar public safety requests and to the telephone companies serving those end users to whom Customer calls so that calls may be completed.
- Pursuant to 47 C.F.R. § 9.5(e), Customer shall specifically advise every end user of the Voice Service prominently and in the language provided below, of the circumstances under which E911 service may not be available.

Business Class voice-enabled customer premise equipment is electrically powered and, in the event of a power outage or Time Warner Cable network failure, Enhanced 9-1-1 ("E911") services may not be available.

The Master Agreement prohibits moving your Time Warner Cable voice-enabled customer premise equipment to a new address or accessing the Service from a remote location. If this equipment is moved to another location or the Service is accessed from a remote location, E9-1-1 services may not operate properly and emergency operators may be unable to accurately identify the caller's address in an emergency. The E911 location specified on the Service Order will be provided to emergency operators for all emergency calls made from the telephone numbers associated with the Service Order. To obtain service at another location you must call Time Warner Cable.

- Customer shall obtain and keep a record of affirmative acknowledgement by every end user of the Voice Service of having received and understood the above advisory. Customer shall also distribute to all end users of the Voice Services labels/stickers to be supplied by TWC and instruct all end users of the Voice Services to place them on or near the equipment used in conjunction with the service.
- Customer agrees that TWC will not be responsible for any losses or damages arising as a result of the unavailability of the Voice Service, including the inability to reach 911 or other emergency services, the inability to contact a security system or remote medical or other monitoring service provider or any failure or fault relating to Customer-provided equipment, facilities or services; the use of third-party enterprise 911 solutions or Customer's attempt to access the Voice Service from a remote location.
- Customer acknowledges that TWC does not guarantee that the Voice Service will operate with alarm, security, medical and/or other monitoring systems and services or Customer-provided equipment, facilities and services ("**Alarm Services**").
- Customer must ensure that all Alarm Services and related signal transmission services are tested to validate that they remain fully operational after installation of Voice Service. Customer is solely responsible for obtaining such testing from the appropriate Alarm Service providers, ensuring that such testing is completed in a timely manner, and confirming that the Alarm Services and any related Customer-provided equipment, facilities and systems that are connected to the Voice Service operate properly. Customer is solely responsible for any and all costs associated with this activity.

- TWC's obligation is to provide Voice Service to the customer-accessible interface device or equipment installed by TWC at the TWC network demarcation point on the Customer's premises. Customer is solely responsible for coordinating and completing any and all rearrangement, augmentation and configuration of Customer-provided equipment, facilities and systems to be used with the Voice Service and connecting such equipment, facilities and systems to the TWC network interface device or equipment. Customer must notify TWC at least seventy two (72) hours prior to the Customer's scheduled installation appointment if the Customer seeks to reschedule installation for any reason. Additional charges may apply for non-standard installation and missed installation appointments.
- Customer agrees to provide TWC and its authorized agents with access to Customer's internal telephone wiring at the network interface device or at some other minimum point of entry in order to facilitate the installation and operation of the Voice Service over existing wiring. Customer hereby authorizes TWC to make any requests from Customer's landlord, building owner and/or building manager, as appropriate and to make any requests necessary to other or prior communications service providers as necessary and appropriate to ensure that TWC has all access to inside wiring and cabling necessary and sufficient to efficiently and securely install the Voice Service and all related equipment.
- Information relating to Customer calling details ("**Calling Details**"), including the quantity, configuration, type, destination and amount of Voice Service usage by Customer, and information contained in Customer's bills (collectively, "**Customer Proprietary Network Information**" or "**CPNI**"), that is obtained by TWC pursuant to its provision of the Voice Service will be protected by TWC as described herein, in the Time Warner Cable Privacy Policy and in accordance with applicable federal and state requirements. Notwithstanding the foregoing, the following shall not be CPNI: (i) Customer's directory listing information, and (ii) aggregated and/or compiled information that does not contain customer-specific references, even if CPNI was used as a basis for such information.

TWC may use and disclose CPNI when required by applicable law. TWC may use CPNI and share CPNI with its partners and contractors without Customer consent: (i) to provide services and bills to Customer; (ii) pursuant to applicable law; (iii) to protect the interests of TWC, Customer and related parties in preventing fraud, theft of services, abuse, harassment and misuse of telephone services; (iv) to protect the security and integrity of TWC's network systems; and (v) to market additional TWC services to Customer that are of the same category as the services that Customer purchases from TWC. TWC will obtain Customer's consent before using CPNI to market to Customer TWC services that are not within the categories of services that Customer purchases from TWC. Customer agrees that, except as provided in Section 14.0 of the Terms and Conditions and applicable law, TWC will not be liable for any losses or damages arising as a result of disclosure of CPNI.

Customer may obtain from TWC Calling Details showing Customer's outbound calls made within a trailing 90-day period. Customer may access this information by logging in through Customer's secure account information page on TWC's web portal or by requesting such information in writing or by telephone call to TWC. If Customer has not been assigned a designated account representative, TWC will respond to Customer requests for Customer Calling Details only in compliance with TWC's then-current authentication requirements and applicable law. Such authentication requirements may require Customer to obtain a secure password, which may be required for both online and telephone requests for Calling Details. TWC will provide the requested Calling Details by sending a printout or CD containing the requested information to the Customer's account address of record or by making the document or information available to Customer or Customer's employee at a TWC retail location upon presentation of a valid government-issued photo ID by Customer. TWC will notify Customer of any requests to change account passwords, activate online account access and change Customer's account address of record. TWC may provide such notice by voicemail, by e-mail or by regular mail to Customer's prior account address of record.

If TWC has assigned a designated account representative to Customer, Customer may identify a person or persons who are authorized to request Calling Details from the designated account representative, with or without further identity authentication, at Customer's option, and may designate the means by which TWC will provide such information to Customer (e.g., electronically, by fax, by mail, orally or otherwise) ("**Calling Detail Preauthorization Plan**"). Thereafter, TWC will provide requested Calling Detail in accordance with the Calling Detail Preauthorization Plan. Customer is responsible for: (i) ensuring that TWC receives timely notice of any changes to the list of authorized individuals (ii) the accuracy of Customer-defined additional authentication information and practices; and (iii) maintaining the security and confidentiality of the Calling Detail Preauthorization Plan. TWC will not be liable to Customer for any disclosure of Calling Detail, including CPNI, that occurs if TWC has complied with the Calling Detail Preauthorization Plan.

- In the event that a material error or omission in Customer's directory listing information, regardless of form, is caused by TWC, Customer's sole and exclusive remedy shall be a partial service credit in an amount set by TWC's then-current standard policies or as prescribed by applicable regulatory requirements, if any. Notwithstanding the foregoing, TWC shall have no other liability for any error or omission in any directory listing information.

Attachment C

Business Class National Teleworker Service, Branch Office Connectivity Service, Broadband High Speed Data, Wideband Internet and Dedicated Internet Access (collectively, "Data Services")

National Teleworker Service ("NTW Service"): If Customer selects to receive the NTW Service, TWC shall provide connectivity to a single personal computer ("PC") via a cable modem at the residential location of the limited number of Customer employees set forth on a Service Order to connect such employees' PCs to the Customer's data network. Each PC connection may be used by one Customer employee at a time solely for Customer's internal business purposes.

Branch Office Connectivity Service ("BOC Service"): If Customer selects to receive the BOC Service, TWC shall provide connectivity from the number of Customer branch offices set forth in a Service Order to the Customer's data network. Customer shall be permitted to connect any number of computers within Customer's identified branch offices to the BOC Service, provided that use does not exceed the standard bandwidth provided by TWC.

Broadband High Speed Data and Wideband Internet ("HSD Service"): If Customer selects to receive the HSD Service, TWC shall provide connectivity from the number of Customer sites set forth in a Service Order to the Customer's data network. Customer shall be permitted to connect any number of computers within Customer's identified sites to the HSD Service, provided that use does not exceed the standard bandwidth provided by TWC.

Dedicated Internet Access ("DIA Service"): If Customer selects to receive the DIA Service, TWC shall provide Customer with a dedicated, scalable connection over a packet-based infrastructure with Internet service provider ("ISP") peering between Customer's data network identified on a Service Order and the TWC facility identified on a Service Order.

Customer's use of the Data Services is subject to the following additional terms and conditions:

TWC's provision of any Data Service is subject to availability.

TWC shall allow Customer employees to use (however in no event shall TWC be responsible for) a Virtual Private Network ("VPN") and to allow the VPN to pass through the cable modem of any Data Service, as applicable, provided that TWC shall have the right to disconnect (or demand the immediate disconnection of) any such Data Service that degrades any service provided to other subscribers on the TWC network.

Customer shall not upload, post, transmit or otherwise make available on or via the Data Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. TWC may remove content that in its judgment violates these standards.

TWC shall have the right, but not the obligation, to: (a) monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters); and (b) monitor Customer's bandwidth utilization and to limit excessive use of bandwidth (as determined by TWC) as TWC deems appropriate to efficiently manage its network. In the event that any TWC audit reveals that Customer's usage of a Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage. In addition, TWC shall have the right, but not the obligation, to: (i) review public content associated with the Data Services, including chat rooms, bulletin boards and forums, in order to determine compliance with the Master Agreement and any rules now or hereafter established by TWC; and (ii) remove (or demand the removal of) any such content that TWC determines to be unacceptable or to violate the terms of the Master Agreement, any bandwidth utilization limitations or other Terms of Use.

Each tier or level of Services has limits on the maximum throughput rate at which Customer may send and receive data at any time and the maximum throughput rate may be achieved in bursts, but generally will not be sustained on a consistent basis. The throughput rate experienced by Customer at any time will vary based on numerous factors, including without limitation, the condition of Customer's inside wiring, computer configurations, Internet and TWC network congestion, time of day and the accessed website servers, among other factors.

Attachment D

Business Class Data Transport Services: Ethernet Solutions ("Ethernet Service")

Ethernet: If Customer selects to receive the Ethernet Service, TWC shall provide Customer with a dedicated circuit connection between Customer's data network and the TWC facility identified on a Service Order. The Ethernet Services shall be limited to the capacity set forth on a Service Order.

Customer's use of Ethernet Service is subject to the following additional terms and conditions:

TWC's provision of Ethernet Services is subject to availability.

TWC shall have the right to disconnect (or demand the immediate disconnection of) any such Ethernet Service that degrades any service provided to other subscribers on the TWC network.

Customer shall not transmit or otherwise make available on or via the Ethernet Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law.

TWC shall have the right, but not the obligation, to (a) monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters); and (b) monitor Customer's bandwidth utilization and to limit excessive use of bandwidth (as determined by TWC) as TWC deems appropriate to efficiently manage its network. In the event that any TWC audit reveals that Customer's usage of a Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage.

Each tier or level of a Data Transport Service has limits on the maximum throughput rate at which Customer may send and receive data at any time and the maximum throughput rate may be achieved in bursts, but generally will not be sustained on a consistent basis. The throughput rate experienced by Customer at any time will vary based on numerous factors, including without limitation, the condition of Customer's inside wiring, computer configurations, Internet and TWC network congestion, time of day and the accessed servers, among other factors.

Customer represents and warrants that Customer's use of Ethernet Services shall be such that the Ethernet Service shall be deemed jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed use "10% Rule" (47 C.F. R. 36.154, 4 FCC Red. 1352), and shall notify TWC in the event of breach or threatened breach of the foregoing. If, as a result of Customer's use of Ethernet Services, the Ethernet Services are deemed not to be jurisdictionally interstate pursuant to the 10% Rule, then Customer will be liable for any resulting fees, fines, penalties and costs incurred by TWC. In addition, if TWC determines that Customer's use of the Ethernet Services is likely to be deemed not to be jurisdictionally interstate, and therefore that TWC's provision of the Ethernet Services is likely to put TWC's franchises, licenses, permits or business at risk, or otherwise cause regulatory problems for TWC, then TWC may immediately suspend the provision of any or all Ethernet Service under any or all affected Service Orders until such time as either (a) Customer provides TWC with satisfactory assurances that Customer's use of Ethernet Services shall be deemed to be jurisdictionally interstate or (b) TWC is otherwise brought into full compliance with any applicable laws and regulations.



Service Agreement

This Time Warner Cable Business Class Service Agreement (“**Service Agreement**”) in addition to the Time Warner Cable Business Class Terms and Conditions (“**Terms and Conditions**”) and any Time Warner Cable Business Class Service Orders (each, a “**Service Order**”), constitute the “**Master Agreement**” by and between customer identified below (“**Customer**”) and Time Warner Cable (“**TWC or Operator**”) and is effective as of the date last signed below.

Time Warner Cable Information

Time Warner Cable

Street: 17777 Center Court Dr.
City: Cerritos
State: CA
Zip Code: 90703

Contact: Enrico Diaz
Phone: 562-677-0402
Cell Phone: 714-719-0622
Fax: 704-697-4790

Customer Information

Customer Name (Exact Legal Name): Hemet Public Library
Account Number
Federal Tax ID

Billing Address:
300 E. Latham Avenue.
Hemet, CA 92543

Billing Contact Name: Scott Underwood
Phone 951-765-3765
Fax

Authorized Contact: Scott Underwood
Phone: 951-765-3765
Fax:

Agreement

THIS SERVICE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS ATTACHED HERETO. SUCH TERMS AND CONDITIONS ARE INCORPORATED HEREIN BY THIS REFERENCE. BY EXECUTING THIS SERVICE AGREEMENT BELOW, CUSTOMER ACKNOWLEDGES THAT: (1) CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS, INCLUDING SECTION 21 THEREOF, WHICH PROVIDES THAT THE PARTIES DESIRE TO RESOLVE DISPUTES RELATING TO THE TIME WARNER BUSINESS CLASS SERVICES AGREEMENT THROUGH ARBITRATION; AND (2) BY AGREEING TO ARBITRATION, CUSTOMER IS GIVING UP VARIOUS RIGHTS, INCLUDING THE RIGHT TO TRIAL BY JURY.

By signing and accepting below you are acknowledging that you have read and agree to the terms and conditions outlined in this document.

Electronic Signature Disclosure

Authorized Signature for Time Warner Cable

Authorized Signature for Customer

By: _____

By: _____

Name (printed): _____

Name (printed): _____

Title: _____

Title: _____

Date: _____

Date: _____

Business Class Customer Service Order

Account Executive: Enrico Diaz
 Phone: 562-677-0402
 Cell Phone: 714-719-0622
 Fax: 704-697-4790
 Email: enrico.diaz@twcable.com

Customer Information		
Business Name: Hemet Public Library		Customer Type: Government
Federal Tax ID	Tax Exempt Status	Tax Exempt Certificate #
Billing Address 300 E. Latham Avenue. Hemet, CA 92543		Account Number
Billing Contact	Billing Contact Phone	Billing Contact Email Address
Authorized Contact Scott Underwood	Authorized Contact Phone: 951-765-3765	Authorized Contact Email Address sunderwood@cityofhemet.org
Technical Contact	Technical Contact Phone	Technical Contact Email Address

Internet Access Service Order Information				
Site Name	Address Location	Location Type	Service Description / Bandwidth (List all Services for Each Location)	Customer Requested Due Date
Hemet Public Library	300 E Latham Ave., Hemet, CA	Hub	DIA Internet Access over Fiber	ASAP

Service Category	Monthly Recurring Charges	Non-Recurring Charges	Initial Order Term
1) DIA Internet Access 50Mb x 50Mb	\$1,620.00	\$0.00	36 Months
1) DNS Hosting	\$3.95	\$0.00	
1) DNS Registration			
1) 29 Static IP's Scope	\$80.00	\$0.00	36 Months
*Gross Total	\$1,703.95	\$0.00	36 Months
E-Rate Discount			
CTF Discount			
*Net Total	\$1,703.95	\$0.00	36 Months

Special Terms

Term:

- 3 Year Term

Data:

- 1 DIA Internet Access 50Mbps
- 29 Static IP's
- DNS Hosting <https://dns-email.twcbc.com/>
- Scalable Upgrade Bandwidth up to 10Gigs
- 1 Gig Ethernet Hand-off, Managed Switch
- Customer Support 24x7, 888-881-5303

CATV:

- Library may continue receiving 1st CATV Drop GRATIS
- Term to be co-terminus with this agreement

Installation:

- Installation Fee Waived

The services, products, prices and terms identified on this Service Order constitute Time Warner Cable's offer to provide such services on such terms. Until Customer has accepted this offer by signing as appropriate below, Time Warner Cable reserves the right to rescind this offer at any time, at its sole discretion.

The Agreement shall be renewable for successive terms unless at least thirty (30) days prior to the expiration of the then - current term, either party notifies the other party of such party's intent not to renew this Agreement. Agreement term and corresponding monthly billing will commence on actual service installation date. Agreement locks in rate for the Time Warner Cable Business Class services for term of contract. Cable television and Work-at-home services are subject to annual price change.

Electronic Signature Disclosure

By signing and accepting below you are acknowledging that you have read and agree to the terms and conditions outlined in this document.

Authorized Signature for Time Warner Cable

Authorized Signature for Customer

Printed Name and Title

Printed Name and Title

Date Signed

Date Signed

Time Warner Cable Business Class Terms and Conditions

1.0 AGREEMENT.

These Time Warner Cable Business Class Terms and Conditions (“**Terms and Conditions**”), and any Time Warner Business Class Service Orders (as described in Section 2.2 below) are hereby incorporated into the Time Warner Cable Business Class National Service Agreement or the Time Warner Cable Business Class Service Agreement, as the case may be, (“**Service Agreement**”) and constitute the “**Master Agreement**” by and between Customer and TWC (collectively, the “**Parties**” or each individually a “**Party**”) for the services specified on Service Orders (“**Services**”). The attachments to these Terms and Conditions (“**Attachments**”) further describe TWC’s services and are hereby incorporated by reference. The Attachments may set forth additional terms and conditions for the applicable Service. “**TWC**” means the Time Warner Cable Inc.-affiliated entity that is providing the Services.

2.0 SERVICES AND SERVICE ORDERS.

2.1 Subject to the terms and conditions of the Master Agreement (including, without limitation, Customer’s compliance with its obligations set forth in Section 5), TWC shall provide Customer with the Services in accordance with any Service Order entered into by the Parties. Customer understands and agrees that certain Services may not be available in all TWC service areas and that TWC, upon entering into a Service Order with Customer may, at its own discretion, utilize one or more of its affiliates or third parties to deliver the Services (“**Third Party Services**”). The Third Party Services may be subject to additional terms and conditions. Unless otherwise set forth, TWC shall use commercially reasonable efforts to provide the Services seven (7) days a week, twenty four (24) hours a day, excluding scheduled maintenance, required repair and events beyond TWC’s reasonable control.

2.2 Customer shall request Services hereunder by issuing to TWC one or more proposed service and/or work order(s) (in the form provided or approved by TWC) or via a mutually agreed electronic order entry system. Upon TWC’s acceptance of a proposed service and/or work order(s), such proposed service and/or work order(s), shall be deemed a “**Service Order**” hereunder and shall be deemed incorporated into the Master Agreement. A proposed service and/or work order shall be deemed accepted upon the earlier of (a) TWC’s acceptance of such proposed service and/or work order in writing; or (b) TWC’s commencement of delivery of the Service(s) set forth in such proposed service and/or work order.

3.0 SERVICE & EQUIPMENT INSTALLATION.

Customer shall obtain and maintain, or ensure that each Customer employee or branch office to whom the Services will be provided, or who shall use the Service (each, an “**End User**”), shall obtain and maintain throughout the Term, such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, TWC personnel to install, deliver, operate and maintain the Services and TWC Equipment (as defined in Section 4 below) at Customer’s and any Customer End User’s facilities. Customer shall permit TWC reasonable access to the Customer and any End User facilities at any time as needed to install, configure, upgrade, maintain or remove the TWC Equipment and other Service components collocated at Customer’s or an End User’s facilities. Customer shall make and maintain throughout the Term all reasonable site preparations necessary to permit the installation, maintenance and operation of the Service and any TWC Equipment as specified by TWC and that is required to provide the Services hereunder. In addition, Customer will provide TWC with floor space, rack space, other space and clean power as is reasonably necessary for the installation and operation of TWC Equipment at the Customer locations identified in a Service Order. Customer shall not charge TWC, and shall ensure that TWC does not incur, any fees or expenses whatsoever in connection with Customer’s provision of space, power, or access as described herein, or otherwise in connection with Customer’s performance of its obligations pursuant to this Section 3; and any such fees or expenses charged by a Customer End User shall be borne solely by Customer. Provided that Customer properly performs all necessary site preparation and provides TWC with all required consents, TWC shall use commercially reasonable efforts to install the Service in accordance with the requested Service start date indicated on a Service Order. TWC shall provide Customer with a completion notice (“**Completion Notice**”) upon completion of the installation of a Service. In the event that TWC is unable to install the Service in accordance with the agreed upon schedule as a result of (i) Customer’s (or its End User’s) failure to deliver any required materials, support or information to TWC; or (ii) TWC not being able to obtain access to equipment or software at the installation location as necessary for installation of the Service, then Customer shall pay TWC the standard installation fee as identified on the applicable Attachment hereto for any installation trip made by TWC and an additional installation fee for each subsequent trip necessitated to perform the Service installation. Interconnection of the Services and TWC Equipment with Customer’s or an End User’s equipment will be performed by Customer unless otherwise agreed in writing between the Parties. With respect to any Services for which Customer will seek any discounts under the E-Rate Program administered by the Schools and Libraries Division of the Universal Administrative Company (USAC) or the California Teleconnect Fund (collectively, the “**Discounts**”), Customer acknowledges that TWC will not begin installation of any TWC Equipment or otherwise incur costs to provide such Services under a Service Order unless and until Customer notifies TWC that either (i) Customer has received confirmation of applicable Discounts or (ii) Customer elects to pay the Gross Monthly Service Charges set forth on the Service Order in full.

4.0 SUPPORT & MAINTENANCE.

TWC shall use commercially reasonable efforts to maintain the TWC-provided and installed equipment, including as applicable, any cabling, cable modems, related splitters, routers or other items, (collectively, “**TWC Equipment**”) on TWC’s side of the demarcation points used by TWC to provide the Service. Notwithstanding any contrary provision set forth in the Master Agreement, equipment

and services on Customer's side of the demarcation points, as well as any other Customer-provided equipment, are the responsibility of Customer. TWC shall provide a telephone number and email address for inquiries and remote problem support for the Service. All such Customer support shall be provided only to Customer's designated personnel, as mutually agreed upon by TWC and Customer. Customer is responsible for all communications and interfaces with its End Users. In no event shall TWC be responsible for providing support for any network, equipment or software not provided and installed by TWC or for issues or problems beyond its control. Notwithstanding anything to the contrary in the foregoing, TWC shall use commercially reasonable efforts to restore any cable cuts on the TWC network and shall keep Customer reasonably advised of such restoration progress. Customer agrees to provide routine operational Service support for TWC Equipment and Service components collocated at Customer's or an End User's facility, including without limitation by performing reboots, as requested by TWC.

5.0 CUSTOMER OBLIGATIONS.

5.1 Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the terms of the Master Agreement. Customer agrees not to resell or redistribute (whether for a fee or otherwise) the Service, or any portion thereof, or make any use of the Service other than for Customer's internal business purposes, unless otherwise agreed in writing by TWC. Customer shall ensure that its End Users' use of the Service, if any, shall comply with all applicable laws and regulations and terms of the Master Agreement and any applicable Terms of Use (which are incorporated herein by this reference). "**Terms of Use**" means all applicable Service policies, including without limitation acceptable use policies, and other terms and conditions established by TWC and available on the TWC web site, www.twcbc.com/legal, as may be modified from time to time by TWC, in its sole discretion. TWC may audit Customer's use of the Service remotely or otherwise, to ensure Customer's compliance with the Master Agreement.

5.2 Customer shall ensure that all TWC Equipment at Customer's and Customer's End Users' facilities remains free and clear of all liens and encumbrances and Customer shall be responsible for loss or damage to the TWC Equipment while at Customer's or an End User's facilities. As between the Parties, Customer is solely responsible for: (a) all use (whether or not authorized) of the Service by Customer, an End User or any person or entity, which use shall be deemed Customer's use for purposes of this Agreement; (b) all content that is viewed, stored or transmitted via the Service; and (c) all third party charges incurred for merchandise and services accessed via the Service, if any. Customer agrees to conform its equipment and software, and to ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by TWC.

6.0 TERM.

The Master Agreement shall commence on the date of the last signature on the Service Agreement (the "**Effective Date**") and shall remain in effect for the term specified in the Service Agreement, or if no term is specified, until the expiration or termination of all Service Orders (the "**Term**"). The term for the applicable Service shall be set forth in the Service Order ("**Initial Order Term**") and shall remain in effect until expiration as set forth in the Service Order. Unless otherwise specified in the Service Agreement, if the Customer continues to receive Services after the expiration of the Initial Order Term, the Services shall renew on a month to month basis on the same terms and conditions ("**Renewal Order Term**", collectively with Initial Order Term, "**Order Term**"). The fees for the Renewal Order Term shall be as set forth in Section 7.

7.0 PAYMENT.

For each Service, Customer agrees to pay TWC all recurring and non-recurring charges, fees and taxes, (which may include Service installation and activation charges, measured and usage-based charges, local, long distance, directory assistance and operator services calling charges, and equipment and facilities charges) (collectively the "**Service Charges**") as set forth on the Service Order in accordance with the following payment terms: Service Charges will be billed to Customer on a monthly basis, and are payable within thirty (30) days after the date appearing on the invoice. If Customer and any Services purchased under this Master Agreement are eligible for Discounts, then as a courtesy to Customer, TWC will submit invoices to Customer net of Discounts and bill the balance to the government agencies administering the Discounts, all as set forth on the applicable Service Order. Customer shall apply for all applicable Discounts for each year of the Term and provide to TWC satisfactory evidence of the continuation of each Discount for such years. If TWC does not receive such confirmation, then TWC shall have the right to bill the Gross Monthly Service Charges for the applicable Services to Customer. TWC will not defer any charges while Customer awaits reimbursement, subsidy, discount or credit from any third party or government entity, and Customer shall have the obligation to pay all charges regardless of the status of any such reimbursement, subsidy, discount or credit. TWC shall have the right to increase Service Charges for each Service after the initial Order Term for such Service upon thirty (30) days written notice to Customer. TWC may charge a standard late fee for any amounts which are not paid when due, which amount shall not exceed one percent of the monthly Service Charges or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts. If TWC fails to present a charge in a timely manner, such failure shall not constitute a waiver of the charges for the fees to which it relates and Customer shall pay such invoice in accordance with these payment terms.

8.0 TAXES.

8.1 Customer shall pay all federal, state, and local taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of the Master Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable. TWC shall have the right to recover from Customer the amount of any state or local fees, charges or taxes arising as

a result of this Agreement that are imposed on TWC or TWC's services, or measured on TWC's receipts. Such fees or taxes shall be invoiced to Customer in the form of a surcharge included on Customer's invoice. TWC shall be responsible for and shall pay all taxes measured by TWC's net income. To the extent that a dispute arises as to which Party is liable for fees or taxes under the Master Agreement, Customer shall bear the burden of proof in showing that the fee or tax is imposed upon TWC's net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the fee or tax indicating that the fee or tax is based on TWC's net income. Customer shall be responsible for providing TWC any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under the Master Agreement. To the extent such documentation is held invalid for any reason, Customer agrees to reimburse TWC for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation.

8.2 Customer acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services TWC provides and, consequently, uncertainty about what fees, taxes and surcharges are due from TWC and/or its customers. Customer agrees that TWC has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Customer. Customer hereby waives any claims it may have regarding TWC's collection or remittance of such fees, taxes and surcharges. Customer understands that it may obtain a list of the fees, taxes and surcharges that TWC currently collects or passes through by writing to TWC at the following address and requesting same: Time Warner Cable, 7800 Crescent Executive Drive, Charlotte, North Carolina, 28217; Attention: Subscriber Tax Inquiries.

9.0 PROPRIETARY RIGHTS AND CONFIDENTIALITY.

9.1 TWC's Proprietary Rights. All materials including, but not limited to, any TWC Equipment (including related firmware), software, data and information provided by TWC, any identifiers or passwords used to access the Service or otherwise provided by TWC, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by TWC to provide the Service (collectively "**TWC Materials**") shall remain the sole and exclusive property of TWC or its suppliers. Customer shall acquire no interest in the TWC Materials by virtue of the payments provided for herein. Customer may use the TWC Materials solely for Customer's use of the Service. Customer may not disassemble, decompile, reverse engineer, reproduce, modify or distribute the TWC Materials, in whole or in part, or use them for the benefit of any third party. All rights in the TWC Materials not expressly granted to Customer herein are reserved to TWC. Customer shall not open, alter, misuse, tamper with or remove the TWC Equipment as and where installed by TWC, and shall not remove any markings or labels from the TWC Equipment indicating TWC (or its suppliers) ownership or serial numbers.

9.2 Confidentiality. Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the TWC Materials and any other information and materials provided by TWC in connection with this Agreement, that are identified or marked as confidential or are otherwise reasonably understood to be confidential, including but not limited to the content of this Agreement.

9.3 Software. If software is provided to Customer hereunder, TWC grants Customer a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term.

10.0 MONITORING, EQUIPMENT UPGRADES AND MODIFICATIONS.

TWC has the right, but not the obligation, to upgrade, modify and enhance the TWC Equipment (including related firmware) and the Service and take any action that TWC deems appropriate to protect the Service and its facilities. TWC has the right to add to, modify or delete any provision of the Terms of Use. TWC will notify Customer of any material adverse change to the Terms of Use or Service descriptions by posting such modified Terms and Conditions (including the Terms of Use) or Service description on the TWC web site or by email, or, if applicable, in the appropriate TWC tariff. Upon the effectiveness of any addition, modification or deletion, Customer's continued use of the Services shall constitute Customer's consent to such addition, modification or deletion, and agreement to continue to be bound by the Master Agreement. In any event, if TWC modifies the Services or the Terms of Use and such modification has a material adverse impact on Customer's ability to use the Service, Customer may, within the thirty (30) day period following the date of such modification, terminate, without penalty, that portion of the Service Order relating to the affected Service.

11.0 TERMINATION.

Either Party may terminate a Service Order; (a) upon thirty (30) days written notice of the other Party's material breach, provided that such material breach is not cured within such thirty (30) day period; or (b) immediately, in the event that the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its debtors, initiates any proceeding seeking general protection from its creditors, or is removed or delisted from a trading exchange. In addition, in the event that Customer fails to comply with any applicable laws or regulations, the terms of the Master Agreement or the Terms of Use, TWC may upon thirty (30) days written notice suspend or discontinue any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, TWC may immediately terminate or suspend Customer's or its End User's use of the Service if such use is determined by TWC, in its sole discretion, to be resulting in a material degradation of the TWC network, until such time as such degradation has been remedied. TWC will use

commercially reasonable efforts to assist Customer in remedying such degradation. In the event of a suspension, TWC may require the payment of reconnect or other charges before restarting the suspended Service. Upon the termination or expiration of the Master Agreement and the Service Order(s) hereunder: (i) TWC's obligations hereunder shall cease; (ii) Customer shall promptly pay all amounts due and owing to TWC for Service delivered prior to the date of termination or expiration, and any deinstallation fees identified in the Service Order(s), if any; (iii) Customer shall promptly cease all use of any software provided by TWC hereunder, and shall return such software to TWC; and (iv) Customer shall return to TWC or permit TWC to remove, in TWC's discretion, the TWC Equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall be responsible for reimbursing TWC for the reasonable and documented costs of the repair or replacement, at TWC's discretion, of any TWC Equipment not returned in accordance with this Section 11. In addition, notwithstanding anything to the contrary herein, upon early termination of a Service Order by Customer for any reason other than as set forth in Section 11(a) or 11(b) above or by TWC for any reason set forth in Section 11(a) or 11(b) above, Customer shall promptly pay TWC the full amount of the Service Charges that Customer would have been charged for the remainder of the Initial Term or the then-current renewal term. Notwithstanding the foregoing, Customer or TWC may immediately terminate the applicable Service Order without penalty if after entering into such Service Order, TWC conducts a site survey and learns that the construction costs will require a material increase in the Service Charges. The foregoing shall be in addition to any other rights and remedies that TWC may have under the Master Agreement or at law or equity.

Notwithstanding the foregoing, if, after the initial award of a Discount and TWC has provisioned a Service, any Discount for a subsequent year is reduced, eliminated, or otherwise not available, then Customer shall promptly notify TWC in writing that it, or the end user school district, is no longer eligible to receive the Discount and that such ineligibility did not result from any act or failure by Customer or the school districts using the Services. This Master Agreement shall remain in full force and effect and Customer shall continue to pay TWC an amount equal to the Service Charges, plus applicable taxes and fees, less an amount equivalent to the Discount. TWC shall continue to provide the Services, but may, in its sole discretion, reduce the bandwidth provided to the Customer, or the end user school district, to account for the decreased amount being paid for the Services. Customer shall, and shall cause the school districts to, use their best efforts to reinstate all applicable Discounts or find another source of funds to ensure that TWC receives the total Service Charges anticipated for the applicable Initial Order Term.

12.0 INDEMNIFICATION.

Customer agrees to defend, indemnify and hold harmless TWC, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against third party claims, liabilities, damages and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to: (a) the use of the Service, including but not limited to a breach of Section 5 herein; (b) personal injury or property damage caused by the negligence or willful misconduct of Customer or its employees or agents; (c) any fees, fines or penalties incurred by TWC as a result of Customer's violation of the 10% Rule as set forth in Attachment D; or (d) breach of the terms governing any use of music services provided as part of the Service.

13.0 DISCLAIMER OF WARRANTY.

CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND USES THE SAME AT ITS OWN RISK. TWC EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE AND TWC EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. EXCEPT AS SPECIFICALLY SET FORTH IN THE MASTER AGREEMENT, THE SERVICE, TWC EQUIPMENT AND TWC MATERIALS ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY TWC, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. TWC DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, BE UNINTERRUPTED, SECURE, ERROR FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATE OR INFORMATION OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. EXCEPT AS SET FORTH IN THE MASTER AGREEMENT, TWC DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT PROVIDED BY TWC WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE SERVICE MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR AN END USER'S COMPUTER SYSTEM OR EQUIPMENT (INCLUDING NETWORK EQUIPMENT) OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR THAT RESULTS FROM, CUSTOMER'S OR ITS END USERS' USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO, CUSTOMER'S OR END USERS' SENDING OR RECEIVING, OR UPLOADING OR DOWNLOADING, OR ATTEMPTS TO DO SAME, OF SUCH DATA, MATERIAL OR TRAFFIC. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TWC'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT AND TWC DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

14.0 LIMITATION OF LIABILITY.

IN NO EVENT SHALL TWC BE LIABLE TO CUSTOMER, AN END USER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT, REGARDLESS OF WHETHER TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TWC'S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY)) SHALL BE LIMITED TO THE FEES PAID OR OWED BY CUSTOMER UNDER THE SERVICE ORDER THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL TWC'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER HEREUNDER. TWC SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES ARISING AS A RESULT OF THE UNAVAILABILITY OF THE SERVICE, INCLUDING THE INABILITY TO REACH 911 OR OTHER EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO CUSTOMER-PROVIDED EQUIPMENT, FACILITIES OR SERVICES.

15.0 DISCLOSURE OF CUSTOMER INFORMATION.

Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Telecommunications Act (the "**Telecommunications Act**"), the Federal Cable Communications Act (the "**Cable Act**"), the Electronic Communications Privacy Act, and, to the extent applicable, state laws and regulations. Customer proprietary network information and personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in Attachment B (Voice Services), the Subscriber Privacy Notice, and, if applicable, in TWC's tariff, which are incorporated herein by reference. The Subscriber Privacy Notice is available at www.twcbc.com/legal. In addition to the foregoing, Customer hereby acknowledges and agrees that TWC may disclose Customer's and its employees' personally identifiable information as required by law or regulation, or the American Registry for Internet Numbers ("**ARIN**") or any similar agency, or in accordance with TWC's Subscriber Privacy Notice or, if applicable, tariff. In addition, TWC shall have the right (except where prohibited by law notwithstanding Customer's consent), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril.

16.0 FORCE MAJEURE.

Notwithstanding anything to the contrary contained herein, a Party shall have no liability to the other hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, natural disaster, regulation or governmental acts, fire, civil disturbance, weather, or any unauthorized access to or destruction or modification of the Service, in whole or in part (each a "**Force Majeure Event**"). Notwithstanding anything to the contrary herein, Customer may terminate the affected Service Order(s) in its entirety and without penalty if a Force Majeure Event continues for more than ten (10) consecutive days and prevents TWC from delivering the Service under such Service Order(s).

17.0 REGULATORY AND LEGAL CHANGES, POLE ATTACHMENT AND CONDUIT CHARGES, TARIFFS.

In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any new application of or increase in any government- or quasi-government-imposed fees or charges that increases the costs or other terms of TWC's delivery of Service to Customer, or, in the event of any increase in pole attachment or conduit charges applicable to any facilities used by TWC in providing the Service, Customer acknowledges and agrees that TWC may pass through to Customer any such increased fees or costs, but only to the extent of the actual increase, provided TWC notifies Customer at least thirty (30) days in advance of the increase. In such case, and if such increase materially increases the fees or charges due by Customer hereunder for the applicable Service, Customer may, within thirty (30) days after notification of such increase, terminate the affected Service without incurring termination liability, provided Customer notifies TWC at least fifteen (15) days in advance of Customer's requested termination date. Further, in the event that TWC is required to file tariffs or rate schedules with a regulatory agency or otherwise publish its rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, and TWC is required under applicable law to apply those rates to Customer's purchase of Service under the Master Agreement, then the terms set forth in the applicable tariff or rate schedule shall govern TWC's delivery of, and Customer's use or consumption of the Service. In addition, if TWC determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then TWC may terminate the Master Agreement and any affected Service Orders without liability, by giving Customer thirty (30) days prior written notice or any such notice as is required by law or regulation applicable to such determination.

17.1 The Master Agreement, its Attachments and the Service Order(s) are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which TWC provides the Services. If any provision of the Master Agreement, the Attachments, or the Service Order(s) contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of the Master Agreement, the Attachments, and/or the Service Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided hereunder, then such law or regulation will take priority over the relevant provision of the Master Agreement, the Attachments, and the Service Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in the Master Agreement, nothing contained in the Master Agreement shall constitute a waiver by TWC of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.

18.0 ENTIRE AGREEMENT.

The Master Agreement, including without limitation all attachments that are attached hereto and incorporated herein by this reference, sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the Parties with respect to such subject matter.

19.0 ORDER OF PRECEDENCE.

Each Service shall be provisioned pursuant to the terms and conditions of the Master Agreement. In the event that TWC permits a Customer to use its own standard purchase order form to order the Service, the Parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect. To the extent that the terms of any Service Agreement or Service Order are inconsistent with the terms of these Terms and Conditions, the terms of the Service Agreement then the terms of the Service Order shall control.

20.0 COMPLIANCE WITH LAWS.

As between the Parties, TWC will obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to TWC's operation and provision of the Services as contemplated herein, and Customer will obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to Customer's use of the Services as contemplated herein. Unless specified otherwise in the Master Agreement, each Party will give all notices, pay all fees and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified herein.

21.0 ARBITRATION.

EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT SHALL BE BROUGHT IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK AND SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THE MASTER AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THE MASTER AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRABILITY OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

22.0 MISCELLANEOUS.

The interpretation, validity and enforcement of the Master Agreement, and all legal actions brought under or in connection with the subject matter of the Master Agreement, shall be governed by the law of the State of California. In the event that any portion of the Master Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth herein and the remainder of the Master Agreement shall remain in full force and effect. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Customer may not assign the Master Agreement without the prior written consent of TWC, and any assignment in violation of this Section shall be null and void. TWC may assign its rights and obligations under the Master Agreement including, without limitation, in whole or in part, to any affiliate without the prior written approval of or notice to Customer. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of TWC herein may accrue to, or be fulfilled by, any affiliate, as well as by TWC and/or its subcontractors. Customer may not issue a press release, public announcement or other public statements regarding the Master Agreement without TWC's prior written consent. Excluding any third party claims, claims under the Master Agreement must be initiated not later than two (2) years after the claim arose. There are no third party beneficiaries to the Master Agreement. The Parties to the Master Agreement are independent contractors. Any notice under the Master Agreement shall be given in writing and shall be deemed to have been given when actually received by the other Party. Notices shall be delivered to Customer and TWC at the respective addresses set forth above, or to such other address as is provided by one Party to the other in writing. Notices to TWC shall include a cc to: Time Warner Cable Inc., 60 Columbus Circle, New York, New York, 10023, Attn: General Counsel, Fax: (212) 364-8254. The provisions of sections 7, 8, 9, 11, 12, 13, 14, 15, 17.1, 18, 19, 21 and 22 and the Attachments shall survive the termination or expiration of the Master Agreement. The Master Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Attachment A

**Business Class Cable TV Service
("Cable TV Service")**

Cable TV Service: If Customer selects to receive the Cable TV Service, TWC shall provide Basic and Standard Cable services. Customer understands and agrees that premium program services, such as HBO, Cinemax, Showtime, and The Movie Channel, may not be received or shown on any television receivers located in any public areas, such as lounges, dayrooms, visiting areas or other common areas used by groups or the general public, nor shall Customer authorize or approve of any copying, taping or duplicating thereof.

TWC shall have the right to add, modify, or delete channel line-ups.

Customer's use of the Cable TV Service is subject to the following additional terms and conditions:

In the event that changes in technology require the use of specialized equipment to continue to receive Cable TV Services, TWC agrees to provide such equipment and Customer agrees to pay for such equipment at the same rate charged by TWC to commercial customers in the municipality in which Customer's property receiving the Cable TV Service is located.

In the event that any TWC audit reveals that Customer's usage of the Cable TV Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage.

The monthly service charges set forth in a Service Order for Cable TV Service do not include applicable taxes, regulatory fees, franchise fees and public access fees. Notwithstanding anything to the contrary in this Agreement, the monthly service charges for the Cable TV Service are subject to change in accordance with commercial Cable TV rate increases applied to commercial customers.

Attachment B

Business Class Phone Service and Business Class PRI Service (collectively, "Voice Services")

Business Class Phone Service: If Customer selects to receive the Business Class Phone Service, Customer will receive telephone service consisting of one or more telephone lines and a variety of features, as described more fully in the applicable Service Order.

Business Class PRI Service: If Customer selects to receive the Business Class PRI Service, Customer will receive voice and call processing services via a full or fractional DS-1 level Primary Rate Interface ("PRI") connection to Customer's private branch exchange ("PBX") or other equipment facilities and services ("Customer-provided equipment" or "CPE"), and a variety of features, as described more fully in the applicable Service Order.

Customer's use of the Voice Services is subject to the following additional terms and conditions:

- Customer acknowledges that the voice-enabled cable modem used to provide Business Class Phone Service and the integrated access device ("IAD") used to provide the Business Class PRI Service are electrically powered and that the Voice Services, including the ability to access 911 services and alarm, security, medical and other monitoring services, may not operate in the event of an electrical power outage or a TWC network service interruption. Customer also acknowledges that, in the event of a power outage at Customer or any End User's facility, any back-up power supply provided with a TWC-provided voice-enabled cable modem or IAD may enable service for a limited period of time or not at all, depending on the circumstances, and that the use of a back-up power supply does not ensure that the Voice Service will be available in all circumstances.
- The location and address associated with the Voice Service will be the address identified on the Service Order. Customer is not permitted to move TWC Equipment from the location and address in which it has been installed or to access the Voice Service from a remote location. If Customer's network enables access to the Voice Service from a remote location or moves a voice-enabled cable modem or IAD to an address different than that identified on the Service Order, calls from such modem or IAD to 911 will appear to 911 emergency service operators to be coming from the address identified on the Service Order and not the remote location or new address. Customer consents to TWC's disclosure of Customer's name, address and or/telephone number in response to 911 and similar public safety requests and to the telephone companies serving those end users to whom Customer calls so that calls may be completed.
- Pursuant to 47 C.F.R. § 9.5(e), Customer shall specifically advise every end user of the Voice Service prominently and in the language provided below, of the circumstances under which E911 service may not be available.

Business Class voice-enabled customer premise equipment is electrically powered and, in the event of a power outage or Time Warner Cable network failure, Enhanced 9-1-1 ("E911") services may not be available.

The Master Agreement prohibits moving your Time Warner Cable voice-enabled customer premise equipment to a new address or accessing the Service from a remote location. If this equipment is moved to another location or the Service is accessed from a remote location, E9-1-1 services may not operate properly and emergency operators may be unable to accurately identify the caller's address in an emergency. The E911 location specified on the Service Order will be provided to emergency operators for all emergency calls made from the telephone numbers associated with the Service Order. To obtain service at another location you must call Time Warner Cable.

- Customer shall obtain and keep a record of affirmative acknowledgement by every end user of the Voice Service of having received and understood the above advisory. Customer shall also distribute to all end users of the Voice Services labels/stickers to be supplied by TWC and instruct all end users of the Voice Services to place them on or near the equipment used in conjunction with the service.
- Customer agrees that TWC will not be responsible for any losses or damages arising as a result of the unavailability of the Voice Service, including the inability to reach 911 or other emergency services, the inability to contact a security system or remote medical or other monitoring service provider or any failure or fault relating to Customer-provided equipment, facilities or services; the use of third-party enterprise 911 solutions or Customer's attempt to access the Voice Service from a remote location.
- Customer acknowledges that TWC does not guarantee that the Voice Service will operate with alarm, security, medical and/or other monitoring systems and services or Customer-provided equipment, facilities and services ("**Alarm Services**").
- Customer must ensure that all Alarm Services and related signal transmission services are tested to validate that they remain fully operational after installation of Voice Service. Customer is solely responsible for obtaining such testing from the appropriate Alarm Service providers, ensuring that such testing is completed in a timely manner, and confirming that the Alarm Services and any related Customer-provided equipment, facilities and systems that are connected to the Voice Service operate properly. Customer is solely responsible for any and all costs associated with this activity.

- TWC's obligation is to provide Voice Service to the customer-accessible interface device or equipment installed by TWC at the TWC network demarcation point on the Customer's premises. Customer is solely responsible for coordinating and completing any and all rearrangement, augmentation and configuration of Customer-provided equipment, facilities and systems to be used with the Voice Service and connecting such equipment, facilities and systems to the TWC network interface device or equipment. Customer must notify TWC at least seventy two (72) hours prior to the Customer's scheduled installation appointment if the Customer seeks to reschedule installation for any reason. Additional charges may apply for non-standard installation and missed installation appointments.
- Customer agrees to provide TWC and its authorized agents with access to Customer's internal telephone wiring at the network interface device or at some other minimum point of entry in order to facilitate the installation and operation of the Voice Service over existing wiring. Customer hereby authorizes TWC to make any requests from Customer's landlord, building owner and/or building manager, as appropriate and to make any requests necessary to other or prior communications service providers as necessary and appropriate to ensure that TWC has all access to inside wiring and cabling necessary and sufficient to efficiently and securely install the Voice Service and all related equipment.
- Information relating to Customer calling details ("**Calling Details**"), including the quantity, configuration, type, destination and amount of Voice Service usage by Customer, and information contained in Customer's bills (collectively, "**Customer Proprietary Network Information**" or "**CPNI**"), that is obtained by TWC pursuant to its provision of the Voice Service will be protected by TWC as described herein, in the Time Warner Cable Privacy Policy and in accordance with applicable federal and state requirements. Notwithstanding the foregoing, the following shall not be CPNI: (i) Customer's directory listing information, and (ii) aggregated and/or compiled information that does not contain customer-specific references, even if CPNI was used as a basis for such information.

TWC may use and disclose CPNI when required by applicable law. TWC may use CPNI and share CPNI with its partners and contractors without Customer consent: (i) to provide services and bills to Customer; (ii) pursuant to applicable law; (iii) to protect the interests of TWC, Customer and related parties in preventing fraud, theft of services, abuse, harassment and misuse of telephone services; (iv) to protect the security and integrity of TWC's network systems; and (v) to market additional TWC services to Customer that are of the same category as the services that Customer purchases from TWC. TWC will obtain Customer's consent before using CPNI to market to Customer TWC services that are not within the categories of services that Customer purchases from TWC. Customer agrees that, except as provided in Section 14.0 of the Terms and Conditions and applicable law, TWC will not be liable for any losses or damages arising as a result of disclosure of CPNI.

Customer may obtain from TWC Calling Details showing Customer's outbound calls made within a trailing 90-day period. Customer may access this information by logging in through Customer's secure account information page on TWC's web portal or by requesting such information in writing or by telephone call to TWC. If Customer has not been assigned a designated account representative, TWC will respond to Customer requests for Customer Calling Details only in compliance with TWC's then-current authentication requirements and applicable law. Such authentication requirements may require Customer to obtain a secure password, which may be required for both online and telephone requests for Calling Details. TWC will provide the requested Calling Details by sending a printout or CD containing the requested information to the Customer's account address of record or by making the document or information available to Customer or Customer's employee at a TWC retail location upon presentation of a valid government-issued photo ID by Customer. TWC will notify Customer of any requests to change account passwords, activate online account access and change Customer's account address of record. TWC may provide such notice by voicemail, by e-mail or by regular mail to Customer's prior account address of record.

If TWC has assigned a designated account representative to Customer, Customer may identify a person or persons who are authorized to request Calling Details from the designated account representative, with or without further identity authentication, at Customer's option, and may designate the means by which TWC will provide such information to Customer (e.g., electronically, by fax, by mail, orally or otherwise) ("**Calling Detail Preauthorization Plan**"). Thereafter, TWC will provide requested Calling Detail in accordance with the Calling Detail Preauthorization Plan. Customer is responsible for: (i) ensuring that TWC receives timely notice of any changes to the list of authorized individuals (ii) the accuracy of Customer-defined additional authentication information and practices; and (iii) maintaining the security and confidentiality of the Calling Detail Preauthorization Plan. TWC will not be liable to Customer for any disclosure of Calling Detail, including CPNI, that occurs if TWC has complied with the Calling Detail Preauthorization Plan.

- In the event that a material error or omission in Customer's directory listing information, regardless of form, is caused by TWC, Customer's sole and exclusive remedy shall be a partial service credit in an amount set by TWC's then-current standard policies or as prescribed by applicable regulatory requirements, if any. Notwithstanding the foregoing, TWC shall have no other liability for any error or omission in any directory listing information.

Attachment C

Business Class National Teleworker Service, Branch Office Connectivity Service, Broadband High Speed Data, Wideband Internet and Dedicated Internet Access (collectively, "Data Services")

National Teleworker Service ("NTW Service"): If Customer selects to receive the NTW Service, TWC shall provide connectivity to a single personal computer ("PC") via a cable modem at the residential location of the limited number of Customer employees set forth on a Service Order to connect such employees' PCs to the Customer's data network. Each PC connection may be used by one Customer employee at a time solely for Customer's internal business purposes.

Branch Office Connectivity Service ("BOC Service"): If Customer selects to receive the BOC Service, TWC shall provide connectivity from the number of Customer branch offices set forth in a Service Order to the Customer's data network. Customer shall be permitted to connect any number of computers within Customer's identified branch offices to the BOC Service, provided that use does not exceed the standard bandwidth provided by TWC.

Broadband High Speed Data and Wideband Internet ("HSD Service"): If Customer selects to receive the HSD Service, TWC shall provide connectivity from the number of Customer sites set forth in a Service Order to the Customer's data network. Customer shall be permitted to connect any number of computers within Customer's identified sites to the HSD Service, provided that use does not exceed the standard bandwidth provided by TWC.

Dedicated Internet Access ("DIA Service"): If Customer selects to receive the DIA Service, TWC shall provide Customer with a dedicated, scalable connection over a packet-based infrastructure with Internet service provider ("ISP") peering between Customer's data network identified on a Service Order and the TWC facility identified on a Service Order.

Customer's use of the Data Services is subject to the following additional terms and conditions:

TWC's provision of any Data Service is subject to availability.

TWC shall allow Customer employees to use (however in no event shall TWC be responsible for) a Virtual Private Network ("VPN") and to allow the VPN to pass through the cable modem of any Data Service, as applicable, provided that TWC shall have the right to disconnect (or demand the immediate disconnection of) any such Data Service that degrades any service provided to other subscribers on the TWC network.

Customer shall not upload, post, transmit or otherwise make available on or via the Data Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. TWC may remove content that in its judgment violates these standards.

TWC shall have the right, but not the obligation, to: (a) monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters); and (b) monitor Customer's bandwidth utilization and to limit excessive use of bandwidth (as determined by TWC) as TWC deems appropriate to efficiently manage its network. In the event that any TWC audit reveals that Customer's usage of a Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage. In addition, TWC shall have the right, but not the obligation, to: (i) review public content associated with the Data Services, including chat rooms, bulletin boards and forums, in order to determine compliance with the Master Agreement and any rules now or hereafter established by TWC; and (ii) remove (or demand the removal of) any such content that TWC determines to be unacceptable or to violate the terms of the Master Agreement, any bandwidth utilization limitations or other Terms of Use.

Each tier or level of Services has limits on the maximum throughput rate at which Customer may send and receive data at any time and the maximum throughput rate may be achieved in bursts, but generally will not be sustained on a consistent basis. The throughput rate experienced by Customer at any time will vary based on numerous factors, including without limitation, the condition of Customer's inside wiring, computer configurations, Internet and TWC network congestion, time of day and the accessed website servers, among other factors.

Attachment D

Business Class Data Transport Services: Ethernet Solutions ("Ethernet Service")

Ethernet: If Customer selects to receive the Ethernet Service, TWC shall provide Customer with a dedicated circuit connection between Customer's data network and the TWC facility identified on a Service Order. The Ethernet Services shall be limited to the capacity set forth on a Service Order.

Customer's use of Ethernet Service is subject to the following additional terms and conditions:

TWC's provision of Ethernet Services is subject to availability.

TWC shall have the right to disconnect (or demand the immediate disconnection of) any such Ethernet Service that degrades any service provided to other subscribers on the TWC network.

Customer shall not transmit or otherwise make available on or via the Ethernet Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law.

TWC shall have the right, but not the obligation, to (a) monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters); and (b) monitor Customer's bandwidth utilization and to limit excessive use of bandwidth (as determined by TWC) as TWC deems appropriate to efficiently manage its network. In the event that any TWC audit reveals that Customer's usage of a Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage.

Each tier or level of a Data Transport Service has limits on the maximum throughput rate at which Customer may send and receive data at any time and the maximum throughput rate may be achieved in bursts, but generally will not be sustained on a consistent basis. The throughput rate experienced by Customer at any time will vary based on numerous factors, including without limitation, the condition of Customer's inside wiring, computer configurations, Internet and TWC network congestion, time of day and the accessed servers, among other factors.

Customer represents and warrants that Customer's use of Ethernet Services shall be such that the Ethernet Service shall be deemed jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed use "**10% Rule**" (47 C.F. R. 36.154, 4 FCC Red. 1352), and shall notify TWC in the event of breach or threatened breach of the foregoing. If, as a result of Customer's use of Ethernet Services, the Ethernet Services are deemed not to be jurisdictionally interstate pursuant to the 10% Rule, then Customer will be liable for any resulting fees, fines, penalties and costs incurred by TWC. In addition, if TWC determines that Customer's use of the Ethernet Services is likely to be deemed not to be jurisdictionally interstate, and therefore that TWC's provision of the Ethernet Services is likely to put TWC's franchises, licenses, permits or business at risk, or otherwise cause regulatory problems for TWC, then TWC may immediately suspend the provision of any or all Ethernet Service under any or all affected Service Orders until such time as either (a) Customer provides TWC with satisfactory assurances that Customer's use of Ethernet Services shall be deemed to be jurisdictionally interstate or (b) TWC is otherwise brought into full compliance with any applicable laws and regulations.



Staff Report

TO: Honorable Mayor and City Council

FROM: Ronald E. Bradley, Interim City Manger

DATE: March 12, 2013

RE: **CAL-HOME Grant 2013 Application**

RECOMMENDATION:

It is respectfully recommended that the City Council adopt the proposed draft Resolution Bill No. 13-007 entitled:

“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE CAL-HOME PROGRAM; AND IF SELECTED, THE EXECUTION OF A STANDARD AGREEMENT, ANY AMENDMENTS THERETO, AND OF ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE CAL-HOME PROGRAM.”

BACKGROUND:

The California Department of Housing and Community Development (HCD) has issued a Notice of Funding Availability (NOFA) for a 2013 Cal-HOME Grant. Staff recommends applying for the \$600,000 grant available to continue the City of Hemet Housing Authority's (HHA) Owner-Occupied Rehabilitation and Mobile Home Replacement Program (OOR).

In 2012, Hemet was successful in receiving a Cal-Home grant in the amount of \$600,000 to continue its housing programs which were at risk of elimination redevelopment agencies by the Governor and the State Legislature via AB 1X 26.

DISCUSSION:

The HHA offers rehabilitation loans to lower income homeowners (e.g. a two-person household with an income under \$42,700). The rehabilitation program not only assists homeowners, but preserves the neighborhood and the overall housing stock. Typical clients are seniors living in mobile home parks. The OOR Program provides 0% interest loans which are typically repaid to the HHA when the homes are sold. The HHA then re-loans these funds for home rehabilitation or uses these funds for other affordable housing and neighborhood programs. The Cal-HOME program is a forgivable loan for mobile homes located within space rented mobile home parks; there continues to be a great need in the community for the OOR program. As of the 2012

award by HCD to the City of Hemet, the program now allows for mobile home replacement in addition to Owner Occupied Repair.

Currently, the HHA has approximately 196 subscribers to owner occupied homeowner loans and oversees a revolving loan portfolio of about \$2,812,000. The City's HHA can use a portion of the grant to pay staff and consultant costs (loan document preparation, construction management, etc.). Rehabilitation loans often pay for roofs, heating, cooling, paint, flooring and plumbing. The maximum rehabilitation loan for a mobile home is \$20,000 and \$30,000 for a single-family home. Cal-HOME funds may also be used for mobile home replacement (up to \$60,00 per unit) which is increasing in popularity due to the age of the city's mobile home housing stock.

If HCD awards the Cal-HOME grant to the City, staff will return to the City Council to review any special conditions and to consider acceptance of the grant.

FISCAL IMPACT:

Application only – no fiscal impact at this time.

COORDINATION AND REVIEW:

The recommendation was coordinated with the Community Investment Department- Housing Division, and State of CA – Department of Housing and Community Development (HCD).

INTEGRATION OF COUNCIL GOALS / STRATEGIC PLAN:

The recommendation supports the Council's goals of: Revitalizing Neighborhoods, Improving the Housing Stock, and Eliminating Blight and Blighting Conditions.

CONCLUSION:

It is respectfully recommended that the City Council adopt the proposed draft Resolution Bill No. 13-007 to apply for funding from the State of CA for the OOR Program.

Attachments:

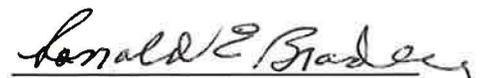
- 1) City Council draft Resolution Bill No.13-007

Respectfully Submitted
and Recommended By:



John Jansons
Director of Community Investment

Approved By:



Ronald E. Bradley
Interim City Manager



CITY OF HEMET
Hemet, California

RESOLUTION BILL NO. 13-007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE CALHOME PROGRAM; AND IF SELECTED, THE EXECUTION OF A STANDARD AGREEMENT, ANY AMENDMENTS THERETO, AND OF ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE CALHOME PROGRAM.

WHEREAS, the City of Hemet, a *municipal corporation of the State of California* (the "Applicant"), wishes to apply for and receive an allocation of funds through the CalHome Program; and

WHEREAS, the California Department of Housing and Community Development (hereinafter referred to as "HCD") has issued a Notice of Funding Availability ("NOFA") for the CalHome program established by Chapter 84, Statutes of 2000(SB 1656 Alarcon), and codified in Chapter 6 (commencing with Section 50650) of Part 2 of Division 31 of the Health and Safety Code (the "statute"). Pursuant to the statute, HCD is authorized to approve funding allocations utilizing monies made available by the State Legislature to the CalHome program, subject to the terms and conditions of the statute and the CalHome Program Regulations adopted by HCD in January 23, 2013; and

WHEREAS, the City of Hemet wishes to submit an application to obtain from HCD an allocation of CalHome Funds in the amount of \$600,000.00.

NOW THEREFORE, be it resolved that:

1. The City of Hemet shall submit to HCD an application to participate in the CalHome Program in response to the NOFA issued in January 22, 2013 which will request a funding allocation for the following activities:

Approximately 15 to 20 Owner-Occupied Rehabilitation or Mobile Home Replacement Loans; all located in the City of Hemet. Loans will be 0%

1 State of California)
2 County of Riverside)
3 City of Hemet)
4

5 I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the foregoing
6 Resolution is the actual Resolution adopted by the City Council of the City of Hemet
7 and was passed at a regular meeting of the City Council on the 12th day of March, 2013
8 by the following vote:
9

10 AYES:
11 NOES:
12 ABSTAIN:
13 ABSENT:
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17 _____
18 Sarah McComas, City Clerk
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*Staff Report*

TO: Honorable Mayor and Members of the City Council

FROM: Kris Jensen, Public Works Director
Ronald E. Bradley, Interim City Manager *REB*

DATE: March 12, 2013

RE: Award of Bid for the Purchase of Two (2) Ford F250 Trucks from Gosch Ford in Hemet

RECOMMENDED ACTION:

It is respectfully recommended that the City Council approve the following:

- 1.) Award of bid to Gosch Ford in the amount of \$59,860.75 (Fifty Nine Thousand Eight Hundred Sixty dollars and Seventy Five cents) for the purchase of two Ford F250 trucks to be funded from 380-9000-5400;
- 2.) Authorization for the Interim City Manager to execute a purchase order for the same.

BACKGROUND:

The City of Hemet Water Division provides potable water to approximately 22,000 residential and business customers. The system infrastructure consists of over 130 miles of main distribution lines, over 9,700 lateral connections, and currently nine (9) well sites. The division currently employs two Water Production Operators who are responsible for performing preventative maintenance, repairs and daily monitoring of all the City's production wells. The wells are monitored seven days per week to insure proper operation of equipment and provide safe drinking water to our residents. The vehicles proposed for purchase must be operable and available at all times for emergency response by these employees.

ANALYSIS:

The vehicles being replaced consist of a 2000 Ford F250 with 123,593 miles and a 2002 Ford F250 with 116,687 miles. Because of their number of years in constant service and higher mileage, these vehicles have become less dependable for daily use. Although we have seen an increase in maintenance costs, these vehicles will not be surplus. Instead, they will be transferred to other divisions to be used in work loads that require less frequent use of the vehicles.

COORDINATION AND REVIEW:

Water Division and Equipment Maintenance Division worked together to develop the specifications for this vehicle. In January 2013 the Purchasing Administrator managed the formal Invitation for Bid process, including preparation of documents, advertising in the Press Enterprise and on the City of Hemet web site. The bid request was sent to twelve dealers and seven responses were received.

Gosch Ford	\$55,410.42 (actual bid price) \$52,639.89 (local business preference applied)*
Fairview Ford	\$53,188.00
Redlands	\$53,464.72
Theodore Robins	\$54,103.04
Raceway	\$54,330.00
Bob Wondries	\$54,864.00
Kearny Pearson Ford	\$56,798.00

**HMC Section. 2-334(6) Local Business Preference*

Gosch Ford, a local vendor, is eligible for "local business preference" consideration as outlined in the City's Purchasing Code. With the application of the 5% local business preference, for purposes of determining the bid award only, Gosch Ford shall be considered the lowest responsible bidder. Award amount with the lowest responsible bidder shall be at the actual bid price.

The water and equipment maintenance division reviewed the proposal submitted by Gosch Ford and determined they meet all specifications and the cost is within the approved budget amount. It is the recommendation of staff to purchase two (2) Ford F250 trucks.

ALTERNATIVES TO STAFF RECOMMENDATION:

- 1.) Reject current bid and solicit bids for an alternative vehicle.
- 2.) Reject current bid and direct staff to further investigate additional options.

FISCAL IMPACT:

No General Fund Impact. Funding for this purchase in the amount of \$70,000 was established in the Water Equipment Replacement Fund 380-9000-5400 in FY 2012/13 Operating Budgets. This purchase will result in a total savings to the City of \$10,139.

Respectfully Submitted,


Kris Jensen
Public Works Director

Fiscal Review,


Rita Conrad
Deputy City Manager
Admin. Services Director



Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Kris Jensen, Public Works Director
Ron Bradley, Interim City Manager *RSB*

DATE: March 12, 2013

RE: Park Commission Recommendations of February 25, 2013

Park Commission Recommendations of February 25, 2013

1. Tree Removal Request: 621 Snead Dr.

Flame Tree (1) - (*Ms. Wuerth*)

Reason for Request: Resident is requesting removal of this City tree due to concerns with surface roots. City staff visited the site and observed a healthy tree. There are several surface roots present that are likely due to the Loc-Roc in the property owner's yard that was installed too closely to the base of the tree.

Recommendation: Deny removal request; approve scheduling this tree for trimming. Approve scheduling for a root prune contingent upon property owner's agreement to remove the Loc-Roc, creating a two foot perimeter around the tree. Property owner would responsible for any and all costs associated with the removal of the Loc-Roc.

2. Tree Removal Request: 607 E. Acacia Ave.

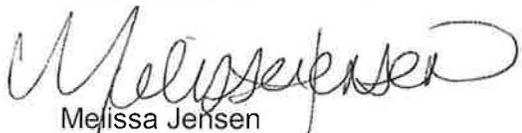
Washington Fifera (1) - (*Chris Coker, Southern California Edison*)

Reason for Request: Mr. Coker is a representative of the Vegetation Management Department of Southern California Edison and is requesting the removal of this City palm tree. He expressed concerns with its proximity to the overhead utility lines. City Staff visited the site and observed that there are several Washington Fifera Palm Trees on this street, all of which are located near the overhead utility lines. This tree was trimmed in 2012 and does not appear to be closer to the utility lines than the other existing trees.

Recommendation: Deny removal request.

Fiscal Impact: No additional general fund impact. Costs for work performed will be absorbed in existing operating budgets.

Respectfully Submitted,


Melissa Jensen
Administrative Assistant



Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Ronald E. Bradley, Interim City Manager

DATE: March 12, 2013

RE: Consideration of Sixth (6th) Amendment to Stetson Crossing Purchase and Sale Agreement.

RECOMMENDATION:

That the City Council consider authorizing the Interim City Manager to execute a Sixth (6th) Amendment to the Stetson Crossing Purchase and Sale Agreement for real property commonly known as Stetson Crossing and extend close of escrow to August 30, 2013.

BACKGROUND:

On November 9, 2010 the City, the former Redevelopment Agency (RDA), and Stetson Crossing Partners, LLC (Developer), approved terms and conditions for the sale of approximately 18 acres of real property located at Stetson and Sanderson for development of a retail shopping center.

On April 9, 2011, the City entered into an Amended and Restated Purchase and Sale Agreement with Joint Escrow Instructions with Stetson Crossing Partners, LLC ("Purchase Agreement"). The Purchase Agreement set forth the terms and conditions upon which Stetson Crossing Partners would purchase the real property identified in the Purchase Agreement from the City.

Since 2011, the City and Stetson Crossing Partners have agreed to five amendments to the Purchase Agreement to address funding, tenanting, leasing, and infrastructure improvement issues. On August 14, 2012, the City Council approved a Fifth (5th) Amendment to the Purchase Agreement extending the Developer additional time to perform until March 29, 2013.

DISCUSSION:

The Fifth Amendment approved on August 14, 2012 granted the Developer additional time to perform in several areas in order to close escrow and purchase the property by March 29, 2013.

Included in those performance milestones were dates associated with receiving approvals from various agencies and starting and completing construction of storm drain facility and street improvements, proving the Developer's financial capacity to purchase and develop the site and securing a national retailer or similar anchor tenant acceptable to the City.

To that end, flood control channel work, funded by the former Hemet Redevelopment Agency

was completed ahead of schedule and within budget in early January 2013.

Now as a result of the expiration of the Fifth Amendment and progress in securing an anchor tenant, Stetson Crossing Partners desires additional time to perform under the PSA.

The draft sixth (6th) amendment (Attachment 1) contains the following requested changes:

- Extends time of performance to obtain and proof of financial capacity to perform from February 28, 2013 to May 31, 2013 (90 days)
- Extends time to request to close escrow on property purchase from June 21, 2013 to August 23, 2013.
- Extends time to close escrow on property purchase from March 28, 2013 to August 30th (5 months).
- Having achieved substantial completion of Food Control Channel improvements, funded by former Hemet Redevelopment agency, Developer is required to obtain all remaining "punch list" items required by Riverside County Flood Control District (District) to obtain final acceptance by City and District by May 31, 2013.
- Granting of the requested extension by Developer also now recommends prohibitions instilled by the City Council on uses that are contrary and detrimental to the development of a high quality retail, restaurant and entertainment themed center.
 - Restrictions on Use. Are expressed in Section (s) 8.2.1 ("Restrictions on Use") of the Purchase Agreement is hereby amended by adding new sub-sections 8.2.1.8, 8.2.1.9, 8.2.1.10, 8.2.1.11 and 8.2.1.12 after sub-section 8.2.1.7 as follows:
 - "8.2.1.8 Gas stations.
 - Liquor stores and convenience stores stocking a range of everyday items such as groceries, toiletries, alcoholic and soft drinks, and newspapers.
 - Automotive repair and automotive part stores, auto detailing shops, and car washes.
 - Thrift shops and second hand stores.
 - Gold exchange stores and other establishments regularly and primarily engaged in purchasing precious metals from individual customers."

Following direction received by staff from the City Council at the February 12, 2013, negotiations have continued with the developer on their requested amendment. During that time, the developer has requested more time to perform than proposed February 12, 2013 to the City Council and this request is justified and recommended by staff due to the demonstration of good faith performance in completing the channel undergrounding, demonstration of satisfactory progress in securing a binding commitment from a major tenant, and the acknowledged need of the purchaser to apply for, and receive, an amendment to the Specific Plan and approval from ALUC and/or an override by the City Council prior to closing to achieve the planned project.

COORDINATION AND REVIEW:

This recommendation was prepared and coordinated with the Office of the City Manager and City Attorney.

INTEGRATION OF COUNCIL GOALS / STRATEGIC PLAN:

The recommendation supports the Council's goals of: economic vitality, increasing municipal revenue, local job creation, and high quality commercial development.

FISCAL IMPACT:

There is no fiscal impact in approving a Sixth (6th) Amendment besides delaying sales proceeds to the City.

ALTERNATIVE(S):

The City Council may choose to consider or approve different terms than proposed by the Developer to extend the term of the PSA. .

CONCLUSION:

That the City Council consider authorizing the Interim City Manager to execute a Sixth (6th) Amendment to the Stetson Crossing Purchase and Sale Agreement for Real Property commonly known as Stetson Crossing.

Attachment(s): 1 – Draft Sixth (6th) Amendment to Purchase and Sales Agreement

Recommended By:



Ronald E. Bradley
Interim City Manager

Prepared By:



John Jansons
Community Investment Director

**SIXTH AMENDMENT TO
AMENDED AND RESTATED PURCHASE AND SALE
AGREEMENT WITH JOINT ESCROW INSTRUCTIONS
[Stetson Crossing]**

by and between

the

CITY OF HEMET

and

STETSON CROSSING PARTNERS, LLC

Dated: March 12, 2013

**SIXTH AMENDMENT TO AMENDED AND RESTATED PURCHASE AND SALE
AGREEMENT WITH JOINT ESCROW INSTRUCTIONS**

This Sixth Amendment to the Amended and Restated Purchase and Sale Agreement with Joint Escrow Instructions (“**Sixth Amendment**”), which is dated for reference as indicated on the cover page, is hereby entered into by and between the CITY OF HEMET, a California general law city (“**Seller**”), and STETSON CROSSING PARTNERS, LLC, a California limited liability company (“**Purchaser**”), as follows:

RECITALS

- A. Seller and Purchaser entered into that Amended and Restated Purchase and Sale Agreement with Joint Escrow Instructions on April 9, 2011 (“**Purchase Agreement**”) providing the terms and conditions under which Seller would sell and Purchaser would purchase that certain real property described in the Agreement as the “**Real Property**”.
- B. Since entry into the Purchase Agreement, Seller and Buyer have mutually agreed to amend the Purchase Agreement five times by means of the First, Second, Third, Fourth and Fifth Amendments (“**Prior Amendments**”) to revise the terms and extend the Close of Escrow to adapt to changing market conditions.
- C. By means of this Sixth Amendment, the Parties desire to extend the Term of Escrow to August 30, 2013, provided, however, that Purchaser is able to provide suitable proof of financial ability to complete certain onsite improvements by a specific date, as provided below.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the promises made and recited herein, the parties do hereby enter into this Sixth Amendment which modifies and amends the Purchase Agreement and Prior Amendments as follows:

- 1. **AMENDMENTS.** The Purchase Agreement, inclusive of the Prior Amendments, is hereby amended as follows:

- 1.1 **Term of Escrow.** Section 3.2 of the Purchase Agreement is hereby amended to read:

- “**Term of Escrow.** Close of Escrow shall occur no later than August 30, 2013 unless this Agreement is amended by mutual agreement of the Parties, as provided in Section 19 [Entire Agreement] herein.”

- 1.2 **Proof of Financial Ability.** Subsection 5.2.3.1 (“Purchaser’s Construction Loan Document”) of the Purchase Agreement is hereby amended to read:

- “**Purchaser’s Proof of Financial Ability.** Purchaser must, by May 31, 2013 (the “**Financing Date**”), provide Seller with the documents provided in subsection (a) and/or subsection (b):

(a) *Construction Loan Documents.* Copies of all loan documents, and such other agreements, financial records, statements, reports and similar documents as Seller may reasonably require: (i) to evidence that a lender, acceptable to Seller as provided below, has entered into a legally binding and enforceable agreement to provide the Construction Loan to Purchaser, and that the loan documents (collectively the “Loan Documents”) require the proceeds of the Construction Loan to be available for Purchaser’s draw as of the Close of Escrow, and (ii) to evidence that Purchaser has the ability to timely make all payments due and otherwise perform all obligations required under the Loan Documents (collectively, the “Performance Documents”). Seller shall review the Loan Documents and the Performance Documents promptly upon receipt and, not more than fifteen (15) days following receipt of the Loan Documents and the Performance Documents, shall deliver to the Purchaser written notice that the Loan Documents and Performance Documents either (x) are approved as reasonably acceptable to Seller or (y) are rejected as not reasonably acceptable to Seller, in which case such notice shall specify with reasonable detail the terms or provisions that are not reasonably acceptable and what provisions would be reasonably acceptable to Seller. If the Seller does not provide timely notice to Purchaser following receipt of the Loan Documents and the Performance Documents, then Seller shall be deemed to have approved such documents as reasonably acceptable to Seller. If the Seller timely rejects the Loan Documents or Performance Documents, Purchaser shall have until fifteen (15) days following receipt of Seller’s notice to respond to and cure any reasonable objections of Seller to the Loan Documents and/or the Performance Documents. If the Purchaser does not timely cure the reasonable objections of Seller, to Seller’s reasonable satisfaction, then Seller may immediately terminate the Purchase Agreement and cancel the escrow. If Seller has or is deemed to have approved the Loan Documents and Performance Documents, then Seller shall execute a subordination agreement or otherwise subordinate the Carryback Note and Carryback Deed of Trust to the Construction Loan and related deed of trust in conformance with such customary terms reasonably required by the lender. The lender providing the Construction Loan may either be a commercial lending institution, in good standing, with assets in excess of \$100 Million as of the Financing Date (“Commercial Lender”) or a financing company, investment group, affiliate member of Purchaser, or similar enterprise (collectively “Other Lender”). For purposes of this section, a lender is reasonably acceptable to Seller if the lender is a Commercial Lender or where the lender is an Other Lender, if Purchaser provides to Seller by the Financing Date sufficient financial records, bank statements, or similar information demonstrating to Seller’s reasonable satisfaction that the Other Lender is capable of making and funding the Construction Loan.

(b) *Equity Partner or other Financial Resources.* Copies of: (i) the agreement or other documents, executed by the authorized representatives of the parties, evidencing that Purchaser has secured a legally binding commitment for additional equity necessary (in combination with or in addition to proceeds from the Construction Loan), to timely fund the Purchaser’s on-site improvement construction obligations under the Development Agreement, and (ii) bank statements in the name of Developer or the equity provider showing the equity funds on deposit, or a bank’s letter of confirmation of the existing and accessibility of such funds.

(c) The parties acknowledge that the Purchaser shall demonstrate the ability, to the reasonable satisfaction of Seller, to fund the Purchaser's on-site improvement construction obligations under the Development Agreement by any combination of equity and loans. Proceeds from the sale or lease of all or a portion of the Real Property shall be considered a reasonably acceptable means of satisfying loan repayment obligations so long as the Purchaser has a legally binding commitment to purchase and/or lease such Real Estate. The parties acknowledge that the Purchaser currently anticipates that the portion of such construction obligations not reimbursed by the Seller or the National Retailer will be approximately \$2,500,000. Purchaser shall be considered to have reasonably demonstrated the ability to timely make all payments due and perform all other obligations under the Loan Documents if (i) the Construction Loan proceeds and capital contributions shall be sufficient to fund the interest carry on the Construction Loan and the Seller's Carryback Note for their respective anticipated terms, (ii) proceeds from any sale of any portion of the Remaining Property equal to the Release Price for such parcel shall be paid to Seller prior to any proceeds being applied to reduce the principal balance of the Construction Note, (iii) the Purchaser demonstrates sufficient interest by prospective tenants or purchasers by virtue of signed non-binding letters of intent, which if consummated, would result in a substantial reduction on the outstanding principal balance of the Construction Loan and the Carryback Note within six (6) months of the Close of Escrow, and (iv) the Purchaser's reasonable projection for the absorption of the balance of the Real Property over the term of the Carryback Note predict sale proceeds necessary to pay the principal balance of the Carryback Note and the Construction Loan as they come due.

1.3 Commencement of Flood Channel Improvements. Section 6.3.5, added to the Purchase Agreement by the 4th Amendment and amended thereafter by the 5th Amendment, is hereby further amended to read as follows:

“6.3.5 Purchaser has achieved substantial completion of the Flood Channel Improvements by February 28, 2013 and now by May 31, 2013 must complete any remaining City and RCFCD punch list items that are reasonably required for acceptance.”

1.4 Timing of Close. Section 7.4 (“Timing of Close”) of the Purchase Agreement is hereby amended to read as follows:

“**Timing of Close.** Purchaser shall provide not less than five (5) business days advance written notice of the date for the Close of Escrow, provided that such notice must be provided no later than August 23, 2013, for a August 30, 2013 closing.”

1.5 Restrictions on Use. Section 8.2.1 (“Restrictions on Use”) of the Purchase Agreement is hereby amended by adding new sub-sections 8.2.1.8, 8.2.1.9, 8.2.1.10, 8.2.1.11 and 8.2.1.12 after sub-section 8.2.1.7 as follows:

“8.2.1.8 Gas stations.

- 8.2.1.9 Liquor stores and convenience stores stocking a range of everyday items such as groceries, toiletries, alcoholic and soft drinks, and newspapers.
- 8.2.1.10 Automotive repair and automotive part stores, auto detailing shops, and car washes.
- 8.2.1.11 Thrift shops and second hand stores.
- 8.2.1.12 Gold exchange stores and other establishments regularly and primarily engaged in purchasing precious metals from individual customers.”

2. GENERAL PROVISIONS.

2.1 **Remainder Unchanged.** Except as specifically modified and amended in this Sixth Amendment, the Purchase Agreement remains in full force and effect and binding upon the parties. For avoidance of doubt, the parties intend that the definition of “Construction Loan” is hereby modified to include a loan extended by an Other Lender, as provided herein.

2.2 **Integration.** This Sixth Amendment consists of pages 1 through 6 inclusive, which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the transaction discussed in this Sixth Amendment.

2.3 **Effective Date.** This Sixth Amendment shall not become effective until the date it has been formally approved by the City Council and executed by the appropriate authorities of the Seller and Purchaser.

2.4 **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Sixth Amendment.

2.5 **References.** All references to the Purchase Agreement include all their respective terms and provisions. All defined terms utilized in this Sixth Amendment have the same meaning as provided in the Purchase Agreement, unless expressly stated to the contrary in this Sixth Amendment.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Sixth Amendment to the Purchase Agreement on the date and year first written above.

CITY:

CITY OF HEMET

By: _____
Ronald E. Bradley, Interim City Manager

ATTEST:

Sarah McComas, City Clerk

APPROVED AS TO FORM

Eric S. Vail, City Attorney

STETSON CROSSING PARTNERS, LLC.

By: _____

By: _____

Its: _____

Its: _____

NOTE: PURCHASER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO PURCHASER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____, ____ before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
TITLE(S)	NUMBER OF PAGES
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> GENERAL	DATE OF DOCUMENT
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	SIGNER(S) OTHER THAN NAMED ABOVE
<input type="checkbox"/> GUARDIAN/CONSERVATOR	
<input type="checkbox"/> OTHER _____	

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))



Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Ronald E Bradley, Interim City Manager

DATE: March 12, 2013

RE: Request to Appoint Council Member and Re-activate Special Events Ad Hoc Committee to Consider Fiscal Year 13/14 Special Events Funding Requests

RECOMMENDATION:

That the City Council Appoint Council Member and Re-activate Special Events Ad Hoc Committee to Consider Fiscal Year 13/14 Special Events Funding Program

BACKGROUND:

On February 14, 2012, the City Council approved a new program and policy for funding community events. At that time, a City Council Ad Hoc Sub-Committee (Mayor Pro-Tem Foreman and Councilperson Krupa) was also established and charged with reviewing requests received and providing the full Council with a future funding recommendation to support Community events.

On April 30, 2012 the applications period to request funding from the City closed and 28 applications were received for financial assistance totaling approximately \$82,000.

In June of 2012, with the approval of the Fiscal Year 2012-2013 City budget, the Council approved an allocation of \$25,000 for support of community events. This approval was separate from funding approved for City-produced events such as the Veterans' Day celebration and Christmas Parade.

On August, 14, 2012 the City Council approved a Special Event Funding program based upon the recommendation of the Council Ad Hoc Committee.

DISCUSSION:

In order to proceed with Special Events Funding Program for FY 13/14 forward, the Ad Hoc needs to be reactivated and a new Ad Hoc Committee member(s) needs to be appointed by the Council to review applications and formulate a funding recommendation to Council after the application period closes by March 31, 2013.

COORDINATION AND REVIEW:

This recommendation was prepared and coordinated with the Office of the City Manager, and Department of Community Investment.

INTEGRATION OF COUNCIL GOALS / STRATEGIC PLAN:

The recommendation supports the Council's goals of ensuring a high quality of life and supporting economic vitality.

FISCAL IMPACT:

There is no fiscal impact associated with appointing a Council Member to serve as an Ad Hoc Committee member to consider funding of Special Events.

ALTERNATIVE(S):

- 1) The City Council may choose to not reestablish the Ad Hoc and appoint a new member.
- 2) The City Council may direct staff to review the applications and present a recommendation for funding to the City Council.

CONCLUSION:

That the City Council Appoint Council Member and Reactivate Special Events Ad Hoc Committee to Consider Fiscal Year 13/14 Special Events Funding Program

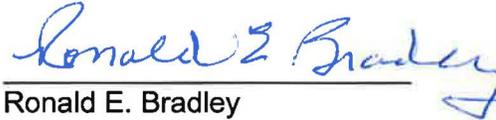
Attachment(s): Special Event Funding Program Information

Respectfully Submitted,



John Jansons
Community Investment Director

Approved By:



Ronald E. Bradley
Interim City Manager



ATTACHMENT 1

Staff Report

TO: Honorable Mayor and City Council

FROM: Brian S. Nakamura, City Manager

DATE: August 14, 2012

RE: City Council "Special Event Subcommittee" Recommendation for Special Event / Community Event funding for 2012-2013 Fiscal Year.

RECOMMENDATION:

That the City Council approve the recommendation of the City Council Subcommittee to fund Community Events in the amount of \$25,000 for fiscal year 2012-2013.

BACKGROUND:

On February 14, 2012, the City Council approved a new program and policy for funding community events. At that time, a City Council Sub-Committee (Mayor Pro-Tem Foreman and Councilperson Krupa) was also established and charged with reviewing requests received and providing the full Council with a future funding recommendation to support Community events.

On April 30, 2012 the applications period to request funding from the City closed and 28 applications were received for financial assistance totaling approximately \$82,000.

With the approval of the Fiscal Year 2012-2013 City budget, the Council approved an allocation of \$25,000 for support of community events. This approval was separate from funding approved for City-produced events such as the Veterans' Day celebration and Christmas Parade.

DISCUSSION:

Again fiscal year 2012-2013 presents financial challenges for the City Hemet which have directly effected the City's ability to sponsor community events. Despite this, City staff believes that there tangible benefits to the community in sponsoring, albeit modestly, events that foster community pride, healthy living and that provide family friendly activities to the residents of Hemet. Such events contribute to Hemet's economic development trough tourism spending and exposure of Hemet as a great place to live, work and play. Support for community events directly supports Hemet's efforts to showcase itself as a community that takes pride in its heritage, promotes healthy lifestyles and reinforces harmonious living.

Attachment 1, is a memo summarizing the recommendation for community event funding. The recommendation does not fully exhaust the funds available and retains \$188.00 for support of an event or events that may requests funds later in the year. Should the remainder not be

allocated, that amount would carry over to Fiscal Year 2013-14 community event funding activities or reprogrammed by the Council for other purposes during the budget process.

ALTERNATIVES:

The Council may direct staff to implement all, part or none of the Sub-Committee's recommendation.

FISCAL IMPACT:

The recommendation of the Sub Committee, if approved will encumber the \$25,000 allocated in the City's budget for FY 2012-2013 for community event support. Should any other events or new events request funds later in this fiscal year, they could be considered with the remaining fund balance of \$188.00 by separate action of the Council or moved to the request for funds list for FY 2013-2014 should funding be allocated for community events next year.

COORDINATION AND REVIEW:

The recommended action of the Sub-Committee has been coordinated with the City Manager's Office, Finance Department, Public Works: Operations, Community Development: Planning Division, and the Community Investment Department.

STRATEGIC PLAN AND COUNCIL GOALS INTEGRATION:

The recommended action supports the City's goals of fostering and maintaining a high quality of life for its residents and promoting economic activity to benefit the local business community and Hemet residents.

CONCLUSION:

It is respectfully recommended that the City Council accept and approve the Sub-Committee's recommendation to fund community events for FY 2012-2013.

ATTACHMENTS: 2 –

- 1) Sub-Committee Recommendation
- 2) Original List of Funding Requests

Recommended By:

Approved By:

John Jansons
Community Investment Director

Brian S. Nakamura
City Manager



City of Hemet Event Funding Request **Guidelines**

The City of Hemet is accepting requests for financial assistance to help fund community events that provide enjoyment and benefit to the citizens and businesses of Hemet. Organizations may request City sponsorship funds each year during the City's annual application period, for events that will take place during the following fiscal year (July 1 to June 30). The City Council will evaluate all applications received; evaluation is based on the award criteria detailed herein this application packet; and City Council may then choose to award financial assistance to one or more event funding requests.

Application Deadline: Complete application packets, including all requested information and signatures, must be received by the City of Hemet: Department of Community Investment no later than April 30. Applicant is responsible to ensure that application is complete. Incomplete or late applications may not be considered.

- For an event occurring between the following dates: July 1, 2012 - June 30, 2013
Application Deadline: April 30, 2012

Eligibility:

- Organizations that produce a community event in or near the City of Hemet.
- Event must take place during the fiscal year directly following the application deadline. (Due to year-to-year City budget fluctuations, applications for future years' events cannot be considered until the review cycle for that particular year)

Award Limitations:

- Minimum Funding Request City Council will consider: \$100.
- Maximum Funding Request City Council will consider: No current maximum.

The amount of any award will be dependent upon, and may be limited by, funding available at the time an application is evaluated, the number of events that are awarded funding, and/or the City Council's evaluation of the merits of an application.

Application Review Process: City staff will compile all applications received and will forward them to a City Council Ad Hoc Committee for review. All applicants will be given an opportunity to speak to the Ad Hoc Committee about their application. The Ad Hoc Committee will forward a recommendation to the City Council regarding the applications received. The City Council will then decide whether to provide financial assistance to one or more proposed community events. All applicants will be notified of City Council's decision.

City of Hemet Event Funding Request Guidelines (cont.)

Application Review Criteria: Proposals submitted will be evaluated based on the following criteria:

CRITERIA	MAXIMUM POINTS POSSIBLE
What services/benefits/products will the City of Hemet receive in return for sponsoring the event (i.e., Advertising, Services to Hemet citizens, etc.).	20
Will the event generate local hotel/motel stays?	20
How long has this event been in existence?	10 pts for first year event 5 pts for established event
Is Budget Worksheet clear and understandable? (other event sponsors, event revenues, event expenditures, donations being made, etc.)	20
Has the applicant demonstrated that they are going to meet all federal, state, and local regulations, and obtain any required permits (i.e., ADA, vendor permits, health permits, street closures, security, clean up, etc.).	20
Location of event.	10 pts for downtown core 5 pts for outside downtown core

Application Submittal:

If you are requesting **funding less than \$1,000.00**, please complete the attached **Form 'A'** Funding Request Form (must be a signed original), including all requested information.

If you are requesting **funding of \$1,000.00 or more**, please complete the attached **Form 'B'** Funding Request Form (must be a signed original), including all requested information.

Submit your Funding Request Form prior to the application deadline to:

City of Hemet
Community Investment Dept.
Attn: John Jansons
445 E. Florida Avenue
Hemet, CA 92543

Questions:

Please direct all questions concerning City of Hemet Event Funding to the City of Hemet Community Investment Department (951) 765-2308.



City of Hemet Event Funding Request Form A

(Request for Assistance \$100 to \$999)

Request Guidelines:

- If you are requesting financial assistance for more than one event, a separate request form and distinct separate budget must be submitted for each request.
- Application Deadline:
For an event occurring between the following dates: July 1, 2012 - June 30, 2013
Application Deadline is April 30, 2012.
- Any questions re submitting a funding request should be directed to the City of Hemet – Community Investment Department (951) 765-2308.

1. NAME OF EVENT: _____

2. DATE OF EVENT: _____

3. LOCATION OF EVENT: Address: _____

*(if no address, provide
description of location)*

City: _____ State: _____

Zip: _____

4. NAME OF APPLICANT/ORGANIZATION
WHO IS PRODUCING THE EVENT: _____

5. CONTACT PERSON: Name: _____

Title: _____

Phone: _____ Fax: _____

Email: _____

Address: _____

City: _____ State: _____

Zip: _____

6. DESCRIPTION OF EVENT: _____

7. DESCRIBE WHAT BENEFITS THE COMMUNITY AND CITY OF HEMET WILL RECEIVE FROM
THE EVENT. Attach separate pages as needed:

City of Hemet Event Funding Request Form (cont.)

8. ANTICIPATED NUMBER OF ATTENDEES: _____

9. IS THIS A FUNDRAISING EVENT?: _____ NO _____ YES

10. IS THIS EVENT FREE TO THE PUBLIC?: _____ NO _____ YES

11. IS THIS A FIRST TIME EVENT?: _____ NO _____ YES

IF NO, HOW MANY YEARS HAS YOUR ORGANIZATION PRODUCED THIS EVENT?: _____

12. LIABILITY INSURANCE?: _____ NO _____ YES CARRIER: _____

13. HAVE YOU CONSULTED WITH CITY/COUNTY/STATE AND OTHER AGENCIES TO DETERMINE WHAT PERMITS WILL BE REQUIRED TO CONDUCT THE EVENT?

_____ NO _____ YES

If YES, what permits have you determined are required? (i.e., Special Event, Street Closure, Park Reservation, Sign Permit, ABC Alcohol, Environmental Health, Fire Dept, etc...):

14. TOTAL AMOUNT OF FINANCIAL ASSISTANCE REQUESTED: \$ _____

Please Provide Detail of Assistance Requested Below:

A. Requested City of Hemet **In-Kind Support** (Please List):
(i.e., Permit Fee Waive, Traffic Control, Security, Electrical Support, Other City Staff Labor, City Equipment, Portable Restrooms, Street Barricades, City Facilities, etc.)

_____ \$ _____
_____ \$ _____
_____ \$ _____

B. Requested City of Hemet **Monetary Support**: _____ \$ _____

TOTAL IN-KIND AND MONETARY SUPPORT (sum of A + B): \$ _____

OFFICIAL WITH CONTRACTING AUTHORITY FOR THE ORGANIZATION

I **HEREBY CERTIFY** that the facts stated herein this Event Funding Request are true and correct to the best of my knowledge. The Event described herein will be conducted in accordance with all applicable city/county and other regulations, and the Event provides equal access to employment and event participation without regard to race, color, religion, sex, national origin, age, disability, or military status in accordance with applicable federal laws.

Official's Signature

Date

Official's Name & Title (Print)



City of Hemet Event Funding Request Form B

(Request for Assistance of \$1,000 or More)

Request Guidelines:

- If you are requesting financial assistance for more than one event, a separate request form and distinct separate budget must be submitted for each request.
- Application Deadline:
For an event occurring between the following dates: July 1, 2012 - June 30, 2013
Application Deadline is April 30, 2012.
- Any questions re submitting a funding request should be directed to the City of Hemet – Community Investment Department (951) 765-2308.

1. NAME OF EVENT: _____

2. DATE OF EVENT: _____

3. LOCATION OF EVENT: Address: _____

(if no address, provide description of location)

City: _____ State: _____

Zip: _____

4. NAME OF APPLICANT/ORGANIZATION
WHO IS PRODUCING THE EVENT: _____

5. CONTACT PERSON: Name: _____

Title: _____

Phone: _____ Fax: _____

Email: _____

Address: _____

City: _____ State: _____

Zip: _____

6. DESCRIPTION OF EVENT: _____

7. DESCRIBE WHAT BENEFITS THE COMMUNITY AND CITY OF HEMET WILL RECEIVE FROM THE EVENT. Attach separate pages as needed:

City of Hemet Event Funding Request Form (cont.)

8. ANTICIPATED NUMBER OF OUT-OF-TOWN OVERNIGHT ATTENDEES: _____

9. ANTICIPATED NUMBER OF LOCAL ATTENDEES: _____

10. IS THIS A FUNDRAISING EVENT?: _____ NO _____ YES

11. EVENT PROMOTION: What type of advertising/public relations/promotion methods do you plan to use to advertise the Event? For example, provide details of promotional activities, materials, and ad placements, including the names of publications, location of billboards, tv/radio stations, websites, number of postcards to be produced, etc. Attach separate pages as needed: _____

12. IS THIS EVENT FREE TO THE PUBLIC?: _____ NO _____ YES

13. IS THIS A FIRST TIME EVENT?: _____ NO _____ YES

IF NO, HOW MANY YEARS HAS YOUR ORGANIZATION PRODUCED THIS EVENT?: _____

14. WHAT HOTELS HAVE COMMITTED TO SPECIAL RATES OR PACKAGES FOR THE EVENT DATE?: _____

15. HOW MANY ESTIMATED HOTEL ROOM NIGHTS WILL BE GENERATED BY THIS EVENT? _____

16. DESCRIBE YOUR PROCEDURES FOR CROWD CONTROL AND SECURITY. Attach separate pages as needed: _____

17. LIABILITY INSURANCE?: _____ NO _____ YES CARRIER: _____

18. HAVE YOU CONSULTED WITH CITY/COUNTY/STATE AND OTHER AGENCIES TO DETERMINE WHAT PERMITS WILL BE REQUIRED TO CONDUCT THE EVENT?

_____ NO _____ YES

If YES, what permits have you determined are required? (i.e., Special Event, Street Closure, Park Reservation, Sign Permit, ABC Alcohol, Environmental Health, Fire Dept, etc...):

19. TOTAL AMOUNT OF FINANCIAL ASSISTANCE REQUESTED: \$ _____

Include total value of all monetary assistance -AND- in-kind assistance you are requesting from the City of Hemet (see *Projected Event Budget Worksheet*).

City of Hemet Event Funding Request Form (cont.)

20. COMPLETE THIS PROJECTED EVENT BUDGET WORKSHEET:

ANTICIPATED REVENUE:

1. Admissions\$ _____

2. Booth/Space Rentals\$ _____

3. Corporate/Individual Sponsorships (Please List):

_____\$ _____

_____\$ _____

_____\$ _____

_____\$ _____

4. Other Revenue (Please List):

_____\$ _____

_____\$ _____

5. Requested **City of Hemet** In-Kind Support (Please List):
(i.e., Permit Fee Waive, Traffic Control, Security, Electrical Support, Other City Staff Labor, City Equipment, Portable Restrooms, Street Barricades, City Facilities, etc.)

_____\$ _____

_____\$ _____

_____\$ _____

_____\$ _____

6. Requested **City of Hemet** Monetary Support:\$ _____

TOTAL PROJECTED REVENUE:\$ _____

ANTICIPATED EXPENSES:

7. Personnel:

Administrative\$ _____

Artistic\$ _____

Technical/Production\$ _____

Other\$ _____

8. Space Rental\$ _____

9. Equipment Rental/Purchase\$ _____

10. Miscellaneous Supplies\$ _____

11. Permits/Licenses\$ _____

12. Advertising/Marketing\$ _____

13. Other Expenses (Please List):

_____\$ _____

_____\$ _____

TOTAL PROJECTED EXPENSES:\$ _____

City of Hemet Event Funding Request Form (cont.)

- SIGNATURE PAGE -

OFFICIAL WITH CONTRACTING AUTHORITY FOR THE ORGANIZATION

I **HEREBY CERTIFY** that the facts stated herein this Event Funding Request are true and correct to the best of my knowledge. The Event described herein will be conducted in accordance with all applicable city/county and other regulations, and the Event provides equal access to employment and event participation without regard to race, color, religion, sex, national origin, age, disability, or military status in accordance with applicable federal laws.

Official's Signature

Date

Official's Name & Title (Print)



Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Ronald E Bradley, Interim City Manager

DATE: March 12, 2013

RE: Appointment of City Council representatives to RECON, the International Council of Shopping Centers trade show and annual conference in May of 2013 and approval of funding.

RECOMMENDATION:

That the City Council appoint two representatives of the Council to attend RECON, the International Council of Shopping Centers (ICSC) retail industry trade show and conference in May 2013 and approve and direct expenditures in the amount of approximately \$24,000.

BACKGROUND:

For many years the City has attended, exhibited or participated in RECON, the International Council of Shopping Centers (ICSC) annual trade show and conference to recruit new retail to Hemet. This year's event is scheduled from May 19 through the May 22 (4 days) at the Las Vegas Convention Center.

In 2012, Mayor Pro-Tem Larry Smith and Councilperson Linda Krupa attended ICSC and met with various retailers, developers, investors and property owners and managers. Mr. Smith and Ms. Krupa also attended the regional ICSC event in San Diego in September of 2012 to meet with prospective retailers.

DISCUSSION:

In 2012, Hemet conducted retail recruitment by staffing a trade show booth within the "Riverside County Pavilion" as part of the cities collaborative trade show program with Riverside County Economic Development Agency (EDA), and met with various retailers, developers, investors and property owners and managers.

Staff intends to field a three person team to staff the booth and meet with prospective retailers, developers, and investors.

In order to finalize plans for Hemet's effort, the City Council should identify who will attend representing the Council so arrangements can be made.

COORDINATION AND REVIEW:

This recommendation was prepared at the direction of the City Manager.

INTEGRATION OF COUNCIL GOALS / STRATEGIC PLAN:

The recommendation supports the Council’s goals of increasing economic vitality, increasing municipal revenue, and providing new jobs in retail through business recruitment.

FISCAL IMPACT:

The estimated fiscal impact is contingent upon Council representation and other costs. To achieve the Manager’s direction, it is estimated that approximately \$24,000 is needed to have two council members attend and pay for other necessary expenses to participate in ICSC. Included in this proposed budget are the following recommended items exclusive of staff and Council travel and registration expenses:

New Marketing Brochures (design and printing)	\$ 8,700
Trade Show Booth Cost (partner with w/Riverside County)	\$ 3,600
Misc. and Shipping	\$ 1,700
<u>Pre-show activities (Broker Outreach)</u>	<u>\$ 2,500</u>
Sub-Total:	\$16,500
Three staff members to manage booth presence:	\$ 4,500
Estimate for 2 Council Members to attend:	\$ 3,000
Event registrations	
ICSC membership fee	
Hotel – 3 nights	
Meals – 3 days	
Travel (air or car)	
Misc.	
<hr/>	
Total for Planned Approach:	<u>\$24,000</u>

The request to develop new materials, perform pre-show outreach, prepare and present a booth presence and fund the registration and travel of council members exceeds what was budgeted for 2013. Therefore, it is respectfully requested that the City Council approve a supplemental appropriation of \$10,000 from City Council Budget 100-1100-2550 and \$14,000 from Undesignated General Fund Balance to provide for costs associated with participating in ICSC’s RECON 2013.

ALTERNATIVE(S):

- 1) Authorize only one Council representative,
- 2) Authorize more than two Council representatives, or
- 3) Authorize no Council representatives to attend.

CONCLUSION:

That the City Council appoint two representatives of the Council to attend RECON, the International Council of Shopping Centers (ICSC) retail industry trade show and conference in May 2013 and approve and direct expenditures in the amount of approximately \$24,000.

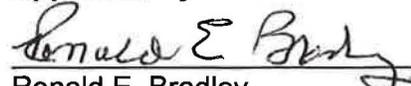
Attachment(s): ICSC Information

Respectfully Submitted,



 John Jansons
 Community Investment Director

Approved By:



 Ronald E. Bradley
 Interim City Manager

RECon
THE GLOBAL RETAIL REAL ESTATE CONVENTION

May 19–22, 2013
Las Vegas Convention Center
Las Vegas, NV

The retail landscape may have changed but not to worry. RECon 2013 will give you the tools to navigate it. RECon is the world's largest retail real estate exhibition and conference and is the must attend industry event for shopping center executives, retailers, financial companies, economic development professionals, public officials and product and service providers.

If you're in the shopping center industry, you can't afford not to attend RECon. Are you an owner/developer looking to lease space in an existing or new shopping center? Then RECon will provide you with the opportunity to meet more retailers and brokers in four days than you could do all year on your own. If you're a product and service provider to the shopping center industry, RECon provides you with numerous opportunities to promote your brand to over 30,000 industry professionals. Looking to expand your industry knowledge? Then RECon's educational sessions will present you with a wide array of topics that are guaranteed to address key issues and offer you time-tested solutions that you can take home and immediately put to work for your business.

When over 30,000 of the best and brightest in the industry come together, the opportunities are limitless.



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What You'll Find at RECon

Leasing Mall

Whether you're a shopping center owner looking to lease space in a new or existing shopping center or a retailer looking to expand into new markets, the Leasing Mall is the place where the deals get done! With over 800 of the world's largest shopping center development companies and retailers in attendance, the Leasing Mall is the most cost-efficient means of doing business. You can visit with all the major companies in the industry and conduct a year's worth of business in just three days.

Marketplace Mall

Introduced in 2012, the Marketplace Mall will feature over 300 product suppliers and service companies grouped together in one convenient location so that attendees can quickly and easily learn about the latest innovations that will improve their profitability. Whether you are looking for signage, shopping carts or new technology solutions, you can get the information you need at the Marketplace Mall.

“What's great for IKEA is that everybody in the business is at RECon. Whether we are looking to meet with developers, land owners, city representatives, consultants, or brokers; they are all there! So for us, RECon is a really efficient way of getting business done.”

Douglas Greenholz
Vice President Real Estate
IKEA Property, Inc.

Cities of the World Pavilion

The Cities of the World Pavilion features cities and municipalities as well as government and non-profit organizations that are looking to attract retail real estate development to communities throughout the world. Located on the Leasing Mall floor, the Cities of the World Pavilion will allow attendees to quickly and conveniently learn about all the incentives, inducements and development opportunities that exist in communities near and far.

Finance Pavilion

The Finance Pavilion is one convenient stop for attendees to meet with financial companies, banks and lenders to discuss incentives and financing opportunities that will make their development dreams come true.

Design Trends Exhibit

Today's dreams and tomorrow's realities are featured at the Design Trends Exhibit as shopping center owners, developers, architects and designers display their vision and latest concepts. Prominently located in high traffic areas throughout the Convention Center, a Design Trends Exhibit is an ideal way to expand your presence and drive traffic to your Leasing Mall exhibit.

#iTechLounge

From social media to mobile marketing. From SEO to geo-fencing. As technology evolves, so must marketing strategies and tactics. At ICSC's first-ever #iTechLounge, learn about emerging trends and tools, understand the importance of creating a solid digital and online footprint, review real industry examples and look beyond Facebook and Twitter. See page 26 for schedule.

Marketplace Mall Education Hall

Brand new to the Marketplace Mall, the Marketplace Mall Education Hall hosted by the Professional Retail Store Maintenance Association (PRSM), will provide attendees with 30-minute trade-relevant power sessions on topics like HVAC, paving, sustainability, and much more! The Marketplace Mall Education Hall will be the go to place for retail facility professionals to learn about the latest industry advancements and network with their peers. So if you are responsible for the maintenance or management of a retail store or shopping center, don't miss this brand new feature of the Marketplace Mall. See page 25 for sessions.

Continuing Education Credits

Attend RECon Academy and earn credits toward your ICSC continuing education!





Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Ronald Bradley, interim City Manager
Deanna Elliano, Community Development Director

DATE: March 12, 2013

RE: **MUNICIPAL CODE AMENDMENT 13-001 pertaining to Social Hosts and Loud and Unruly Gatherings:** A city-initiated ordinance amending Chapter 46 (Offenses and Miscellaneous Provisions) of the Hemet Municipal Code to add a new Article V entitled "Social hosts and Loud or Unruly Gatherings". This ordinance is a component of the Hemet ROCS (Restoring Our Community Strategy) Program for the City of Hemet. (**Ordinance Bill No. 13-006**)

RECOMMENDED ACTION:

That the City Council:

1. *Introduce, read by title only, and waive further reading of Ordinance Bill No. 13-006, establishing Article V of Chapter 46 of the Hemet Municipal Code regarding the regulation of Social Hosts and Loud and Unruly Gatherings; and direct staff to file a Notice of Exemption in compliance with the California Environmental Quality Act.*

BACKGROUND:

The proposed ordinance is a component of the Hemet ROCS (Restoring Our Community Strategy) program, which the Council has established as a key City initiative to continue forward. The need for a "social host" ordinance was suggested to the City by members of the Hemet Community Action Network, whom are also on the Hemet ROCS Citizen Advisory Committee (CAC), as a means to further limit and discourage underage drinking and alcohol access to minors. As such, the proposed municipal code amendment is a companion ordinance to the recently adopted Alcoholic Beverage Sales ordinance which became effective in February, 2013.

In addition to the proposed regulations regarding social hosts, the ordinance also makes it unlawful for any person to "conduct, organize, host, permit or allow a loud and unruly gathering", as defined in the ordinance. Because such a gathering is deemed a public nuisance, the ordinance includes provisions for the City to recover the "public safety services costs" of responding to the incident. The persons responsible for conducting or hosting the event can be held financially liable for the public safety costs, in addition to any other criminal or civil penalties deemed appropriate by the responding officers. The ordinance provides the Hemet Police Department with additional enforcement tools to abate such gatherings in residential neighborhoods or at commercial properties, as well providing the option of administrative penalties to curb the potential for alcohol consumption by minors occurring at private properties.

Several cities throughout California and the U.S. have adopted similar ordinances to deter alcohol consumption by minors at private properties and to hold the persons providing the alcohol, or the uncontrolled access to alcohol, accountable. Various studies have found that the majority of minors drinking alcohol occurs at house parties. The Hemet Community Action Network (CAN) collected surveys from youth in Hemet schools and 80% of those surveyed reported house parties as the number one way to obtain alcohol. In addition, 59% of 9th graders and 71% of 11th graders reported that alcohol is fairly easy to obtain. Ventura County conducted a study of cities within the county that had adopted Social Host ordinances, and reported that there were fewer calls for service regarding underage drinking after the adoption of the ordinance. It was also reported that the majority of those who received a citation for violation of the social host ordinance had only one occurrence, with 4% of the violators being repeat offenders.

ORDINANCE DESCRIPTION:

The proposed ordinance establishes a new section in the Hemet Municipal Code as Article V of Chapter 46, (Offenses and Miscellaneous Provisions). The ordinance addresses two types of violations which are frequently related. First, it is a violation to knowingly host or allow a gathering to take place on the premises where one or more minors consumes alcoholic beverages, and the person responsible does not take immediate action to prevent the consumption of alcohol by minors. This person or persons are identified as the “social hosts” for the purposes of the ordinance. The provisions of the ordinance do not apply to occasions where minors are in the presence of their parents and the parents have permitted consumption of alcohol by their own children. The provisions of the ordinance also do not apply to locations and events that are governed under state issued Alcoholic Beverage Control licenses.

The second type of violation under the ordinance is to hold or allow a “loud or unruly” gathering where people have assembled, such as at a party, and where unruly conduct occurs as identified in Section 46-81(F) of the proposed ordinance. This conduct is essentially a public nuisance and can include one or more of the following activities: loud noise or disruption, loitering on public streets and sidewalks, public drunkenness or unlawful consumption of alcohol, assaults, and any other conduct which constitutes a threat to public health, safety, and welfare; or the quiet enjoyment of the neighborhood.

A violation of the ordinance may be enforced by as an infraction, misdemeanor, or administration citation, at the discretion of the citing officer. In addition, the public safety costs of responding to a loud or unruly gathering can be charged to the responsible person(s). These remedies are in addition to any and all other legal remedies or provisions contained in the Hemet Municipal Code, state or federal law. The Hemet Police Department will be the primary implementation and enforcement entity for this ordinance.

COORDINATION & PUBLIC REVIEW:

The proposed ordinance was prepared by the City Attorney, and reviewed by the Community Development Department and Police Department staff. The Hemet ROCS Citizen Advisory Committee (CAC) reviewed the draft ordinance at their meeting of February 28, 2013, and took unanimous action to recommend adoption of the ordinance to the City Council. No members of the public in attendance at the meeting spoke in regard to this item.

CONSISTENCY WITH ADOPTED GOALS, PLANS, AND PROGRAMS:

The proposed ordinance is a component of the Hemet ROCS program, which the City Council had identified as a Strategic Goal in 2012, and has continued in 2013. In addition, the proposed ordinance is consistent with the following General Plan 2030 Implementation Programs and Policies:

LU-P-36: Hemet ROCS. *The City shall prepare ordinances and implementation programs to achieve the Hemet "Restoring Our Community Strategy" to address issues associated with vacant and absentee properties, maintenance issues, blight, and crime, in order to enhance the quality of life for Hemet Citizens.*

GOAL PS-8: *Ensure a secure environment with minimized risk of crime for residents, visitors, and businesses throughout the City of Hemet.*

POLICY LU-15.5: *Create, update, and enforce regulations and laws pertaining to the location, retailing, and use of unhealthy substances such as tobacco, marijuana, and other drugs, and alcohol."*

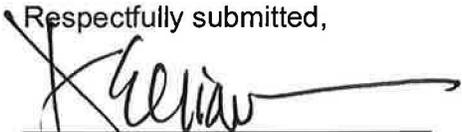
CEQA REVIEW AND COMPLIANCE:

The City has analyzed this proposed ordinance and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The addition of this section to Chapter 46 of the Hemet Municipal Code does not relate to any physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that this Ordinance may have a significant adverse effect on the environment and, therefore, the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

FISCAL IMPACT:

No direct fiscal impacts are associated with implementation of the proposed ordinance. The ordinance specifically authorizes the City to recover Public Safety Service Costs that may occur as a result of responding to loud and unruly gatherings and abating the nuisance activity.

Respectfully submitted,



Deanna Elliano
Community Development Director

Attachments:

1. City Council Ordinance Bill No. 13-006 regarding Social Hosts and Loud or Unruly Gatherings

Attachment No. 1

City Council
Ordinance Bill No. 13-006

(Social Host Ordinance)



**CITY OF HEMET
Hemet, California
ORDINANCE BILL NO. 13-006**

AN ORDINANCE OF CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA, ADDING ARTICLE V TO CHAPTER 46 OF THE HEMET MUNICIPAL CODE, PERTAINING TO SOCIAL HOSTS AND LOUD AND UNRULY GATHERINGS, AN ELEMENT OF THE HEMET RESTORING OUR COMMUNITY STRATEGY (HEMET ROCS) PROGRAM.

WHEREAS, the City of Hemet ("City"), pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

WHEREAS, minors often obtain alcoholic beverages at gatherings held on private property. Persons responsible for such gatherings often fail to ensure that alcoholic beverages are neither served to nor consumed by minors; and

WHEREAS, the occurrence of gatherings where alcoholic beverages are consumed by minors is harmful to the minors themselves and is a public nuisance; and

WHEREAS, the use of alcohol by minors contributes significantly to the incidence of adolescent crime, addiction, sexual assault, truancy, driving under the influence of alcohol, and motor vehicle crashes involving alcohol and causing injury and/or death; and

WHEREAS, the occurrence of loud or unruly gatherings is a threat to the public health, safety and general welfare of the City's residents and the quiet enjoyment of residential property; and

WHEREAS, law enforcement responses to loud or unruly gatherings cause a drain of law enforcement resources and expenditure of public safety funds, which are underwritten by general taxes paid to the City by its taxpayers and residents; and

1 **WHEREAS**, it is the intent of the City Council of the City of Hemet to protect the
2 public health, safety and general welfare of its residents and the quiet enjoyment of
3 residential property.

4 **NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET DOES**
5 **HEREBY ORDAIN AS FOLLOWS:**

6 **SECTION 1: ADDITION OF ARTICLE V OF CHAPTER 46 TO THE HEMET**
7 **MUNICIPAL CODE.** Article V is hereby added to Chapter 46 of the Hemet Municipal
8 Code, and shall read as shown in Exhibit "A" hereto.

9 **SECTION 2: CEQA FINDINGS.**

10 The adoption of this Ordinance is exempt from CEQA review pursuant to CEQA
11 Guidelines Section 15061(b)(3), because it can be seen with certainty that this project
12 would not have a significant effect on the environment.

13 **SECTION 3: SEVERABILITY.**

14 If any section, subsection, subdivision, sentence, clause, phrase, or portion of
15 this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of
16 any court of competent jurisdiction, such decision shall not affect the validity of the
17 remaining portions of this Ordinance. The City Council hereby declares that it would
18 have adopted this Ordinance, and each section, subsection, subdivision, sentence,
19 clause, phrase, or portion thereof, irrespective of the fact that any one or more sections,
20 subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared
21 invalid or unconstitutional.

22 **SECTION 4: EFFECTIVE DATE.**

23 This Ordinance shall take effect 30 days from its passage by the City Council of
24 the City of Hemet.

25 **SECTION 5: PUBLICATION.**

26 The City Clerk is authorized and directed to cause this Ordinance to be published
27 within 15 days after its passage in a newspaper of general circulation and circulated
28

1 within the City in accordance with Government Code Section 36933(a) or, to cause this
2 Ordinance to be published in the manner required by law using the alternative summary
3 and posting procedure authorized under Government Code Section 36933(c).

4 **INTRODUCED** at the regular meeting of Hemet City Council on _____ 2013.

5 **APPROVED AND ADOPTED** this ___ day of _____ 2013.

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Robert Youssef, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City Attorney

1 State of California)
2 County of Riverside)
3 City of Hemet)

4 I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the
5 foregoing Ordinance was introduced and first read on the ___ day of _____ 2013,
6 and had its second reading at the regular meeting of the Hemet City Council on the ___
7 day of _____, 2013, and was passed by the following vote:

8 **AYES:**

9 **NOES:**

10 **ABSTAIN:**

11 **ABSENT:**

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13 Sarah McComas, City Clerk

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EXHIBIT "A"

"ARTICLE V – SOCIAL HOSTS AND LOUD OR UNRULY GATHERINGS"

- Sec. 46-80 - Purpose
- Sec. 46-81 – Definitions
- Sec. 46-82 – Gatherings Where Minors Consume Alcoholic Beverages
- Sec. 46-83 – Loud or Unruly Gatherings
- Sec. 46-84 – Enforcement
- Sec. 46-85 – Enforcement – Public Safety Services Costs
- Sec. 46-86 – Enforcement – Cumulative Remedies
- Sec. 46-87 – Protected Activities

46-80 Purpose

The purposes of this Article are to:

- A. Protect the public health, safety and general welfare and quiet enjoyment of property;
- B. Establish a duty of individuals who knowingly conduct, aid, organize, host, permit or allow a gathering to take reasonable steps to prevent the service and consumption of alcoholic beverages by minors;
- C. Facilitate the enforcement of laws prohibiting the service to, consumption of, or possession of alcoholic beverages by minors, deter the service and consumption of alcoholic beverages by minors, and promote the reduction of underage drinking; and
- D. Offset the city's costs associated with providing fire, police, and other emergency services to loud or unruly gatherings by recouping some of the costs associated with providing such services.

46-81 Definitions

- A. "*Alcoholic beverage*" shall have the same meaning as in Business and Professions Code section 23004 as may be amended from time to time.
- B. "*Controlled Substance*" means a drug or substance whose possession and use are regulated under the federal Controlled Substances Act (21 U.S.C. Section 801 et seq.). "Controlled Substance" does not include any drug or substance for which the individual found to have consumed such substance has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription.
- C. "*Gathering*" means a party, gathering, or event where two or more people have assembled or are assembling at a premises for a social occasion or activity.

- D. *“Guardian”* means (i) a person who, under court order, is the guardian of a minor, or (ii) a public or private agency with whom a minor has been placed by the court.
- E. *“Juvenile”* means any person under eighteen years of age.
- F. *“Loud or unruly gathering”* means a gathering where loud or unruly conduct occurs. Loud or unruly conduct shall include one or more of the following:
1. Excessive, unnecessary, unreasonable, or unusually loud noise that disturbs the quiet and repose of the residents of nearby properties and interferes with the comfortable and quiet enjoyment of life and property;
 2. Obstruction of and/or loitering on public streets and sidewalks by individuals that are taking part in a gathering;
 3. Public drunkenness or unlawful public consumption of alcoholic beverages or controlled substances;
 4. Assaults, batteries, fights, domestic violence or other disturbances of the peace; and
 5. Any other conduct which constitutes a threat to the public health, safety, general welfare of the City’s residents or the quiet enjoyment of residential property.
- G. *“Minor”* means any person less than 21 years of age.
- H. *“Premises”* means a residence or other private property, or rented public property. Premises includes any land on which the residence or other private property or rented public property is located and any accessory structures located on the land.
- I. *“Public Safety Service Costs”* means the costs associated with responses by law enforcement, fire and other emergency response providers to loud or unruly gatherings, including but not limited to:
1. Salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with loud or unruly gatherings, and the administrative costs attributable to such responses; and
 2. The cost of any medical treatment for any law enforcement, fire or other emergency response personnel injured responding to, remaining at or leaving the scene of a loud or unruly gathering; and

3. The cost of repairing any City equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of a loud or unruly gathering.

J. *“Responsible person(s)”* means a person or persons with an ownership interest or right of possession in a premises on which a loud or unruly gathering occurs, or a person or persons in charge of the loud or unruly gathering, including, but not limited to:

1. An owner of the premises;
2. A tenant or lessee of the premises;
3. The landlord of another responsible person;
4. The persons in charge of the premises;
5. Any persons who conducts, aids, organizes, hosts, permits or allows the loud or unruly gathering or any other persons accepting responsibility for the loud or unruly gathering; and
6. The parent(s) or guardian(s) of a juvenile who is a responsible person.

K. *“Social host”* means any person who permits, allows, or hosts a gathering at his or her place of residence or other property, public place, or any other premises under his or her control where alcoholic beverages have been consumed by a minor.

46-82 Gatherings Where Minors Consume Alcoholic Beverages

A. It is unlawful and a public nuisance for any person 21 years of age or older having control of any premises to knowingly conduct, aid, organize, host, permit or allow a gathering to take place at the premises where one or more minors consumes an alcoholic beverage, whenever such person having control of the premises either (1) intentionally serves or causes to be served an alcoholic beverage to a minor for consumption, or (2) knows or reasonably should have known that a minor has consumed an alcoholic beverage and thereafter fails to immediately take appropriate action to prevent further consumption of alcoholic beverages by any minor.

B. It is the duty of any person who conducts, aids, organizes, hosts, permits, or allows a gathering at where minors will be present to take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering. Reasonable steps shall include, at a minimum, the following:

- (1) Controlling access to alcoholic beverages at the gathering;

- (2) Controlling the quantity of alcoholic beverages at the gathering to an amount which can be monitored and its access controlled effectively;
 - (3). Verifying the age of persons who consume alcoholic beverages at the gathering by inspecting drivers licenses or other government-issued identification cards; and
 - (4) Monitoring the activities of persons at the gathering, including minors.
- C. This section shall not apply to any California Department of Alcoholic Beverage Control licensee at any premises regulated by the Department of Alcoholic Control or to conduct involving the use of alcoholic beverages by a minor that occurs exclusively in the presence and with the permission of the minor's parents or legal guardians, and that does not violate Penal Code section 272, including as permitted by article 1, section 4 of the California Constitution.
- E. A person who conducts, aids, organizes, hosts, permits, or allows a gathering shall not be in violation of this section if he or she, before any other person makes a complaint to the Police Department or other law enforcement agency about the gathering, seeks assistance from the Police Department or other law enforcement agency to either:
- (1) Remove any person who refuses to abide by the host's rules or requirements with respect to his or her performance of the duties imposed by this section; or
 - (2) Terminate the gathering because the host has been unable to prevent minors from consuming alcoholic beverages, despite having taken all reasonable steps to do so.

46-83 Loud or Unruly Gatherings

It is unlawful and a public nuisance for any person to conduct, organize, host, permit or allow a loud or unruly gathering.

46-84 Enforcement

A violation of Section 46-82 or Section 46-83 shall be either an infraction or misdemeanor, in the discretion of the citing officer or City Attorney's Office. Alternatively, any violation of Section 46-82 or Section 46-83 may, at the City's discretion, be subject to enforcement in accordance with the administrative citation procedures in Chapter 30, Article II, Division 4 of this Code.

46-85 Enforcement – Public Safety Services Costs

A loud or unruly gathering is a public nuisance and the City shall be entitled to recover the public safety services costs of responding to a loud and unruly gathering

and abating the resulting nuisance condition. Any responsible person and/or social host shall be liable for public safety services costs incurred by the City in responding to a loud and unruly gathering. If there is more than one responsible person and/or social host for the loud or unruly gathering, all such individuals shall be jointly and severally liable for the public safety services costs. The amount of any public safety services costs may be collected by the City by any available legal remedy, including but not limited to the cost recovery procedures set forth in Sections 30-40 and 30-41.

46-86 Enforcement - Cumulative Remedies

The remedies provided under this Article are cumulative, and shall not restrict the city's ability to pursue any other remedy to which it is entitled under law or equity. The procedure provided for in this Article is in addition to any other available legal remedy. Nothing in this Article shall be deemed to preclude the imposition of any criminal penalty, nor shall anything in this chapter be deemed to conflict with any penalty or provision under state law, or prohibit any conduct authorized by the state or federal constitutions.

46-87 Protected Activities.

This Article shall not apply to activities (1) protected by Article 1, Section 4, of the California Constitution; (2) protected by the First or Fourteenth Amendments to the United States Constitution; or (3) regulated by the California Alcohol Beverage Control Act.