



AGENDA

REGULAR MEETING OF THE HEMET CITY COUNCIL

September 24, 2013

6:30 p.m.

**City of Hemet Council Chambers
450 E. Latham Avenue**

www.cityofhemet.org

Please silence all cell phones

**Notice: Members of the Public attending shall comply with the Council's adopted Rules of Decorum in Resolution No. 4545. 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 this item, with possible direction to staff

1. Southern California Edison's Communication Plan for Local Governments – Ray Hicks
-

Closed Session

Notice of Opportunity for Public Comment

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

2. Public Employee Appointment
Pursuant to Government Code section 54962
Title: City Manager
-

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

City Attorney Closed Session Report

3. Public Employee Appointment
Pursuant to Government Code section 54962
Title: City Manager
-

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

4. **Approval of Minutes** – September 7, 2013
5. **Receive and File** – Warrant Registers
 - a. Warrant registers dated September 4, 2013 and September 5, 2013. Payroll for the period of August 19, 2013 to September 1, 2013 was \$635,522.75.
6. **Recommendation by Fire** – Revised City of Hemet Emergency Operations Plan (EOP), January 2013
 - a. Adopt a resolution approving the revised (January 2013) City of Hemet Emergency Operations Plan (EOP), Emergency Action Plan (EAP)
Resolution Bill No. 13-041

7. **Recommendation by Community Investment** – Amendment to Neighborhood Stabilization Program for Mobley Lane Revitalization
 - a. Adopt a resolution authorizing an Amendment to Neighborhood Stabilization Program Mobley Lane Revitalization. **Resolution Bill No. 13-043**

 8. **Recommendation by Engineering** – Riverside County Flood Control and Water Conservation District’s Cooperative Agreement – San Jacinto MDP, Line C (Stage 2), Line C-4 (Stage 1), Line C-5 (Stage 1) & Line B (Stage 1)
 - a. Accept the Cooperative Agreement with Riverside County Flood Control and Water Conservation District (RCFC&WCD); and
 - b. Authorize the Mayor, Interim City Manager, and City Attorney to execute the Cooperative Agreement.

 9. **Recommendation by Public Works** – Second Amendment to Four-Agency Agreement regarding In-Lieu Project
 - a. Approve the Second Amendment of the Four-Agency Agreement regarding In-Lieu Project between Eastern Municipal Water District, the Lake Hemet Municipal Water District, the City of Hemet and the City of San Jacinto collectively the Hemet-San Jacinto Watermaster.

 10. **Recommendation by Public Works** – First Amendment to Agreement for Consultant Services with CarteGraph Systems, Inc. for Software Upgrades and Training Services
 - a. Approve the First Amendment to Agreement for Consultant Services with CarteGraph Systems, Inc. to provide a second phase of customization of WORKdirector modules and integration of the Fuel Master Fuel Management System with Fleet for WORKdirector in the Public Works Department; and
 - b. Authorize the Interim City Manager to execute the First Amendment in a total amount not to exceed \$76,840.00 for FY 13/14.

 11. **Recommendation by Public Works** – First Amendment to Implementation Agreement for NPDES Municipal Storm Water Discharge Permit for Santa Ana Region
 - a. Approve the first amendment to the National Pollutant Discharge Elimination System (NPDES) Urban Runoff Discharge Permit Implementation Agreement with the Riverside County Flood Control and Water Conservation District.

 12. **Recommendation by Administrative Services** – Professional Services Agreement with HdL Coren & Cone for Property Tax Audit and Administration Services.
 - a. Approve a Professional Services Agreement with HdL Coren & Cone for property tax audit and administration services; and
 - b. Authorize the Interim City Manager to execute a Professional Service Agreement with HdL Coren & Cone for property tax audit and administration services.
-

Public Hearing

The City Council's procedure for public hearings will be as follows: The Mayor will ask the City Manager for the staff report; the City Manager will call on the appropriate staff member for the report. The Mayor will ask for clarification of items presented, if needed. The Mayor will open the public hearing: ask for comments for those IN FAVOR of the case; ask for comments IN OPPOSITION to the case; and finally for rebuttal to any comments made. The Mayor will then CLOSE THE PUBLIC HEARING. The Mayor will ask the City Manager to respond to any questions raised by the public (the public will not have the opportunity to respond). The matter will then be discussed by members of the City Council prior to taking action on the item.

13. **Development Agreement Amendment 11-001 – First Amendment to Development Agreement No. 04-002** – Community Development Director Elliano
 - a. Introduce, read by title only and waive further reading of an ordinance approving DAA 11-001, the First Amendment to Development Agreement 04-002 for the Tres Cerritos West development; and
 - b. Direct staff to file a Notice of Determination with the County Clerk in compliance with the California Environmental Quality Act. **Ordinance Bill No. 13-037**

 14. **Municipal Code Amendment No. 13-007 – Amending Article XIV of Chapter 18 regarding Residential Rental Unit Registration and Crime Free Housing Program, and adoption of the associated Fee Schedule** – Community Development Director Elliano
 - a. Introduce, read by title only and waive further reading of an ordinance mending Article XIV of Chapter 18 of the Hemet Municipal Code regarding provisions of the Residential Rental Unit Registration and Crime-Free Multi Housing Program **Ordinance Bill No. 13-045**; and
 - b. Adopt a resolution establishing a fee schedule for the registration and inspection of residential rental units in accordance with the provisions of City Council adopted Ordinance No. 1870 and Ordinance Bill No. 13-045. **Resolution Bill No. 13-045**
-

Discussion/Action Item

15. **Support for Healthy Active Living and Sustainable Communities** – Interim Asst. City Manager Thornhill
 - a. Adopt a resolution supporting Healthy Active Living and Sustainable Communities. **Resolution Bill No. 13-044**

 16. **Appointment of City Manager** - City Attorney Vail
 - a. Approve the appointment of Mr. Wally Hill as the City Manager of Hemet, California effective November 18, 2013, subject to completion of contract negotiations with Mr. Hill and approval of the employment agreement by City Council.
-

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. 4545. 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.

City Council Reports

17. 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
1. Indian Gaming Distribution Fund
2. Riverside County Habitat Conservation Agency (RCHCA)
3. 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. West Hemet MSHCP Ad-Hoc Committee
- G. Interim Asst. City Manager Thornhill
1. Manager's Reports
 2. 412 Church Downtown Beautification Project "Clean & Green 2013"
 3. ICSC Western Division

Continued Closed Session

City Attorney Continued Closed Session Report

Future Agenda Items

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

Adjournment

Adjourn to Tuesday, October 8, 2013 at 7:00 p.m. for consideration of items placed on that agenda. The next regular meeting will be held October 22, 2013.

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



#4

MINUTES

SPECIAL MEETING OF THE HEMET CITY COUNCIL

September 7, 2013

8:00 a.m.

City of Hemet Board Room
445 E. Florida Avenue

www.cityofhemet.org
Please silence all cell phones

Call to Order

Mayor Youssef called the meeting to order at 8:02 a.m.

Roll Call

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

ABSENT: None

OTHERS PRESENT: Interim City Manager Bradley and City Attorney Vail

Communications from the Public

There were no communications from the public presented at this time.

Closed Session

Notice of Opportunity for Public Comment

There were no public comments presented at this time.

The City Council recessed to Closed Session at 8:04 a.m.

1. Public Employee Appointment
Pursuant to Government Code section 54957
Title: *City Manager*

The City Council recessed briefly at 11:30 a.m.

Reconvened at 12:15 p.m.

Adjournment

Adjourned at 5:15 p.m. to Tuesday, September 10, 2013 at 7:00 p.m.



Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Rita Conrad, Deputy City Manager/Administrative Services;
Ronald E. Bradley, Interim City Manager *REB*

DATE: September 24, 2013

RE: Warrant Register

The City of Hemet's warrant registers dated September 4, 2013 and September 5, 2013 are currently posted on the City's website in the Finance Department section, under *Financial Information*. Payroll for the period of August 19, 2013 to September 1, 2013 was \$635,522.75.

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,

A handwritten signature in blue ink that reads "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



Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Primo Reynoso, Acting Fire Chief, Ronald Bradley, Interim City Manager *RB*

DATE: September 24, 2013

RE: Resolution Adopting the Revised City of Hemet Emergency Operations Plan (EOP), January 2013

RECOMMENDED ACTION:

The Staff recommends that the City Council adopt, by resolution, the revised (January 2013) City of Hemet Emergency Operations Plan (EOP), Emergency Action Plan (EAP).

BACKGROUND:

The Emergency Operations Plan (EOP), Emergency Action Plan (EAP) were adopted by Resolution No. 4160 in 2006. An update is required every three years. This EOP revision has been reviewed and approved by both Riverside County OES and the State of California OES.

PROJECT DESCRIPTION:

The updates included in the 2013 EOP are requirement of City Hemet policy and place the City of Hemet in compliance with the Federal Emergency Management Agency (FEMA), the California Emergency management Agency (CalEMA), and the County of Riverside Office of Emergency Services (RIVCO EOS).

FISCAL IMPACT:

None.

Respectfully submitted,

Buddy Riley
 Buddy Riley
 Office of Emergency Services



**CITY OF HEMET
Hemet, California
RESOLUTION BILL NO. 13-041**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEMET,
CALIFORNIA, ADOPTING THE REVISED CITY OF HEMET'S EMERGENCY
OPERATIONS PLAN (EOP)

WHEREAS, the County of Riverside has long recognized its responsibility for the implementation of plans for the protection of citizens and property within the County of Riverside in the event of an emergency or disaster condition; and

WHEREAS, The Governor=s Office of Emergency Services has recommended that the Emergency Operations Plan format replace the Multi-Hazard Functional Plan format; and

WHEREAS, The City of Hemet's Emergency Operations Plan entitled City of Hemet Emergency Operations Plan January 2013, was last updated and revised May 2006: and

WHEREAS, The Emergency Operations Plan, dated January 2013, is in accordance with the Standardized Emergency Management System (SEMS), is compliant with the California Emergency Plan and the National Incident Management System (NIMS); and

WHEREAS, The City Departments have reviewed and concur with the plan; and

WHEREAS, The Governor=s Office of Emergency Services has reviewed the plan and approved its content; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hemet, hereby adopts the City of Hemet's revision dated January 2013 as the Emergency Operations Plan for the City of Hemet.

BE IT FURTHER RESOLVED that the City Manager, as the Director of Emergency Services and/or the City of Hemet Fire Department Office of Emergency Services is authorized to amend the Emergency Operations Plan to make those changes which may become necessary in the future to keep the plan current, functional and in accordance with State and Federal guidelines.

1 **BE IT FURTHER RESOLVED** that a copy of this resolution is forwarded to the
2 Governor's Office of Emergency Services.

3
4 **PASSED, APPROVED, AND ADOPTED** this 24th day of September, 2013.
5
6
7

8
9 _____
10 Robert Youssef, Mayor

11
12
13 ATTEST:

14 APPROVED AS TO FORM:
15

16 _____
17 Sarah McComas, City Clerk

18 _____
19 Eric S. Vail, City Attorney
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

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
6 foregoing Resolution is the actual Resolution adopted by the City Council of the City
7 of Hemet and was passed at a regular meeting of the City Council on the 24th day of
8 September, 2013 by the following vote:
9

10 AYES:
11 NOES:
12 ABSTAIN:
13 ABSENT:
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Sarah McComas, City Clerk



AGENDA # 7

Staff Report

TO: Honorable Mayor and City Council

FROM: Ronald E. Bradley, Interim City Manager *REB*

DATE: September 24, 2013

SUBJECT: Consideration of City Council Resolution Bill No.13-043, Authorizing Amendment to Neighborhood Stabilization Program for Mobley Lane Revitalization

RECOMMENDATION:

That the City Council approve City Council Resolution Bill No. 13-043.

BACKGROUND:

On April 9, 2013, and September 10, 2013, the City Council acting as the Hemet Housing Authority reviewed and approved the revitalization plan for the Mobley Lane project.

DISCUSSION:

In order to affect the revitalization Plan as approved by the Hemet Housing Authority, two amendments (included in the attached draft Resolution) to the Neighborhood Stabilization program action plans are needed that require separate authorization by the City Council.

COORDINATION AND REVIEW:

This recommendation was prepared and coordinated with the Department of Community Development, Community Investment, NSP Program Administrator and City Attorney's Office.

INTEGRATION OF COUNCIL GOALS / STRATEGIC PLAN:

The recommendation supports the City's goals of leveraging grant funds, revitalizing neighborhoods, improving the housing stock and creating jobs.

FISCAL IMPACT:

Proceeding as recommended will require no monies from the City's general fund. The project will be funded exclusively with \$1,471,000 of NSP funds. Failure to proceed with the recommended action will result in the City being required to return a significant portion of already expended NSP1 and NSP3 grant funds to HUD which would require City general fund money to fulfill that obligation.

ALTERNATIVE(S):

None proposed.

CONCLUSION:

That the City Council approve Hemet Housing Authority Resolution Bill No. 13-043.

Attachments:

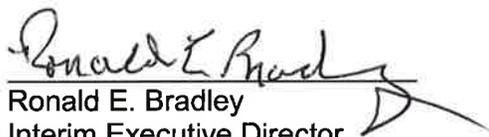
1. City Council Resolution Bill No. 13-043

Recommended By:



John Jansons
Community Investment Director

Approved By:



Ronald E. Bradley
Interim Executive Director



CITY OF HEMET

Hemet, California

RESOLUTION Bill No. 13-043

**AUTHORIZING THE AMENDMENT OF NEIGHBORHOOD STABILIZATION
PROGRAM PLANS AND BUDGET, AUTHORIZING THE CONVEYANCE OF REAL
PROPERTY TO RIVERSIDE HOUSING DEVELOPMENT CORPORATION; AND
APPROVING THE PROVISION OF FINANCING FOR THE REHABILITATION OF
IMPROVEMENTS LOCATED ON THE PROPERTY**

WHEREAS, on April 9, 2013, the Hemet Housing Authority (the "**Authority**") provided conceptual approval for the disposition, rehabilitation and financing of the Property owned by the Authority located on Mobley Lane in the City of Hemet (the "**Property**") pursuant to documents to be negotiated with the Riverside Housing Development Corporation, a California nonprofit public benefit corporation ("**Developer**");

WHEREAS, on September 10, 2013, the Authority provided final approval for the disposition, rehabilitation and financing of the Property and authorized the execution of a Disposition and Development and Loan Agreement ("**DDA**") and related documents that provide for the Developer to acquire and rehabilitate the Property in two phases, collectively consisting of 41 units of housing affordable to low- and very low-income households (the "**Project**");

WHEREAS, Phase 1 of the Project will consist of Developer's acquisition and rehabilitation of 12 units of affordable housing located at 598, 599 and 575 Mobley Lane ("**Phase 1**"), and Phase 2 of the Project will consist of the acquisition and rehabilitation of 29 units of affordable housing on the remainder of the Property ("**Phase 2**") by Developer or by a limited partnership in which Developer serves as the general partner;

WHEREAS, the Project, the Property and the terms and conditions for disposition, rehabilitation, and financing of the Project are more particularly described in the DDA and the Exhibits thereto, copies of which have been provided to the City Council;

WHEREAS, the Developer and City / Authority staff have determined that it will not be economically feasible to rehabilitate and operate the Project at the proposed level of income-targeting and affordability without financial assistance from the City / Authority, and despite good faith efforts on the part of Developer, no other reasonable means of private or commercial financing is reasonably available to finance Phase 1 of the Project at such affordability and income levels;

WHEREAS, the proposed financing for Phase 1 of the Project includes a construction/permanent loan in the amount of \$1,219,000 and a second short-term loan in the amount of \$252,000, each to be funded with Neighborhood Stabilization Program ("**NSP**") funds (collectively, the "**Loans**");

1 **WHEREAS**, the DDA provides that the proceeds of the Loans may be used for
2 rehabilitation of the Phase 1 residential units and for specified predevelopment costs for
Phase 2;

3 **WHEREAS**, Developer will seek additional financing for Phase 2 of the Project,
4 and will apply for an allocation of federal low-income housing tax credits to fund the
5 rehabilitation of the Phase 2 residential units and the construction or rehabilitation of
6 garages and common facilities for both Phase 1 and Phase 2;

7 **WHEREAS**, Developer and City / Authority staff have negotiated the terms and
8 conditions of two Secured Promissory Notes (the "**Notes**") which provide for repayment
9 of the construction/permanent loan on a residual receipts basis and repayment of the
10 short-term loan upon completion of Phase 2 of the Project, an Affordable Housing
Regulatory Agreement and Declaration of Restrictive Covenants ("**Regulatory
11 Agreement**") which restricts rents for units in Phase 1 of the Project at affordable levels
12 for a period of 55 years, and a Deed of Trust, Assignment of Rents, Security Agreement
13 and Fixture Filing (the "**Deed of Trust**") pursuant to which the Authority will be provided
14 a security interest in the Phase 1 Property to secure repayment of the Loans and
15 compliance with the Regulatory Agreement;

16 **WHEREAS**, the DDA provides that similar agreements will be executed in
17 connection with the disposition of the Phase 2 Property;

18 **WHEREAS**, the DDA provides that the Authority has an option to reacquire the
19 Phase 1 property if the Developer is unable to timely secure an allocation of low-income
20 housing tax credits for Phase 2; and

21 **WHEREAS**, the Neighborhood Stabilization Program Action Plans and budgets
22 for NSP1 and NSP3 need to be amended to enable the Loans to be provided for the
23 Project.

24 **NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of
25 Hemet, CA hereby:

- 26 1. Finds that the Project is exempt from the California Environmental Quality Act
27 ("**CEQA**") pursuant to CEQA Guidelines Sections 15301 and 15302 because the Project
28 involves the rehabilitation of existing structures to provide affordable housing to low-
income households.
2. Finds that the disposition and rehabilitation of the Property in accordance with
the DDA will assist in the elimination of blight, and will facilitate the development of
housing for low- and very low-income households.
3. Finds that the provision of financial assistance in the amount of the Loans is
necessary to make Phase 1 of the Project financially feasible and affordable to low- and
very low-income households.
4. Approves the DDA and approves the conveyance of the Phase 1 Property to
Developer pursuant to the terms and conditions set forth in the DDA.
5. Approves the provision of the Loans pursuant to the terms and conditions set
forth in the DDA and the Notes.

1 6. Authorizes and directs staff to amend the HUD NSP Action Plan for NSP1 and
2 NSP3 to allow funds to be expended for NSP Eligible Use category "E" for the
redevelopment of vacant properties.

3 7. Authorizes and directs staff to reallocate amounts in the NSP1 and NSP3 Action
4 Plans from the Single Family Rehabilitation budget to the LH25 Multi-Family Acquisition
Rehabilitation budget as necessary to fund the Loans.

5 8. Authorizes the Interim City Manager or his designee to execute and deliver such
6 other instruments and to take such other actions as necessary to carry out the intent of
this Resolution.

7
8 **PASSED, APPROVED and ADOPTED** at a regular meeting of the Hemet City
Council of the City of Hemet, California held on this 24th day of September, 2013.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Robert Youseff, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City / Authority Attorney

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

3 I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the
4 foregoing Resolution is the actual Resolution adopted by the Hemet City Council of the
City of Hemet, CA and was passed at a regular meeting of the City Council on the 24th
5 day of September, 2013 by the following vote:

6 AYES:
7 NOES:
ABSTAIN:
8 ABSENT:

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Sarah McComas, City Clerk



AGENDA # 9

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 *RCB*

Date: September 24, 2013

Subject: **RCFC&WCD's Cooperative Agreement
San Jacinto MDP, Line C (Stage 2), Line C-4 (Stage 1), Line C-5
(Stage 1) & Line B (Stage 1)
Project No. 4-0-0124**

RECOMMENDATION

Staff respectfully recommends that the City Council:

1. Accept the Cooperative Agreement with Riverside County Flood Control and Water Conservation District (RCFC&WCD),
2. Authorize the Mayor, Interim City Manager, and City Attorney to execute the Cooperative Agreement.

BACKGROUND

RCFC&WCD has been working on the plans for this master planned facility for a couple of years. The proposed Lines C, C-4, C-5, and B, consist of approximately six thousand nine hundred linear feet (6,900 LF) of a combination of reinforced concrete box (RCB), and reinforced concrete pipes (RCP). The alignment of the facility traverses inland from Esplanade Avenue, on the northerly end, and then southerly and westerly along portions of Midway Street, San Jacinto Avenue and Menlo Avenue (see attached map). The corresponding catch basins and laterals that will collect the surface runoff are also part of the project.

After construction, it has been the District's practice to maintain the main lines and leave the maintenance of catch basins and laterals (smaller than thirty six inches in diameter) to the local agencies, or the County. For this reason, the District requires that the cities of Hemet and San Jacinto enter into separate Cooperative Agreements to fulfill this obligation.

AGENDA DATE: September 24, 2013
SUBJECT: RCFC&WCD's Cooperative Agreement
San Jacinto MDP, Lines C, C-4, C-5 & B

Page 2

According to District's Project Manager, Mr. Kyle Gallup, the contract for the project is expected to be awarded in November 2013, and construction of the storm drain line may begin in February 2014. The District has estimated a construction time of approximately ten months.

ANALYSIS

This project will constitute a great benefit to the residents of both, the City of Hemet and the City of San Jacinto, by providing flood protection and improving the driving conditions during rainstorms by eliminating the accumulation of storm water on the streets,

COORDINATION & REVIEW:

The Engineering Department has reviewed the progress prints submitted by the District, and final plans have been signed by the City Engineers of both cities.

CONSISTENCY WITH ADOPTED GOALS, PLANS, AND PROGRAMS:

This storm drain line is identified in the City's Master Flood Control and Drainage Plan, adopted in 1984.

FISCAL IMPACT

There are no fiscal impacts to the General Fund. The funds for the maintenance of the new catch basins and storm drain laterals will be drawn from the Storm Drain/Sewer account (Fund 254).

Respectfully submitted,



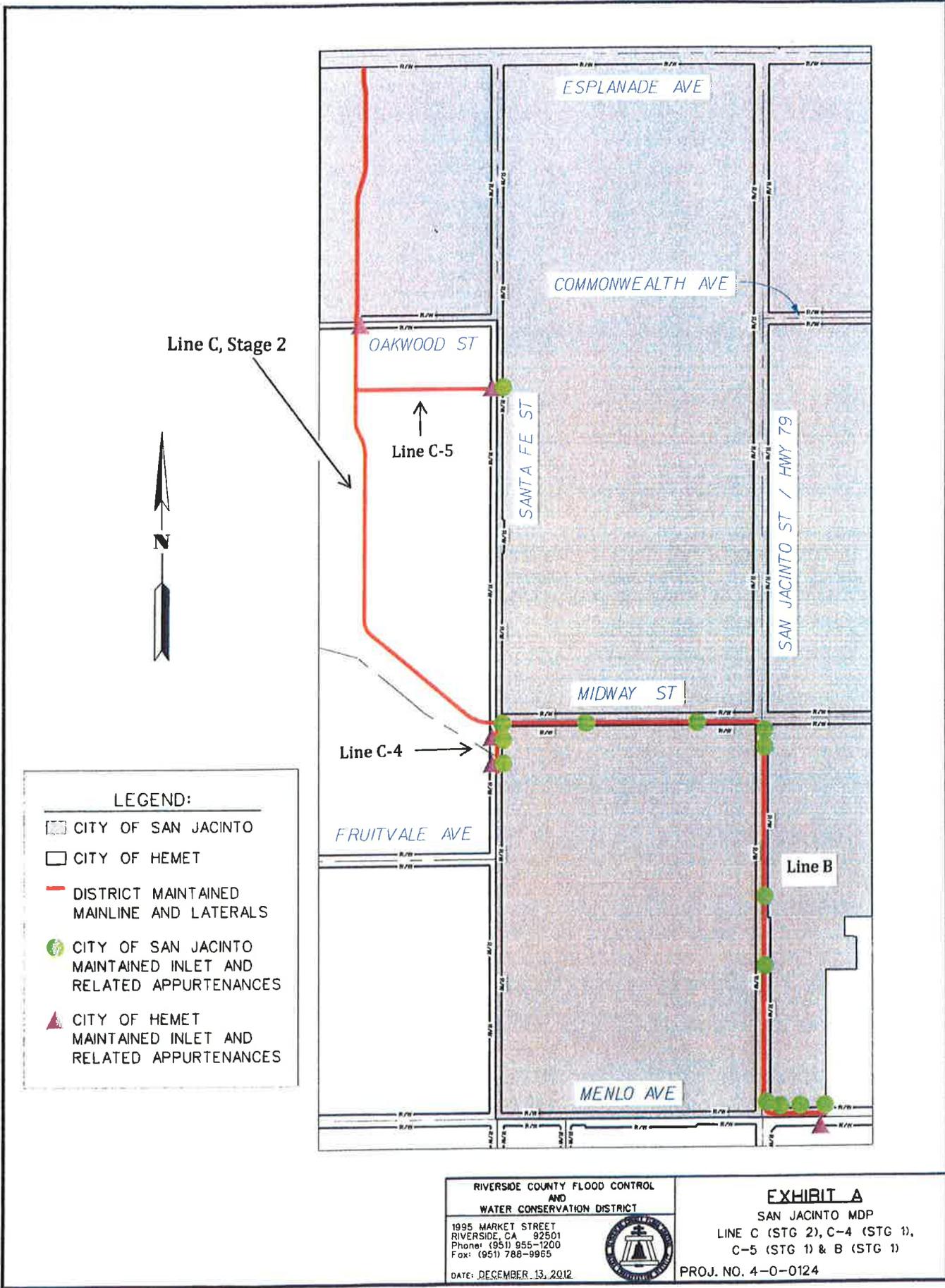
Jorge Biagioni
Director of Engineering/City Engineer

Fiscal review,



Rita Conrad
Finance Director

*Encl. Cooperative Agreement for Project No. 4-0-0124
Vicinity Map*



Line C, Stage 2



Line C-5

Line C-4

Line B

LEGEND:

- CITY OF SAN JACINTO
- CITY OF HEMET
- DISTRICT MAINTAINED MAINLINE AND LATERALS
- CITY OF SAN JACINTO MAINTAINED INLET AND RELATED APPURTENANCES
- CITY OF HEMET MAINTAINED INLET AND RELATED APPURTENANCES

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
 1995 MARKET STREET
 RIVERSIDE, CA 92501
 Phone: (951) 955-1200
 Fax: (951) 788-9965



EXHIBIT A
 SAN JACINTO MDP
 LINE C (STG 2), C-4 (STG 1),
 C-5 (STG 1) & B (STG 1)
 PROJ. NO. 4-0-0124

DATE: DECEMBER 13, 2012

COOPERATIVE AGREEMENT

San Jacinto Master Drainage Plan Line B, Stage 1, Line C, Stage 2,
Line C-4, Stage 1, and Line C-5, Stage 1
Project Nos. 4-0-00042, 4-0-00124, 4-0-00039, and 4-0-00040

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF HEMET, hereinafter called "HEMET", and the CITY OF SAN JACINTO, hereinafter called "SAN JACINTO", hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to design and construct San Jacinto Master Drainage Plan (MDP) Line B, Stage 1, Line C, Stage 2, Line C-4, Stage 1, and Line C-5, Stage 1, as shown on District Drawing No. 4-0713 in order to provide necessary flood protection and improved drainage for existing development located within portions of the cities of Hemet and San Jacinto; and

B. San Jacinto MDP Line B, Stage 1 consists of approximately 2,200 lineal feet of underground storm drain system, hereinafter called "LINE B", as shown in concept in red on Exhibit "A" attached hereto and made a part hereof; and

C. San Jacinto MDP Line C, Stage 2 consists of approximately 5,000 lineal feet of underground storm drain system, hereinafter called "LINE C", as shown in concept in red on Exhibit "A"; and

D. San Jacinto MDP Line C-4, Stage 1 consists of approximately 270 lineal feet of underground storm drain system, hereinafter called "LINE C-4", as shown in concept in red on Exhibit "A"; and

1 E. San Jacinto MDP Line C-5, Stage 1 consists of approximately 670 lineal feet of
2 underground storm drain system, hereinafter called "LINE C-5", as shown in concept in red on
3 Exhibit "A"; and

4 F. Together, LINE B, LINE C, LINE C-4, and LINE C-5 are hereinafter called
5 "DISTRICT DRAINAGE FACILITIES"; and

6 G. Associated with the construction of DISTRICT DRAINAGE FACILITIES is the
7 construction of lateral storm drains that are thirty-six inches (36") or less in diameter, various
8 catch basins, certain inlet structures and connector pipes located within HEMET or SAN
9 JACINTO jurisdiction or rights of way, hereinafter called "APPURTENANCES"; and

10 H. Those APPURTENANCES located within HEMET jurisdiction or rights of way
11 are hereinafter called "HEMET APPURTENANCES". Those APPURTENANCES located
12 within SAN JACINTO jurisdiction or rights of way are hereinafter called "SAN JACINTO
13 APPURTENANCES"; and

14 I. DISTRICT DRAINAGE FACILITIES, HEMET APPURTENANCES, and SAN
15 JACINTO APURTENANCES are hereinafter altogether called "PROJECT"; and

16 J. The purpose of this Agreement is to memorialize the mutual understandings by
17 and between DISTRICT, HEMET and SAN JACINTO with respect to design, construction,
18 ownership, and operation and maintenance of PROJECT.

19 NOW THEREFORE, in consideration of the preceding recitals and the mutual covenants
20 hereinafter contained, the parties hereto mutually agree as follows:

21
22
23
24 SECTION I

25 DISTRICT shall:

26 1. Pursuant to the California Environmental Quality Act (CEQA), act as the Lead
27 Agency and assume responsibility for the preparation, circulation, and adoption of all necessary
28

1 and appropriate CEQA documents pertaining to the construction, operation and maintenance of
2 PROJECT.

3 2. Prepare, at its sole cost and expense, construction plans and specification
4 documents for PROJECT, hereinafter called "IMPROVEMENT PLANS", in accordance with
5 applicable DISTRICT, HEMET and SAN JACINTO standards.
6

7 3. Obtain all necessary rights of way, rights of entry and temporary construction
8 easements necessary to construct, inspect, operate and maintain PROJECT.

9 4. Secure, at its sole cost and expense, all necessary permits, approvals, licenses or
10 agreements required by any Federal or State resource or regulatory agencies pertaining to the
11 construction, operation and maintenance of PROJECT.
12

13 5. Prior to advertising PROJECT for public works construction contract bids,
14 submit IMPROVEMENT PLANS to HEMET and SAN JACINTO for their review and
15 approval, as appropriate.

16 6. Advertise, award and administer a public works construction contract for
17 PROJECT at its sole cost and expense.

18 7. Provide HEMET and SAN JACINTO with written notice that DISTRICT has
19 awarded a construction contract for PROJECT.
20

21 8. Notify HEMET and SAN JACINTO, in writing at least twenty (20) days prior to
22 the start of construction of PROJECT.

23 9. Furnish HEMET and SAN JACINTO, at the time of providing written notice for
24 the start of construction as set forth in Section I.8., with a construction schedule which shall
25 show the order and dates in which DISTRICT or DISTRICT'S contractor proposes to carry on
26 the various parts of work, including estimated start and completion dates.
27
28

1 10. Construct, or cause to be constructed, PROJECT pursuant to a DISTRICT
2 administered public works construction contract, in accordance with IMPROVEMENT PLANS
3 approved by DISTRICT, HEMET and SAN JACINTO, and pay all costs associated therewith.

4 11. Inspect, or cause to be inspected, construction of PROJECT.

5 12. Require its construction contractor(s) to comply with all Cal/OSHA safety
6 regulations including regulations concerning confined space and maintain a safe working
7 environment for all DISTRICT, HEMET and SAN JACINTO employees on the site.

8 13. Within two (2) weeks of completing PROJECT construction, provide HEMET
9 and SAN JACINTO with written notice that PROJECT construction is substantially complete
10 and requesting that HEMET and SAN JACINTO conduct a final inspection of HEMET
11 APPURTENANCES and SAN JACINTO APPURTENANCES, respectively.
12

13 14. Upon completion of PROJECT construction, provide HEMET and SAN
14 JACINTO with a copy of DISTRICT'S Notice of Completion.

15 15. Assume ownership and sole responsibility for the operation and maintenance of
16 PROJECT until such time as HEMET and SAN JACINTO accept ownership and responsibility
17 for the operation and maintenance of HEMET APPURTENANCES and SAN JACINTO
18 APPURTENANCES, respectively.
19

20 16. Upon acceptance by HEMET and SAN JACINTO of HEMET
21 APPURTENANCES and SAN JACINTO APPURTENANCES for ownership, operation and
22 maintenance, provide HEMET and SAN JACINTO each with a reproducible duplicate set of
23 "record drawings" of PROJECT plans.
24

25
26
27
28

SECTION II

1
2 HEMET shall:

3 1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate
4 action to comply with CEQA.

5 2. Review and approve IMPROVEMENT PLANS prior to DISTRICT'S advertising
6 of PROJECT for construction bids.

7 3. Grant DISTRICT, by execution of this Agreement, all rights necessary to
8 construct, inspect, operate and maintain PROJECT within HEMET rights of way.

9 4. Order the relocation of all utilities installed by permit or franchise within
10 HEMET rights of way which conflict with the construction of PROJECT and which must be
11 relocated at the utility owner's expense.

12 5. Issue, at no cost to DISTRICT or DISTRICT'S contractor(s), the necessary
13 encroachment permit to construct PROJECT within HEMET rights of way.

14 6. Inspect PROJECT construction for quality control purposes at its sole cost, and
15 provide any comments to DISTRICT personnel who shall be solely responsible for all quality
16 control communications with DISTRICT'S contractor(s) during the construction of PROJECT.

17 7. Upon receipt of DISTRICT'S written notice that PROJECT construction is
18 substantially complete, conduct a final inspection of HEMET APPURTENANCES.

19 8. Accept ownership and sole responsibility for the operation and maintenance of
20 HEMET APPURTENANCES upon (i) receipt of DISTRICT'S written Notice of Completion as
21 set forth in Section I.14, and (ii) receipt of a duplicate copy of "record drawings" of PROJECT
22 plans as set forth in Section I.16.

23 9. Upon HEMET acceptance of HEMET APPURTENANCES construction as
24 being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings
25
26
27
28

1 and covers located within HEMET rights of way and jurisdiction which must be performed at
2 such time(s) that the finished grade along and above the underground portions of PROJECT are
3 improved, repaired, replaced or changed. It being further understood and agreed that any such
4 adjustments shall be performed at no cost to DISTRICT.

5 SECTION III

6 SAN JACINTO shall:

7
8 1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate
9 action to comply with CEQA.

10 2. Review and approve IMPROVEMENT PLANS prior to DISTRICT'S advertising
11 of PROJECT for construction bids.

12 3. Grant DISTRICT, by execution of this Agreement, all rights necessary to
13 construct, inspect, operate and maintain PROJECT within SAN JACINTO rights of way.

14 4. Order the relocation of all utilities installed by permit or franchise within SAN
15 JACINTO rights of way which conflict with the construction of PROJECT and which must be
16 relocated at the utility owner's expense.

17
18 5. Issue, at no cost to DISTRICT or DISTRICT'S contractor(s), the necessary
19 encroachment permit to construct PROJECT within SAN JACINTO rights of way.

20 6. Inspect PROJECT construction for quality control purposes at its sole cost, and
21 provide any comments to DISTRICT personnel who shall be solely responsible for all quality
22 control communications with DISTRICT'S contractor(s) during the construction of PROJECT.

23
24 7. Upon receipt of DISTRICT'S written notice that PROJECT construction is
25 substantially complete, conduct a final inspection of SAN JACINTO APPURTENANCES.

26 8. Accept ownership and sole responsibility for the operation and maintenance of
27 SAN JACINTO APPURTENANCES upon (i) receipt of DISTRICT'S written Notice of
28

1 Completion as set forth in Section I.14, and (ii) receipt of a duplicate copy of "record drawings"
2 of PROJECT plans as set forth in Section I.16.

3 9. Upon SAN JACINTO acceptance of SAN JACINTO APPURTENANCES
4 construction as being complete, accept sole responsibility for the adjustment of all PROJECT
5 manhole rings and covers located within SAN JACINTO rights of way and jurisdiction which
6 must be performed at such time(s) that the finished grade along and above the underground
7 portions of PROJECT are improved, repaired, replaced or changed. It being further understood
8 and agreed that any such adjustments shall be performed at no cost to DISTRICT.
9

10 SECTION IV

11 It is further mutually agreed:

12 1. Except as otherwise provided herein, all construction work involved with
13 PROJECT shall be inspected by DISTRICT, and shall not be deemed complete until approved
14 and accepted as complete by DISTRICT.
15

16 2. Except as otherwise provided herein, DISTRICT shall not be responsible for any
17 additional street repairs or improvements not shown in IMPROVEMENT PLANS and not as a
18 result of PROJECT construction.

19 3. Prior to HEMET and SAN JACINTO acceptance of ownership and responsibility
20 for the operation and maintenance of HEMET APPURTENANCES and SAN JACINTO
21 APPURTENANCES shall be in a satisfactorily maintained condition as solely determined by
22 HEMET and SAN JACINTO.
23

24 4. Each party, as to any claim or liability arising out of any act or omission with
25 reference to any work to be performed by or authority delegated to such party as a result of this
26 Agreement, shall save, defend, indemnify and hold harmless the other party and its officers and
27 employees from all liability for death or injury to person, or damage to property, or claim
28

1 therefor. DISTRICT shall require its prime contractor to include HEMET and SAN JACINTO
2 as additional insureds under the liability insurance coverage required by DISTRICT'S
3 construction contract for PROJECT.

4 5. In the event of any arbitration, action or suit brought by DISTRICT, HEMET or
5 SAN JACINTO against the other party by reason of any breach on the part of the other party of
6 any of the covenants and agreements set forth in this Agreement, or any other dispute between
7 DISTRICT, HEMET or SAN JACINTO concerning this Agreement, the prevailing party in any
8 such action or dispute, by a final judgment or arbitration award, shall be entitled to have and
9 recover from the other party all costs and expenses or claims, including but not limited to,
10 attorney's fees and expert witness fees. This section shall survive any termination of this
11 Agreement.
12

13 6. This Agreement is made and entered into for the sole protection and benefit of
14 the parties hereto. No other person or entity shall have any right or action based upon the
15 provisions of this Agreement.
16

17 7. DISTRICT, HEMET and SAN JACINTO each pledge to cooperate in regard to
18 the operation and maintenance of their respective facilities as set forth herein and to discharge
19 their respective maintenance responsibilities in an expeditious fashion so as to avoid the creation
20 of any nuisance condition or undue maintenance impact upon the others' facilities.
21

22 8. Any and all notices sent or required to be sent to the parties of this Agreement
23 will be mailed by first class mail, postage prepaid, to the following addresses:

24 RIVERSIDE COUNTY FLOOD CONTROL
25 AND WATER CONSERVATION DISTRICT
26 1995 Market Street
27 Riverside, CA 92501
28 Attn: Design II Section

CITY OF HEMET
510 East Florida Avenue
Hemet, CA 92543
Attn: Jorge Biagioni

1 CITY OF SAN JACINTO
2 595 S. San Jacinto Avenue, Building A
3 San Jacinto, CA 92583
4 Attn: Habib Motlagh

5 9. If any provision in this Agreement is held by a court of competent jurisdiction to
6 be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full
7 force without being impaired or invalidated in any way.

8 10. This Agreement is to be construed in accordance with the laws of the State of
9 California.

10 11. DISTRICT, HEMET and SAN JACINTO shall not assign this Agreement
11 without the written consent of the other parties.

12 12. Any action at law or in equity brought by any of the parties hereto for the
13 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
14 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
15 waive all provisions of law providing for a change of venue in such proceedings to any other
16 county.

17 13. This Agreement is the result of negotiations between the parties hereto, and the
18 advice and assistance of their respective counsel. The fact that this Agreement was prepared as
19 a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty or
20 ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
21 prepared this Agreement in its final form.

22 14. Any waiver by DISTRICT, HEMET, or SAN JACINTO, or any breach by any
23 other party of any provision of this Agreement shall not be construed to be a waiver of any
24 subsequent or other breach of the same or any other provision hereof. Failure on the part of
25 DISTRICT, HEMET, or SAN JACINTO to require from any other party exact, full and
26
27
28

1 complete compliance with any of the provisions of this Agreement shall not be construed as in
2 any manner changing the terms hereof, or estopping DISTRICT, HEMET, or SAN JACINTO
3 from enforcing this Agreement.

4 15. This Agreement is intended by the parties hereto as a final expression of their
5 understanding with respect to the subject matter hereof and as a complete and exclusive
6 statement of the terms and conditions thereof and supersedes any and all prior and
7 contemporaneous agreements and understandings, oral and written, in connection therewith.
8 This Agreement may be changed or modified only upon the written consent of the parties
9 hereto.
10

11 //

12 //

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel

ATTEST:
KECIA HARPER-IHEM
Clerk of the Board

By _____
NEAL R. KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

Cooperative Agreement
San Jacinto MDP Line B, Stage 1, Line C, Stage 2, Line C-4, Stage 1, and Line C-5, Stage 1
Project Nos. 4-0-00042, 4-0-00124, 4-0-00039, and 4-0-00040
7/31/13
AMR:bjp

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECOMMENDED FOR APPROVAL:

CITY OF HEMET

By 
RONALD E. BRADLEY
Interim City Manager

By _____
ROBERT YOUSSEF
Mayor

APPROVED AS TO FORM:

ATTEST:

By _____
ERIC VAIL
City Attorney

By _____
SARAH MCCOMAS
City Clerk

(SEAL)

Cooperative Agreement
San Jacinto MDP Line B, Stage 1, Line C, Stage 2, Line C-4, Stage 1, and Line C-5, Stage 1
Project Nos. 4-0-00042, 4-0-00124, 4-0-00039, and 4-0-00040
7/31/13
AMR:bjp

CITY OF SAN JACINTO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By _____
TIM HULTS
City Manager

APPROVED AS TO FORM:

ATTEST:

By _____
JEFFREY S. BALLINGER
City Attorney

By _____
RICHARD MILLER
City Clerk

(SEAL)

Cooperative Agreement
San Jacinto MDP Line B, Stage 1, Line C, Stage 2, Line C-4, Stage 1, and Line C-5 Stage 1
Project Nos. 4-0-000424-0-00124, 4-0-00039, and 4-0-00040
7/31/13
AMR:bjp

Line C, Stage 2



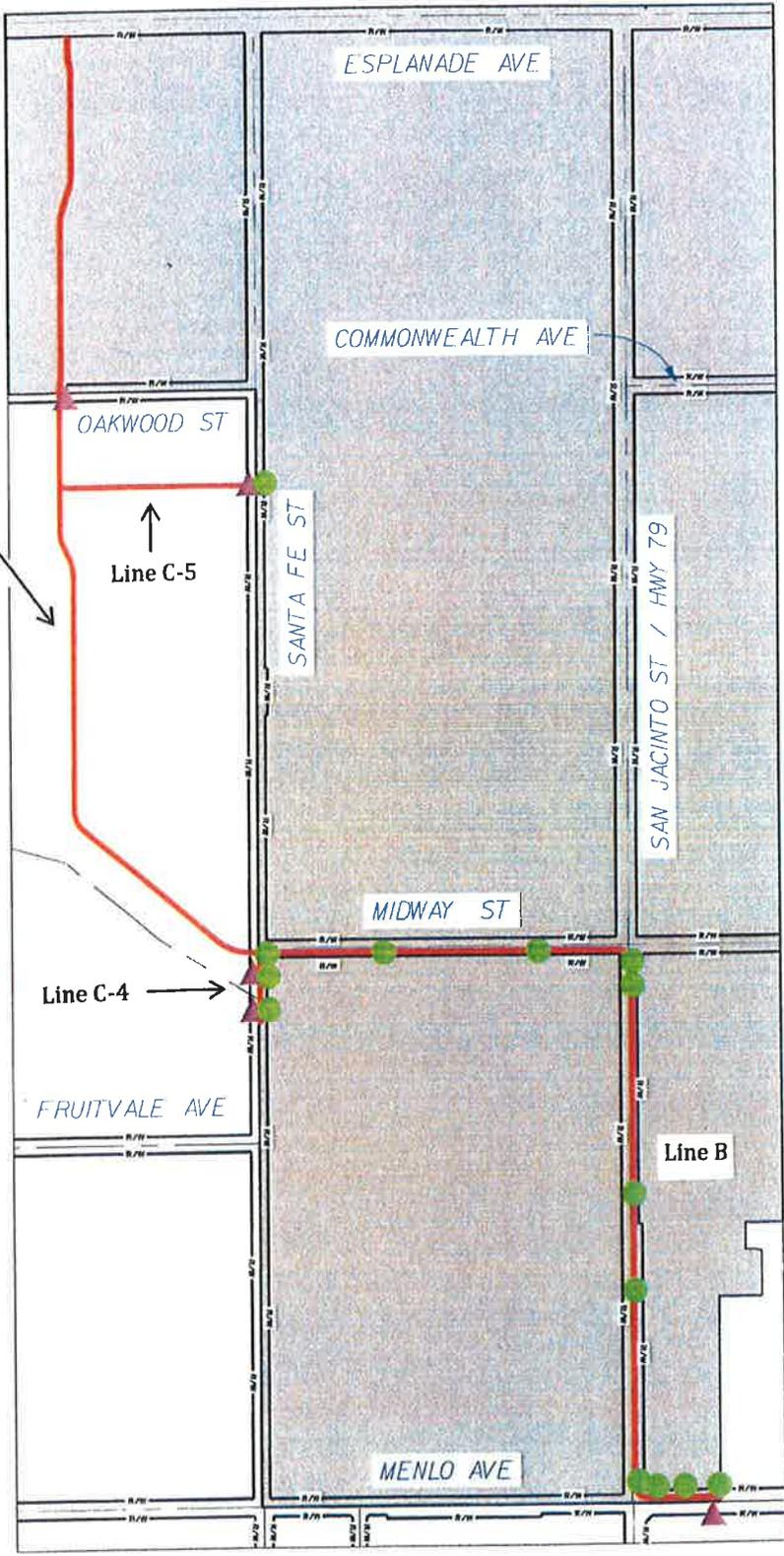
Line C-5

Line C-4

Line B

LEGEND:

-  CITY OF SAN JACINTO
-  CITY OF HEMET
-  DISTRICT MAINTAINED MAINLINE AND LATERALS
-  CITY OF SAN JACINTO MAINTAINED INLET AND RELATED APPURTENANCES
-  CITY OF HEMET MAINTAINED INLET AND RELATED APPURTENANCES



RIVERSIDE COUNTY FLOOD CONTROL
AND
WATER CONSERVATION DISTRICT

1995 MARKET STREET
RIVERSIDE, CA 92501
Phone: (951) 955-1200
Fax: (951) 788-9965

DATE: DECEMBER 13, 2012



EXHIBIT A
SAN JACINTO MDP
LINE C (STG 2), C-4 (STG 1),
C-5 (STG 1) & B (STG 1)
PROJ. NO. 4-0-0124



Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Kristen Jensen, Public Works Director *KJ*
Ronald E. Bradley, Interim City Manager *RB*

DATE: September 24, 2013

RE: Approve Second Amendment of the Four Agency Agreement regarding In-Lieu Project

RECOMMENDED ACTION:

It is respectfully recommended that the City Council approve the attached Second Amendment of the Four-Agency Agreement Re In Lieu Project.

BACKGROUND:

Through previous action, the City Council approved a *Four-Agency Agreement Re In Lieu Project* to participate with three other agencies (City of San Jacinto, Lake Hemet Municipal Water District, and Eastern Municipal Water District) in establishing a program that would encourage groundwater conservation by providing treated recycled water from EMWD to private ground water pumpers. The agreement established that the four agencies would share in covering the cost of construction facilities necessary to deliver the recycled water, as well as, cover a "subsidy" water cost; the difference in cost between tertiary treated water rates and a price charged to the private pumper. To date, this program has resulted in moving two local dairy properties to the use of recycled water for their primary source of irrigation, thereby conserving groundwater that is no longer produced by these private pumpers.

Through the original Four-Agency Agreement, it was anticipated that once formed, a Watermaster agency would become a party to the agreement and would assume various responsibilities of the agreement previously held by the original four agencies. On April 18, 2013, the Hemet San Jacinto Watermaster (HSJW) was officially formed through court action to become a separate legal entity made up representatives of the four original agencies and a private pumper representative. With the Watermaster in place, the four agencies, via a technical advisory committee, reviewed the content, language and intent of the original Four-Agency Agreement to ensure that assignment of tasks were still appropriate. The result of those review efforts are represented in the attached second amendment. With a minor updates to recitals, the amendment looks to acknowledge:

- Acceptance of the Watermaster as a party to the agreement
- Assignment of subsidy payment for in lieu agreements directly from the Watermaster to EMWD

Two additional functions that were previously under consideration to be assigned to the Watermaster were the purchase of treated water from EMWD, and its resale by the Watermaster

to the receiving private pumper. After much review, these extra steps were deemed unnecessary. Instead, EMWD will continue to provide the treated water directly to the private pumpers, bill the private pumpers for their rate, and directly bill the Watermaster for subsidy portion that was previously shouldered by the four agencies. The City of Hemet's prorata share of the subsidy is approximately \$26,000 annually.

The Second Amendment has already been approved by the Watermaster, Lake Hemet Municipal Water District and Eastern Municipal Water District.

FISCAL IMPACT:

No General Fund impact. Approval of this amendment will result in savings of approximately \$26,000 annually in Water Fund No. 571-9000.

Respectfully submitted,

Reviewed as to form:

Fiscal Review:



Kristen Jensen
Public Works Director



Eric S. Vail
City Attorney



Rita Conrad
Deputy City Manager

Attachment(s): ~~Second Amendment of the Four-Agency Agreement RE In Lieu Project~~

**SECOND AMENDMENT OF THE FOUR-AGENCY AGREEMENT
RE IN-LIEU PROJECT**

THIS SECOND AMENDMENT to the Four-Agency Agreement re In-Lieu Project (“the original Agreement”) is between the EASTERN MUNICIPAL WATER DISTRICT (“EMWD”), the LAKE HEMET MUNICIPAL WATER DISTRICT (“LHMWD”), the CITY OF HEMET (“HEMET”), and the CITY OF SAN JACINTO (“SAN JACINTO”), collectively the “Agencies”), and the HEMET—SAN JACINTO WATERMASTER (“WATERMASTER”).

RECITALS

1. The original Agreement established a program to conserve groundwater whereby facilities necessary to deliver recycled water to groundwater pumpers (“Users”) would be constructed with funding by the Agencies, and tertiary-recycled water would be provided by EMWD to the Users at EMWD’S prevailing secondary-treated water and that EMWD would be reimbursed by the other Agencies for their prorata shares of the difference between EMWD’S prevailing rate for tertiary-treated recycled water and the price charged the Users (“the Subsidy”).

2. The original Agreement was amended by an Addendum which became effective January 29, 2009, upon execution thereof on behalf of the City of Hemet as the last of the Four Agencies to approve the Addendum (the main purpose of which was to allow a Party to opt out at the end of the Initial Period). This current amendment shall therefore be labeled the “Second Amendment of the Four-Agency Agreement re In-Lieu Project.”

3. The original Agreement contemplated the appointment of the WATERMASTER by the Court and that upon said appointment, that the WATERMASTER would assume, among

other things, the responsibility for (a) purchasing the recycled water from EMWD at EMWD'S prevailing tertiary-recycled water rates, (b) reselling the recycled water to the Users at EMWD'S then prevailing secondary-recycled water rates, and (c) assuming responsibility for the Agencies' respective prorata shares of the Subsidy and paying EMWD.

4. The WATERMASTER was judicially created by entry of the Judgment in the Riverside County Superior Court Case titled "The Eastern Municipal Water District v. City of Hemet, et al., Case No. RIC 1207274," on April 18, 2013.

5. The WATERMASTER is willing to become a Party to the AGREEMENT and to assume the responsibilities described in the previous Recital in order to carry out the Water Management Plan's goals and the WATERMASTER's duties mandated by the Court thereunder, in part through the use of recycled water in lieu of groundwater in order to conserve the latter for domestic purposes in the Management Area.

6. The Parties, including the Watermaster, agree that it is not necessary that the Watermaster purchase the recycled water from EMWD and resell it to the Users, if the Watermaster agrees to pay the Subsidy directly to EMWD upon receipt of an invoice therefor from EMWD, on a periodic basis.

IT IS THEREFORE AGREED that the Original Agreement, as amended by the Addendum of January 29, 2009, shall be further amended as follows:

A. The AGREEMENT is hereby amended to include the HEMET—SAN JACINTO WATERMASTER as a Party.

B. The HEMET—SAN JACINTO WATERMASTER agrees to pay to EMWD, upon invoice received therefor, the difference between (1) EMWD's rates for tertiary-treated recycled water and (2) EMWD's rates for secondary-treated recycled water delivered to Users for use in lieu of groundwater except in cases in which EMWD substitutes secondary-treated recycled water for tertiary-treated recycled water for reasons set forth in the Agreement.

C. Notices – Notice to the Watermaster, in addition to notice to each of the other Parties shall be added to Subparagraph E-4 as follows:

TO: Hemet-San Jacinto Watermaster
C/o Eastern Municipal Water District
P.O. Box 8300
Perris, CA 92572-8300
ATTN: Advisor to the Watermaster

cc: _____

General Counsel to the Watermaster

D. In all other respects, the Agreement is confirmed.

E. This Amendment may be signed in counterparts by the Parties, and those counterparts, when taken together, shall have the same force and effect as if a single, original document had been signed by all Parties.

DATED: July 29, 2013

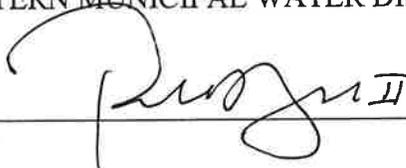
HEMET—SAN JACINTO WATERMASTER

By _____

By _____

DATED: ^{Aug 21}~~July~~ __, 2013

EASTERN MUNICIPAL WATER DISTRICT

By 

Its General Manager

DATED: July __, 2013

LAKE HEMET MUNICIPAL WATER DISTRICT

By Thomas W. Wagoner

Its GENERAL MANAGER

DATED: July __, 2013

CITY OF HEMET

By _____

Its _____

DATED: July __, 2013

CITY OF SAN JACINTO

By _____

Its _____



Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Kristen Jensen, Public Works Director;
Ronald Bradley, Interim City Manager 

DATE: September 24, 2013

RE: Approval of First Amendment to Agreement for Consultant Services with CarteGraph Systems, Inc. for Software Upgrades and Training Services

RECOMMENDED ACTION:

It is respectfully recommended that the City Council:

- Approve the First Amendment to Agreement for Consultant Services with CarteGraph Systems, Inc. to provide a second phase of customization of WORKdirector modules and integration of the Fuel Master Fuel Management System with Fleet for WORKdirector in the Public Works Department, and
- Authorize the Interim City Manager to execute the First Amendment in a total amount not to exceed \$76,840.00 for FY13/14.

BACKGROUND:

In September of 2005, the City Council approved award of a bid to CarteGraph Systems, Inc. for the purchase and implementation of the WORKdirector Work Management System for use by the Public Works Department. In September of 2012, the Council approved, in concept, a multiple year project upgrade and expanded use of the CarteGraph application. Due to the amount of work involved, limited funding and required training time for the project, staff opted to take a phased approach. This was done to ensure a successful application relaunch and retooling of internal processes to take full advantage of the many functions available to the City through the system. An Agreement for Consultant Services with CarteGraph Systems was approved which represented the first portion, or "Phase I", of the project and was established in the amount of \$103,285 for FY12/13.

Over the past 12 months staff has been vigorously pursuing completion of Phase I tasks. Much attention has been given to the needs of the field crews to make the data entry an efficient process, and to be sure we are capturing the right information in the right context. CarteGraph personnel have been onsite for 5 separate training sessions, as well as provided readily available telephone and remote assistance to staff. The majority of tasks outlined for Phase I were completed, including:

- "Scrubbing" of the existing database to ensure accuracy and consistency of data input
- Restructuring of the work order data entry process for the existing users in Water/Sewer and Administrative Staff

- Implementation and training on the following asset modules:
 - SIGNview – Street signs tracked as assets, monitor location and remaining life of street signs, meet future retroreflectivity mandates
 - STORMview – Retention basins, drainages, and reach maintenance work tracked and reported out for environmental agencies.
 - Fleet for WORKdirector – Replaced 1990's stand alone DOS based software effective January 1, 2013. Data automatically ties directly into WORKdirector providing accurate job costing reports.
 - PAVEMENTview – Pavement management system – Initial implementation has occurred with future training elements to be continued into FY13/14.
- Customization and implementation of additional WORKdirector pages and database structure designed for:
 - Water & Sewer Customer Service Crews
 - Storm Drain Crews
 - Municipal Storm Water Permit Inspection Program (Food/Commercial & Industrial)

The only Phase I task remaining, and potentially the most anticipated, is the implementation of the YourGOV module. This is the software option that allows the public to report problems via their smartphones to the Public Works Department. The information is placed directly into CarteGraph WORKdirector system as a work request for our crews without the need for a phone call, or additional data entry. Installation of this program will occur shortly after all elements of the City's current server upgrade have been finalized.

Staff has been very satisfied with the performance and results of the implementation and training conducted in Phase I. In an effort to continue the momentum a second program of work, "Phase II" of the project has been developed, budgeted for, and is being recommended for approval. Staff continues to move forward with our sights ultimately set on real data entry capability in the field performed by crews as they complete job assignments.

PROJECT DESCRIPTION:

A second phase of work will provide the remaining implementations necessary to bring all Public Works divisions into full utilization of the system as an asset management tool. It will also create a solid foundation for a potential "Phase III" which would include moving to a web-based platform and real time data entry, should the Council wish to move in that direction at a later date. The focus of the proposed Phase II scope of work includes:

- Additional customization and training for work order processing in:
 - Parks / Maintenance Districts
 - Facility Maintenance
 - Streets
 - Fleet Maintenance
- Additional implementation and training in asset modules for:
 - SIGNALview - Traffic Signals
 - SEWERview – Mains, Laterals, Valves and Manhole
 - STORMview – Adding non-jurisdictional reaches
 - Versa Pages - City Owned Buildings
- Integration with the City's GIS mapping system through GISdirector

In addition, staff is recommending to have CarteGraph provide services to integrate the Fleet for WORKdirector with our recently approved Fuel Master Fuel Management system. This will allow

information gathered by the new fuel management system to be pushed into the fleet software, providing real time vehicle information that can be used in determining preventative maintenance schedules and provide idle time information for mandatory reporting.

Training and implementation of Phase II work will continue to occur through a combination of onsite visits by CarteGraph staff, as well as online "live" training sessions with City staff.

COORDINATION & REVIEW:

Staff worked closely with the IT Department preparing budgets, discussing potential timing of upgrades, and worked together through database updates and security implementation throughout Phase 1 implementation. As technology continues to move at exceptionally fast pace, staff and IT continue to consult with each other and the vendor to be sure we are spending our time wisely on tasks that offer benefits beyond just the next year or two. Staff is confident the scope of services proposed for Phase II represent logical next steps and are feasible for completion within the upcoming 12 months.

FISCAL IMPACT:

No additional General Fund Impact. Funding for this project has been approved and is available through current FY13/14 Operating Budgets. Licensing for this software was previously approved through Council action on September 25, 2012, and is also accounted for through current FY13/14 budgets.

Respectfully submitted,



Kristen Jensen
Public Works Director

Fiscal Review:



Rita Conrad
Deputy City Manager/Admin Services Director

**FIRST AMENDMENT TO
AGREEMENT FOR SOFTWARE AND SERVICES**

by and between

the

CITY OF HEMET

and

CARTEGRAPH SYSTEMS, INC.

Dated September 24, 2013

FIRST AMENDMENT TO AGREEMENT FOR SOFTWARE AND SERVICES

This FIRST Amendment to Agreement for Software and Services ("FIRST 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 ("City"), and CARTEGRAPH SYSTEMS, INC., a Corporation in the State of Iowa ("Consultant"), as follows:

RECITALS

- A. City and Consultant entered into an Agreement for software and services on September 26, 2012 ("Agreement"). Under this Agreement, Consultant is to provide software licensing, implementation services, and training on Consultant's software to public works employees of City of Hemet.
- B. Section 3 of the Agreement allows for Additional Services, if authorized in advance and in writing by the City Council or City Manager of City.
- C. This FIRST Amendment formally amends the services.
- D. The department has been receiving exemplary service from Cartegraph project managers.

OPERATIVE PROVISIONS

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

- 1. **AMENDMENT.** The Agreement is hereby modified and amended as follows:
 - 1.1 **Scope of Services.** Additional Services to be provided in accordance with Exhibits A1 and A2 for Implementation and Training on Pavementview Plus, SIGN view, SIGNAL view, STORMview, GISdirector; and Fuel Manager.
 - 1.2 **Compensation.**
 - a) \$70,180.00 for Implementation and Training for Pavementview Plus, SIGN view, SIGNAL view, STORMview, and GISdirector; and
 - b) \$ 6,660.00 for Implementation and Training for Fuel Manager Integration Service;
 - c) The total compensation for the Services shall not exceed \$76,840.00.
- 2. **GENERAL PROVISIONS.**
 - 2.1 **Remainder Unchanged.** Except as specifically modified and amended in this FIRST Amendment, the Agreement remains in full force and effect and binding upon the parties.

2.2 **Integration.** This FIRST Amendment consists of pages 1 through 3 inclusive and Exhibits A1 and A2, 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 FIRST Amendment.

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

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

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

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

CITY OF HEMET

CARTEGRAPH SYSTEMS INC.

By _____
Ronald E. Bradley, Interim City Manager

By _____
(Authorized Officer)

Title _____

Print Name

Phone

ATTEST:

By: _____
Sarah McComas, City Clerk

By _____

Title _____

Print Name _____

Phone _____

APPROVED AS TO FORM:

Eric S. Vail, City Attorney

AMENDMENT NO. 1

EXHIBIT A - 1

Contract No.: C1304032-1

Software and Services Proposal

	Purchase Type	Qty.	Unit Price	Total Price
PROJECT SERVICES				
Implementation Services (Fee for Service)				
Implementation Service	Fixed Fee Service	1	\$60,100.00	\$60,100.00
<i>ESTIMATED EXPENSES</i>				\$10,080.00
TOTAL PROJECT COST INCL. ESTIMATED EXPENSES				\$70,180.00

Not-to-Exceed Proposal

Cartegraph will not exceed the total included in this Proposal without written approval from City. In the event it becomes apparent to Cartegraph that additional service efforts will be needed due to any changes in the scope of this proposal, Cartegraph will notify City prior to exceeding the approved efforts and obtain written approval if additional software or services are required.

Project Services Scope

Cartegraph staff will provide project services, listed below, for the specific implementation of PAVEMENTview Plus, SIGNview, SIGNALview, STORMview, WATERview, SEWERview, and GISdirector for each asset. Specific items include:

- Detailed review of project scope.
- Develop a project timeline based upon the project scope discussion.
- Provide system navigation and administrator training during the set-up of Cartegraph as well as during the go-live stage of the project.
- Conduct an initial needs assessment to identify key goals and objectives for the plan.
- Configure Cartegraph Navigator environment (forms, filters, and reports) based the modules listed above in conjunction with agreed upon Best Practices.
- Conduct direct training to end-users (up to 10) or conduct Champion (train-the-trainer) sessions on the Cartegraph application. This training will be scheduled based on mutually agreeable times, to occur both on the Cartegraph training database and your database utilizing any customized forms, filters, and reports as mutually determined. Before the training, both parties will discuss and agree as to who shall provide facilities and any equipment required for the training, including server and City computers as necessary. These services are more particularly described as:
 - The City will approve custom training agendas prior to training delivery, and Cartegraph agrees to consult with the City prior to developing the training agenda.
 - The City will advise Cartegraph as to the number of expected attendees for any particular class.
- Provide assistance during the production use go-live of Cartegraph.
- Provide a system-check, typically four weeks after go-live.
- Provide project management expertise throughout the duration of the project.
 - The Cartegraph Project Manager will provide guidance in the management of this implementation project and will take responsibility for the resources Cartegraph allocates to the project.
 - The Cartegraph Project Manager will manage all project activities that are the responsibility of Cartegraph, serve as a liaison with the City, and be available and responsible to the City for consultation and assistance.

- The Cartegraph Project Manager will attend and participate in project status meetings, and will provide timely, informed responses to operational and administrative inquiries arising from the project.
- Support the GIS integration feature of Cartegraph. Cartegraph will provide consultation services and training assistance to evaluate data sources and to mutually construct with the City a data mapping of database tables and field information between the City's current enterprise or personal geodatabase tables and the corresponding / appropriate Cartegraph database tables and fields. This process may require the City to normalize (standardize) their data, which is the responsibility of the City but will be supported and guided by Cartegraph as needed.
- Cartegraph will deploy database security which will be based on the standard roles included with the current version of software. For each software product, Cartegraph will create Cartegraph standard Administrator, Power User, User, and Read-Only SQL security groups and/or roles and create one user ID assigned to each of the groups and will provide a knowledge transfer that will allow you to create and maintain security records. Additional configuration service is available on request.

During the duration of the project, the City will appoint a project coordinator to be responsible for the following aspects of the project:

- Approve the Project Status Report.
- Authorize the project work.
- Acceptance of deliverables defined in the Project Status Report.
- Ensure the project is in compliance with and satisfies the requirements of the Project Status Report.
- Consult with the Cartegraph Project Manager on a continuing basis.
- Provide leadership on all issues related to the City, such as policy, organization, staff, technical architecture, data, and current systems.
- Monitor progress of the project, including the review of Cartegraph regular status reports and managing internal resources.

Payment Terms and Conditions

In consideration for the Services and Products provided by **Cartegraph** to **City**, **City** agrees to pay **Cartegraph** Software Costs and Professional Service Fees in U.S. Dollars as described below:

1. **Delivery:** Software Products shall be licensed upon approval of the First Amendment. Project Services will be scheduled and delivered upon approval of the First Amendment, which will be considered as a notification to proceed.
2. **Services Scheduling:** City agrees to work with **Cartegraph** to schedule Project Services in a timely manner.
3. **Invoicing:** The City will compensate Cartegraph for the Services performed upon submission if a valid invoice.

Each invoice is to include:

 - A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
 - B. Line items for all supplies properly charged to the Services.
 - C. Line items for all travel properly charged to the Services.
4. **Expenses:** In providing the services included in this Proposal, **Cartegraph** shall be reimbursed for any reasonable out-of-pocket costs, including, but not limited to, travel, lodging, and meals. Out-of-pocket expenses are billed based on actual costs incurred and are due separately. Estimated expenses noted in the table above include six (6) trips to City's site.
5. **Payment Terms:** All payments are due Net 30 days from date of invoice.

AMENDMENT NO. 1

EXHIBIT A - 2

Contract No.: C1306022-1

Software and Services Proposal

	Purchase Type	Qty.	Unit Price	Total Price
PROJECT SERVICES				
Implementation Services (Fee for Service)				
Fuel Manager Integration Service	Fixed Fee Service	1	\$6,660.00	\$6,660.00
SUPPORT SERVICES				
Fuel Manager Integration Support Service	Fixed Fee Service	1	Included	Included
TOTAL PROJECT COST				\$6,660.00

Not-to-Exceed Proposal

Cartegraph will not exceed the total included in this Proposal without written approval from City. In the event it becomes apparent to Cartegraph that additional service efforts will be needed due to any changes in the scope of this proposal, Cartegraph will notify City prior to exceeding the approved efforts and obtain written approval if additional software or services are required.

Software Subscription, Maintenance and Support Services Terms/Renewal

The initial term of Subscription, Maintenance or Support Services, if included, will commence upon execution of a signed agreement and will continue for a period of one (1) calendar year from the date of the execution of said agreement, unless noted differently in the pricing table above.

Each subsequent term will commence upon completion of the prior term and will continue for a period of one (1) calendar year there from. City may terminate their Subscription, Maintenance or Service Support, if applicable, at the end of the Initial Term or any subsequent Renewal Term by notifying Cartegraph in writing of their intention to do so at least 60 days prior to the applicable End Date for that term.

Software licensed under a subscription is governed by a license manager and must be renewed prior to the expiration date of the term in order to keep the software active.

Fuel Manager Integration Service Scope

Cartegraph will construct modifications to the Software Products as defined below so as to automate the transfer of detail from City's fuel system into Cartegraph.

Integration Service Overview

The following describes the functionality and assumptions specific to the automated Fuel Manager Integration.

1. An automated import routine uses an ASCII format to import up to 15 data fields into the Equipment's Fuel Log recordset. The basic steps of the automated process are:
 - a. Open the Cartegraph database.

- b. Create the processed import file from the data file exported from the fuel management system.
 - c. Import the processed file into the Cartegraph database using the standard import engine.
 - d. Archive
2. Custom script and Windows Task Scheduler will automate this process.
 3. A Windows Scheduled Task will be used to initiate the automated import on a consistent basis.
 - a. This process will have to open Navigator and check out a *WORKdirector* license.
 4. Client will create a static export file, with assistance from the fuel management vendor if required, which must always exist in the same location and must always have the same name.
 5. The process includes preprocessing/data scrubbing of 3 data fields in the source ASCII file to ensure the values are Cartegraph-friendly formats. For example, date fields must be imported as a string in "mm/dd/yyyy" or similar format. If the source data is in another format, the preprocessing will convert to a Cartegraph-friendly format. Specific fields are to be defined during the design phase.
 6. Data fields will be mapped to the appropriate Equipment's Fuel Log fields during design document creation.

Standard Fuel Log Data Fields:

<i>Recordset</i>	<i>Field Name</i>	<i>Type</i>
Equipment\Fuel Log	Date	Date
Equipment\Fuel Log	Employee	Lookup
Equipment\Fuel Log	ID	Text
Equipment\Fuel Log	Location	Lookup
Equipment\Fuel Log	Material ID	Lookup
Equipment\Fuel Log	Odometer	Number
Equipment\Fuel Log	Quantity	Quantity
Equipment\Fuel Log	Total Cost	Currency
Equipment\Fuel Log	Unit Cost	Currency
Equipment\Fuel Log	Vendor	Lookup

7. Once the file has been imported successfully, it will be moved to a designated archive directory.
8. If any errors occur during the import, the standard import engine's error file will be generated.
9. The import is not "un-doable." If the import is canceled in the middle of the import, records up to that point will be saved.
10. The process does not include an automated notification when the import is complete or if it has failed. The user can check the Results Log for the status of the import.

Assumptions

1. Client will work with their fuel management system vendor in the creation of the static export file that will conform to an agreed-upon structure for standardization. The static export file must always maintain the same format to ensure field layout. Any change to the fuel export file format can prevent the modification from working.
2. Client will be responsible for the automation of the data export from their fuel system software.
3. The exported fuel data will be consistently named and saved to a static location accessible by the Cartegraph workstation used for the import.
4. The exported fuel data must always maintain the format to ensure field layout. Any change to the fuel export file format can prevent the modification from working.
5. A license of *WORKdirector* will be consumed for this process each time it is run. Additional license(s) of *WORKdirector* are not part of this proposal unless specified in the pricing table earlier in this document.
6. Data validation against existing Cartegraph recordsets / libraries is not a component of this functionality. Standard recordsets / libraries affected are the Equipment, Materials, Labor and Vendor recordsets.

Fuel Manager Integration Support Service

During the term noted, Cartegraph will provide the following services.

- a. *Fuel Manager Integration Support:* Cartegraph will document and track the integration providing City written upgrade instructions and assistance to ensure the integration persists to future releases of the Cartegraph application.
- b. *Fuel Manager Integration Technical Support:* City will receive ongoing support for the latest Major Release and one Major Release prior as applicable to City's specific version of the Cartegraph application software that is utilized and for the same database in which the custom integration is deployed.

Payment Terms and Conditions

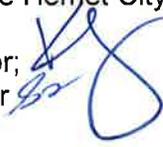
In consideration for the Services and Products provided by **Cartegraph** to **City**, **City** agrees to pay **Cartegraph** Software Costs and Professional Service Fees in U.S. Dollars as described below:

1. **Delivery:** Software Products shall be licensed upon approval of the First Amendment. Project Services will be scheduled and delivered upon approval of the First Amendment, which will be considered as a notification to proceed.
2. **Services Scheduling:** City agrees to work with **Cartegraph** to schedule Project Services in a timely manner.
3. **Invoicing:** The City will compensate Cartegraph for the Services performed upon submission if a valid invoice.
 - **Each invoice is to include:**
 - A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
 - B. Line items for all supplies properly charged to the Services.
 - C. Line items for all travel properly charged to the Services.
4. **Expenses:** In providing the services included in this Proposal, **Cartegraph** shall be reimbursed for any reasonable out-of-pocket costs, including, but not limited to, travel, lodging, and meals. Out-of-pocket expenses are billed based on actual costs incurred and are due separately. Estimated expenses noted in the table above include six (6) trips to City's site.
5. **Payment Terms:** All payments are due Net 30 days from date of invoice.



Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Kristen Jensen, Public Works Director; 
Ronald Bradley, Interim City Manager

DATE: September 24, 2013

RE: **Approval of First Amendment to Implementation Agreement for NPDES Municipal Storm Water Discharge Permit for Santa Ana Region**

RECOMMENDED ACTION:

It is respectfully recommended that the City Council approve the first amendment to the National Pollutant Discharge Elimination System (NPDES) Urban Runoff Discharge Permit Implementation Agreement with the Riverside County Flood Control and Water Conservation District (DISTRICT), which establishes the responsibilities of the DISTRICT, Riverside County, and the 15 cities in the Santa Ana Drainage Area in complying with the 2010 NPDES Storm Water Discharge Permit (Order No. R8-2010-0033).

BACKGROUND:

On January 29, 2010, the California Regional Water Quality Control Board-Santa Ana Region (RWQCB-SAR) issued a NPDES Permit (No R8-2010-0033) to the DISTRICT, Riverside County and cities in the Santa Ana Drainage Area, including the City of Hemet. The DISTRICT, Riverside County and the cities work cooperatively to implement the requirements for this Permit through an Implementation Agreement, which establishes the responsibilities of all parties concerning compliance with the Permit. This Implementation Agreement was approved by the Hemet City Council on December 14, 2010.

PROJECT DESCRIPTION:

This amendment to the Implementation Agreement will accomplish the following:

1. Remove the Cities of Murrieta and Wildomar, except as necessary to meet obligations with regard to the Lake Elsinore and Canyon Lake Nutrient TMDL for portions of these cities that are within the Santa Ana Regional Water Quality Control Board jurisdiction. The entire jurisdictional areas of these cities are now subject to permitting of municipal discharges by the San Diego Regional Water Quality Control Board.
2. Add the City of Jurupa Valley; establish responsibility of City of Jurupa Valley for shared costs of the Implementation Agreement for current and subsequent years.
3. Include the entire jurisdictional area of the City of Menifee in the "Permit Area" as defined in the Implementation Agreement. The entire jurisdictional area of the City of Menifee is

now subject to permitting of municipal discharges by the Santa Ana Regional Water Quality Control Board.

CONSISTENCY WITH ADOPTED GOALS, PLANS, AND PROGRAMS:

- **Goal OS-5** – Conserve and protect surface water, groundwater, and imported water supplies.
- **LU-P-49 Interagency Coordination** – Coordinate programs, plans and development activity with neighboring cities, the County of Riverside, and other federal, state, and local agencies to establish regional strategies and partnerships to better represent the interests of Hemet and the surrounding region. Promote multijurisdictional partnerships in seeking grant funding or cost-sharing in providing infrastructure, public services, master plans, and economic development programs.

FISCAL IMPACT:

Approval of this amendment to the Implementation Agreement will result in a minimal savings: City of Hemet cost share for 2012-2013 was \$32,249. Estimated cost share for City of Hemet in 2013-2014 is \$29,898.

Respectfully submitted,

Approved as to form:

Fiscal Review:



Linda Nixon
Environmental Services Manager



Eric S. Vail
City Attorney



Rita Conrad
Finance Director

Attachment: First Amendment to Agreement: National Pollutant Discharge Elimination System (NPDES) Urban Runoff Discharge Permit Implementation Agreement Santa Ana Region (Santa Ana Drainage Area)

FIRST AMENDMENT TO AGREEMENT

National Pollutant Discharge Elimination System
Urban Runoff Discharge Permit
Implementation Agreement
Santa Ana Region
(Santa Ana Drainage Area)

This First Amendment ("Amendment") to that certain agreement ("Agreement") entered into by and between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ("DISTRICT"), the COUNTY OF RIVERSIDE ("COUNTY"), and the CITIES OF BEAUMONT, CALIMESA, CANYON LAKE, CORONA, EASTVALE, HEMET, LAKE ELSINORE, MENIFEE, MORENO VALLEY, MURRIETA, NORCO, PERRIS, RIVERSIDE, SAN JACINTO and WILDOMAR (individually, "CITY" and collectively, "CITIES") (each of the DISTRICT, COUNTY and CITIES shall be a "PARTY", and collectively, "PARTIES") with respect to establishing the responsibilities of each PARTY concerning compliance with the National Pollutant Discharge Elimination System Urban Runoff Discharge Permit issued by the California Regional Water Quality Control Board - Santa Ana Region ("RWQCB-SAR") pursuant to Order No. R8-2010-0033 ("NPDES Permit"), is entered into by and between the PARTIES and the CITY of JURUPA VALLEY with respect to the following:

RECITALS

WHEREAS, the RWQCB-SAR issued the NPDES Permit to DISTRICT, COUNTY and CITIES on January 29, 2010; and

WHEREAS, the NPDES Permit designates DISTRICT as the "Principal Permittee", and COUNTY and CITIES as "Co-Permittees"; and

WHEREAS, cooperation between the PARTIES in the administration and implementation of the NPDES Permit is in the best interests of the PARTIES; and

WHEREAS, the PARTIES entered into the Agreement to facilitate the administration and implementation of the NPDES Permit; and

WHEREAS, on July 20, 2010 and July 21, 2010 the CITIES of MURRIETA and WILDOMAR, respectively, pursuant to California Water Code section 13228, requested that the RWQCB-SAR designate the California Regional Water Quality Control Board – San Diego Region ("RWQCB-SDR") as the regulating authority for all portions of those CITIES, regardless of RWQCB jurisdictional boundaries for matters pertaining to MS4 permitting; and

WHEREAS, on July 22, 2010, the CITY of MENIFEE requested that the RWQCB-SDR designate the RWQCB-SAR as the regulating authority for all portions of the CITY, regardless of RWQCB jurisdictional boundaries for matters pertaining to MS4 permitting; and

WHEREAS, on September 28, 2010, the Executive Officers of the RWQCB-SAR and RWQCB-SDR signed Designation Agreements, pursuant to Water Code Section 13228(a), providing (1) the RWQCB-SDR authority to regulate municipal stormwater runoff from the CITIES of MURRIETA and WILDOMAR, including those portions of the CITIES that fall within the RWQCB-SAR geographic jurisdiction; and (2) the RWQCB-SAR the authority to regulate municipal stormwater runoff from all portions of the CITY of MENIFEE, including those portions that are within the RWQCB-SDR geographic jurisdiction; and

WHEREAS, in accordance with the RWQCB-SDR Permit, Order No. R9-2010-0016, the CITIES of MURRIETA and WILDOMAR are required to comply with the applicable provisions of the Santa Ana NPDES MS4 Permit, Order R8-2010-0033, pertaining to implementation of the Nutrient Total Maximum Daily Load (TMDL) for Lake Elsinore and Canyon Lake; and

WHEREAS, Order R8-2010-0033 requires the CITY of MENIFEE to comply

with TMDLs and associated MS4 permit requirements issued by the RWQCB-SDR which include the CITY of MENIFEE as a responsible PARTY; and

WHEREAS, on June 7, 2013 the RWQCB-SAR NPDES Permit Order No. R8-2010-0033 was amended with Order No. R8-2013-0024 to provide for the removal of the CITIES of MURRIETA and WILDOMAR and the addition of the newly incorporated CITIES of EASTVALE and JURUPA VALLEY; and

WHEREAS, the entire jurisdictional areas of the CITIES of MURRIETA and WILDOMAR are now regulated by the RWQCB-SDR with respect to MS4 stormwater discharges ' and are no longer subject to the RWQCB-SAR NPDES Permit except with respect to those CITIES' compliance with the Nutrient TMDL for Lake Elsinore and Canyon Lake; and

WHEREAS, portions of the jurisdictional area of the CITY of MENIFEE were previously under the jurisdiction of the RWQCB-SDR and the entire jurisdictional area of the CITY of MENIFEE is now under the jurisdiction of the RWQCB-SAR.

NOW, THEREFORE, the PARTIES do mutually agree as follows:

1. Removal of CITIES of MURRIETA and WILDOMAR. Upon the Effective Date of this Amendment, the CITIES of MURRIETA and WILDOMAR are no longer subject to the terms of this Agreement except as necessary to meet their respective TMDL obligations (including cost shares for regional TMDL programs paid for through this agreement, timely implementation of Comprehensive Nutrient Reduction Plan programs and requirements, and timely submittal of information needed to satisfy TMDL reporting requirements) and except for where the CITIES of MURRIETA and WILDOMAR wish to participate in other related reports, studies or programs that may be necessary to address the Lake Elsinore and Canyon Lake Nutrient TMDL or other future TMDLs regulating the portion of the CITIES of MURRIETA and WILDOMAR within the RWQCB-SAR jurisdiction.

2. Addition of CITY of JURUPA VALLEY. Upon the Effective Date of this Amendment, the CITY of JURUPA VALLEY is a PARTY under the Agreement and shall be considered a "CITY" for purposes of all duties and responsibilities assigned, and all benefits accruing, to CITIES under the Agreement.

3. Permit Area Amendment. As used in the Agreement, the term "Permit Area" shall include the entire jurisdictional area of the CITY of MENIFEE.

4. Effective Date of Amendment. This Amendment shall become effective on the last date that both (a) duly authorized representatives of PARTIES representing a majority of the percentage contribution set forth in Section 4 of the Agreement and (b) the CITIES of JURUPA VALLEY, MENIFEE, MURRIETA and WILDOMAR sign the Amendment. Each PARTY's vote shall be calculated according to the percentage contribution of each PARTY as described in Section 4 of the Agreement.

5. Budget Responsibility of CITY of JURUPA VALLEY. Upon the Effective Date of the Amendment, the CITY of JURUPA VALLEY shall be responsible for the shared costs discussed in Section 4 of the Agreement for the current and any subsequent budget year.

6. Effectiveness of Agreement. Except as amended herein, all provisions in the Agreement remain in full force and effect.

7. Applicability of Prior Agreements. This Amendment, the Agreement and the exhibits attached hereto constitute the entire Agreement between the PARTIES with respect to the subject matter; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.

8. Execution in Counterparts. This Amendment may be executed and delivered in any number of counterparts or copies ("counterpart") by the PARTIES hereto. When each PARTY has signed and delivered at least one counterpart to the other PARTIES

hereto, each counterpart shall be deemed an original and, taken together, shall constitute one and the same agreement, which shall be binding and effective as to the PARTIES hereto.

IN WITNESS WHEREOF, the PARTIES have executed this Amendment on the dates set forth below.

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

RECOMMENDED FOR APPROVAL:

By _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

Date: _____

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By _____
Karin Watts-Bazan
Principal Deputy County Counsel

By _____
Deputy

Date: _____

(SEAL)

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By _____
JAY ORR
Riverside County Executive Officer

By _____
JOHN J. BENOIT, Chairman
Riverside County Board of Supervisors
Fourth District

Date: _____

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By _____
KARIN WATTS-BAZAN
Principal Deputy County Counsel

By _____
Deputy

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF BEAUMONT

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF CALIMESA

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF CANYON LAKE

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF CORONA

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF EASTVALE

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF HEMET

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF JURUPA VALLEY

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF LAKE ELSINORE

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF MENIFEE

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF MORENO VALLEY

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF MURRIETA

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF NORCO

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF PERRIS

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF RIVERSIDE

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF SAN JACINTO

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)

APPROVED AS TO FORM:

CITY OF WILDOMAR

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Date: _____

(SEAL)



Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

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

DATE: September 24, 2013

RE: Professional Services Agreement with HdL Coren & Cone for property tax audit and administration services.

RECOMMENDATIONS:

- A. Approve a Professional Services Agreement with HdL Coren & Cone (HdLCC) for property tax audit and administration services;
- B. Authorize the Interim City Manager to execute a Professional Services Agreement with HdL Coren & Cone for property tax audit and administration services.

BACKGROUND:

The City of Hemet has utilized the services of HdL Coren & Cone (HdLCC) for property tax audit and administration services since 1995 (18 years). HdLCC's audits of secured properties involve the use of county and city records to develop potential miscoding errors regarding the assignment of tax rate areas unique to a local jurisdiction. Unsecured reviews rely on computerized searches of addressing patterns and the verification of the county assignment to each jurisdiction for correctness to ensure that the property tax revenue is flowing to the appropriate taxing entity. HdLCC handles all county submittal and agency follow up regarding the corrective actions requested.

In an audit of FY 2011-2012 property tax data, HdLCC, through the use of their specialized computer software, databases and highly trained staff, identified 867 parcels that were not allocated by the County Assessor to the City of Hemet when they should have been (taxable net value of \$41 million which equates to approximately \$240,000 annually in city property tax revenue).

Additionally, HdLCC provides numerous specialized reports that provide information including but not limited to the following: growth by use category, sales value history, transfer of ownership, use category summary, foreclosure activity, Successor Agency activity, and Proposition 8 appeals. Information from HdLCC is also a critical part of developing property tax revenue estimates for the budget.

During this eighteen-year partnership with HdLCC, HdLCC's charges to the City have remained (amazingly) unchanged with an annually fixed fee of \$14,400 annually and a 25% contingency fee for recovered revenues (contingency applied to new finds one-time only, not on an on-going basis). HdLCC has submitted a proposal to increase their annual fixed fee from \$14,400 to \$15,840 annually (an increase of approximately \$1,440 annually). There is no proposed change to the contingency based fees.

Although the annual value of the contract is relatively low and within the City Manager's signing authority, staff recommended bringing this contract back to Council for informational purposes as well as approval since the original contract with HdLCC dates back to 1995, and the scope of services has changed as technology has evolved. The initial term of the contract is for five years with the option to renew on a yearly basis thereafter; however either party may terminate the contract with forty-five days written notice. Pricing shall remain fixed during the first three years of the contract. Beginning in the fourth year of the contract the fixed fee shall be adjusted by the California Consumer Price Index (CCPI). In no event shall the increase exceed 5%.

ALTERNATIVE ACTION:

A. Hire additional staff to perform these duties.

Because HdLCC provides service for over 360 public agencies in California, they have economies of scale that cities cannot achieve individually.

B. Seek an alternative provider of services.

There is at least one other firm in California with as significant a client base as HdLCC that offers similar services. However, pricing is similar and there would be significant time required to get a new program with a new vendor up and running for very little, if any, return.

FISCAL IMPACT:

Annual cost of contract is \$15,840. \$14,400 was included in the Finance Department budget for this service. The additional \$1,440 can be covered with saving in other line items of the Finance Department Budget.

Respectfully submitted,


Ronald Bradley
Interim City Manager


Rita Conrad
Deputy City Manager/Admin. Svcs.

Attachment: Agreement for Property Tax Consulting/Auditing Services

CITY OF HEMET

AGREEMENT FOR PROPERTY TAX CONSULTING/AUDIT SERVICES

This AGREEMENT (the "Agreement") is made and entered into as of the 24th day of September, 2013 by and between the CITY OF HEMET, a municipal corporation hereinafter called CITY, and HdL Coren & Cone, a California Corporation hereinafter called CONSULTANT.

RECITALS

WHEREAS, property tax revenues can be verified and potentially increased through a system of continuous monitoring, identification and reconciliation to county records; and

WHEREAS, an effective program of property tax management will assist the CITY in fiscal, economic and community development planning; and

WHEREAS, CITY desires the property tax data based reports and data analysis required to effectively manage the CITY property tax base and identify and recover revenues misallocated within the CITY, or to other jurisdictions; and

WHEREAS, CONSULTANT is a state-wide expert in such data analysis with over 190 public agency clients for whom such services are performed and has the programs, equipment, data and personnel required to deliver the property tax services referenced herein;

WHEREAS, CITY prefers to pay for certain of such services through a contingency arrangement where payment is made from monies recovered and CONSULTANT is willing to base its compensation on such a risk-based formula.

WHEREAS, pursuant to the City of Hemet's Municipal Code, City has authority to enter into this Services Agreement and the City Manager has authority to execute this Agreement.

NOW, THEREFORE, CITY and CONSULTANT, for the consideration hereinafter described, mutually agree as follows:

1.0 DEFINITIONS

For purposes of this Agreement, the following terms shall have the meaning stated below:

Audit Review: "Audit" or "Audit Review" shall mean the comparison of databases to ensure that parcels are correctly coded with the appropriate tax rate area to return revenue to the client city or redevelopment agency. Audits include the secured and unsecured tax rolls and where secured records are corrected; the corresponding unsecured records related to those properties are also corrected. A review of the calculation methodologies

developed by auditor/controller offices in the administration of property tax revenues or tax increment revenues is made to ensure compliance. New annexations and newly created redevelopment project areas are audited the 1st or 2nd year after the area's adoption due to the timing of Riverside Local Agency Formation Commission, LAFCO and the State Board of Equalization in assigning new tax rate areas and county processing of those changes.

County: "County" shall mean the County in which the CITY is located.

Database: "Database" shall mean a computerized listing of property tax parcels and information compiled for CITY from information provided by the County.

Days: "Days" shall mean calendar days.

Project Area: "Project Area(s)" shall mean the project areas of former redevelopment agency

Property Tax Roll: "Property Tax Roll" shall mean the assessed values of parcels on the secured and unsecured lien date rolls as reported by the County.

Proprietary Information: "Proprietary Information" shall be the reports, technical information, compilations of data, methodologies, formula, software, programs, technologies and other processes previously designed and developed by CONSULTANT and used in the performance of the services hereunder.

Successor Agency: "Successor Agency" means the City's administration pursuant to Section 34176 of the Health and Safety Code of the former community redevelopment agency of CITY.

Recovered/Reallocated Revenue: "Recovered or Reallocated Revenue" shall mean additional revenue received as a result of an audit or review of properties submitted for correction or for corrections due erroneous calculations or incorrect methods of distributing revenue discovered by the CONSULTANT and then made by county agencies which result in a return of additional revenue to the city/agency. Reviews of city administered pass throughs are performed to ensure the correctness of distributions being made to participating agencies.

Scope of Services: "Scope of Services" shall mean all of the Base Services specified in Section 2.0, the Optional Services in Section 3.0, the Additional Services in Section 4.0, or any other services rendered hereunder.

TRA: "Tax Rate Area" shall mean the area subject to the tax rate.

2.0 BASE SERVICES

The CONSULTANT shall perform all of the following duties as part of the Base Services provided hereunder, unless otherwise specified in writing by the Contract Officer:

2.1 Analysis And Identification Of Misallocation Errors (Contingent Fee)

(a) In the first year of this Agreement, and as necessary thereafter but not less than once every five (5) years, CONSULTANT shall conduct an analysis to identify and verify in the CITY parcels on the secured Property Tax Roll which are not properly attributed to a CITY, and will provide the correct TRA designation to the proper County agency. Typical errors include parcels assigned to incorrect TRAs within the CITY or an adjacent city, and TRAs allocated to wrong taxing agencies.

(b) CONSULTANT shall annually reconcile the annual auditor-controller assessed valuations report to the assessor's lien date rolls and identify discrepancies.

(c) CONSULTANT shall annually review parcels on the unsecured Property Tax Roll to identify inconsistencies such as value variations, values being reported to a mailing address rather than the situs address, and errors involving TRAs (to the extent records are available).

(d) CONSULTANT may audit general fund or tax increment property tax revenue or other revenues attributable to the SUCCESSOR AGENCY and CITY, districts, (including but not limited base year value audits; administration of tax sharing agreements; tax increment allocation reviews; county allocation and payments reviews).

2.2 Annual Services (Fixed Fee)

Annually, after the Property Tax Roll is available:

(a) CONSULTANT shall establish a Database for CITY available through CONSULTANT's online property tax application.

(b) Utilizing the Database, CONSULTANT will provide:

(1) A listing of the major property owners in the CITY, including the assessed value of their property.

(2) A listing of the major property tax payers, including an estimate of the property taxes.

(3) A listing of property tax transfers which occurred since the prior lien date.

(4) A comparison of property within the CITY by county-use code designation.

(5) A listing by parcel of new construction activity between tax years to provide reports for use in the CITY's preparation of Gann (Propositions 4 and 111) State Appropriation Limit calculations.

(6) Calculate an estimate of property tax revenue anticipated to be received for the fiscal year by the CITY. This estimate is based upon the initial information provided by the County and is subject to modification. This estimate shall not be used to secure the indebtedness of the CITY.

(7) Development of forecast of estimated general fund property tax revenue for future fiscal years.

(8) Development of historical trending reports involving taxable assessed values for the CITY, median and average sales prices, foreclosure activity and related economics trends.

(9) Upon written request, analyses based on geographic areas designated by the CITY to include assessed valuations and square footage computations for use in community development planning.

2.3 Successor Agency Services

Successor Agency Services including but not limited to:

- (a) Tax increment projections
- (b) Cash flows for the Successor Agency by Project Area
- (c) Assistance with Redevelopment Obligation Payment Schedules
- (d) Assistance in providing property tax information for the taxing agencies receiving property tax revenues from former Project Areas
- (e) Estimates of property tax revenues to be received by the taxing entities from former Project Areas
- (f) Provide property tax information to the Oversight Board at the direction of the Successor Agency
- (g) Provide access to the Oversight Board to City and former redevelopment agency documents at the direction of the Successor Agency
- (h) Monitor the County distribution of tax-sharing revenues to the taxing entities of the former redevelopment agency
- (i) Coordinate with the Auditor-Controller the relationship between the tax-sharing, debt service and other obligations of former redevelopment agency
- (j) Prepare as needed an assessment resources available to the Successor Agency to meet the long term obligations of the former redevelopment agency

2.4 Quarterly Services/Monthly Services (Fixed Fee)

The CONSULTANT shall perform the following services quarterly:

- (a) A listing of property tax appeals filed on properties in the CITY (selected counties).
- (b) A listing of property transfers that have occurred since the last report.
- (c) Monthly update of CONSULTANT’S web-based software program to include parcel transfer data and, in select counties, appeal updates.

2.5 On-Going Consultation (Fixed Fee)

During the term of this Agreement, CONSULTANT will serve as the CITY's resource staff on questions relating to property tax and assist in estimating current year property tax revenues. On-going consultation would include, but not be limited to, inquiries resolved through use of the CITY's database.

3.0 OPTIONAL SERVICES

The following services are available on a time and materials basis:

3.1 Specified Data

Generation of specialized data-based reports or the development of special geo-based designations from CITY maps or geographic areas which would require additional programming, the purchase of additional data, costs for county staff research, additional historical parcel tracking by CONSULTANT or similar matters not necessary to carry out services outlined in Section 2.0.

3.2 County Research

Any research with County agencies for which CONSULTANT does not have a current database.

3.3 Specialized Services

Other services for which the CONSULTANT has expertise as requested by the CITY.

3.4 Additional Meetings Requested

Meetings in excess of the annual meeting to review the analysis of property tax data, trending information, and other findings with CITY shall be considered an Optional Service.

4.0 ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement, unless such additional services are authorized in advance and in writing by the City Council or City Manager, or Contract Officer of City. Consultant shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

5.0 OBLIGATIONS OF THE PARTIES WITH RESPECT TO SERVICES

5.1 City Materials and Support

CITY agrees to provide the following information:

1. Current CITY maps;
2. A copy of reports received by the CITY annually from the Auditor-Controller's office detailing assessed values (secured, unsecured and utilities), as well as unitary values for reconciliation analysis;
3. Parcel listing and maps of CITY parcel annexations since the lien date roll;
4. A listing of the CITY levies assessment districts and direct assessments.
5. SUCCESSOR AGENCY formation documents, debt service schedules, plan caps, DDA/OPA agreements.
6. Remittance Advices

5.2 Compliance with Law

All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the CITY and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered.

5.3 License, Permits, Fees and Assessments

CONSULTANT shall obtain such licenses, permits and approvals (collectively the "Permits") as may be required by law for the performance of the services required by this Agreement. CITY shall assist CONSULTANT in obtaining such Permits, and CITY shall absorb all fees, assessments and taxes which are necessary for any Permits required to be issued by CITY.

5.4 Further Responsibilities of Parties

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

6.0 CONSIDERATION

6.1 Base Fixed Fee Services

CONSULTANT shall provide the Base Services described in Section 2.0 above, for a fixed annual fee of \$15,840.00 (invoiced quarterly).

The fee for the first 3 years of this Contract shall be the annual fixed fee as noted, not to exceed forty seven thousand five hundred twenty dollars (\$47,520.00). In the fourth (4th) year of the contract the Base Fixed Services Fee shall be adjusted by the California Consumer Price Index (CCPI) for all urban consumers as determined by the California Department of Industrial Relations as measured February of the first year to February of third year of this Contract. The revised Base Fixed Services Fee including the CCPI adjustment shall apply to the 4th and 5th years of the Contract. If this Contract is extended month to month as provided for in Section 7.4, the Base Fixed Fee shall be adjusted annually by the California Consumer Price Index (CCPI) for all items as determined by the California Department of Industrial Relations as measured February to February by the California All Urban Consumers index. In no event shall the increase exceed 5%.

6.2 Base Contingent Fee Services

For Base Services pursuant to Section 2.1 which are payable on a contingent basis, CONSULTANT shall receive 25 percent of general fund or tax increment property tax revenue or other revenues attributable to SUCCESSOR AGENCY, CITY, districts, or funds recovered or reallocated which are directly or indirectly the result of an audit, analysis or consultation performed by CONSULTANT (including but not limited to base year value audits; administration of tax sharing agreements; tax increment allocation reviews; county allocation reviews). CONSULTANT shall separate and support said reallocation and provide CITY with an itemized invoice showing all amounts due as a result of revenue recovery or reallocation. CITY shall pay audit fees after CONSULTANT's submittal of evidence that corrections have been made by the appropriate agency. Payment to CONSULTANT shall be made within thirty (30) days after CITY receives its first remittance advice during the fiscal year for which the correction applies.

6.3 Optional Services

Fees for Optional Services as outlined in Services in Section 3.0 above (except Section 3.4) shall be billed at the following hourly rates:

Partner \$225 per hour

Principal	\$195 per hour
Programmer	\$150 per hour
Associate	\$150 per hour
Senior Analyst	\$100 per hour
Analyst	\$ 65 per hour
Administrative	\$ 45 per hour

Hourly rates are exclusive of expenses and are subject to adjustment by CONSULTANT annually. On July 1st of each year CONSULTANT shall provide CITY with an updated schedule of hourly rates. The rates will not be increased by more than five percent (5%) per year. In addition, expenses for Optional Services shall be billed at 1.15 times actual incurred costs.

6.4 Indirect Expenses

Except as specified above, no other charges shall be made for direct or indirect expenses incurred by CONSULTANT in performing the services in the Scope of Services including for administrative overhead, salaries of CONSULTANT’S employees, travel expenses or similar matters.

6.5 Due Date

All fees are due 30 days immediately following billing. All amounts that are not paid when due shall accrue interest from the due date at the rate of one percent per month (12% per annum).

6.6 Invoice

The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all supplies properly charged to the Services.
- C. Line items for all travel properly charged to the Services.
- D. Line items for all equipment properly charged to the Services.
- E. Line items for all materials properly charged to the Services.
- F. Line items for all subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

7.0 TERM PERFORMANCE SCHEDULE

7.1 Time of Essence

Time is of the essence in the performance of this Agreement.

7.2 Schedule of Performance

CONSULTANT shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "A", and incorporated herein by this reference. When requested by the CONSULTANT, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

7.3 Force Majeure

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the CONSULTANT, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the CITY, if the CONSULTANT shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified.

7.4 Term

Unless earlier terminated in accordance with Section 11.6 of this Agreement, this Agreement shall continue in full force and effect for five (5) years, and, unless a notice of termination is given on the fourth anniversary date, shall be automatically extended from year to year until and such notice shall be given.

8.0 COORDINATION OF WORK

8.1 Representative of CONSULTANT

The following principals of CONSULTANT are hereby designated as being the principals and representatives of CONSULTANT authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Paula Cone
HdL COREN & CONE
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for CITY to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of CONSULTANT and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by CONSULTANT without the express written approval of CITY.

8.2 Contract Officer

The Contract Officer shall be such person as may be designated by the City Manager of CITY. It shall be the CONSULTANT'S responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the CONSULTANT shall refer any decisions which must be made by CITY to the Contract Officer. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Contract Officer.

8.3 Prohibition Against Subcontracting or Assignment

The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for the CITY to enter into this Agreement. Therefore, CONSULTANT shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the CITY. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of CITY. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than fifty percent (50%) of the present ownership and/or control of CONSULTANT, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the CONSULTANT or any surety of CONSULTANT of any liability hereunder without the express consent of CITY.

8.4 Independent Consultant

Neither the CITY nor any of its employees shall have any control over the manner, mode or means by which CONSULTANT, its agents or employees, perform the services required herein, except as otherwise set forth herein. CITY shall have no voice in the selection, discharge, supervision or control of CONSULTANT'S employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. CONSULTANT shall perform all services required herein as an independent CONSULTANT of CITY and shall remain at all times as to CITY a wholly independent CONSULTANT with only such obligations as are consistent with that role. CONSULTANT shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of CITY. CITY shall not in any way or for any purpose become or be deemed to be a partner of CONSULTANT in its business or otherwise or a joint venturer or a member of any joint enterprise with CONSULTANT.

Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

9.0 INSURANCE AND INDEMNIFICATION

9.1 Insurance

The CONSULTANT shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to CITY, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

(a) Comprehensive General Liability Insurance. The policy of insurance shall be in an amount not less than either (i) a combined single limit of \$1,000,000 for bodily injury, death and property damage or (ii) bodily injury limits of \$500,000 per person, \$1,000,000 per occurrence and \$1,000,000 products and completed operations and property damage limits of \$500,000 per occurrence and \$500,000 in the aggregate.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the CONSULTANT and the CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the CONSULTANT in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of \$250,000 per person and \$500,000 per occurrence and property damage liability limits of \$100,000 per occurrence and \$250,000 in the aggregate or (ii) combined single limit liability of \$500,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Errors and Omissions (Professional Liability). A policy of professional liability insurance written on a claims made basis in an amount not less than One Million Dollars (\$1,000,000).

9.2 General Requirements

All of the above policies of insurance shall be primary insurance and shall name the CITY, its officers, employees and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the CITY, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice by registered mail to the CITY. In the event any of said policies of insurance are cancelled, the CONSULTANT shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 9.0 to the Contract Officer. No work or services under this Agreement shall commence until the CONSULTANT has provided the CITY with

Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the CITY.

9.3 Indemnification

CONSULTANT agrees to indemnify the CITY, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of CONSULTANT, its agents, employees, or invitees, provided for herein, or arising from the negligent acts or omissions of CONSULTANT hereunder, or arising from CONSULTANT'S negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of the CITY, its officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the CITY, its officers, agents or employees, who are directly responsible to the CITY.

9.4 Sufficiency of Insurer or Surety

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Contract Officer of the CITY due to unique circumstances. In the event the Contract Officer of CITY ("Contract Officer") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the CITY, the CONSULTANT agrees that the minimum limits of the insurance policies and the performance bond required by this Section 9.0 may be changed accordingly upon receipt of written notice from the Contract Officer; provided that the CONSULTANT shall have the right to appeal a determination of increased coverage by the Contract Officer to the CITY Council of CITY within 10 days of receipt of notice from the Contract Officer .

10.0 RECORDS AND REPORTS

10.1 Reports

CONSULTANT shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

10.2 Records

CONSULTANT shall keep, and require sub-consultants to keep, such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of CITY, including the right to inspect, copy, audit and make records and transcripts from such records.

Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the CITY shall have access to such records in the event any audit is required.

10.3 Non-Disclosure of Proprietary Information

In performing its duties under this Agreement, CONSULTANT will produce reports, technical information and other compilations of data to CITY. These reports, technical information and compilations of data are derived by CONSULTANT using methodologies, formulae, programs, techniques and other processes designed and developed by CONSULTANT at a substantial expense. CONSULTANT'S reports, technical information, compilations of data, methodologies, formulae, software, programs, techniques and other processes designed and developed by CONSULTANT shall be referred to as Proprietary Information. CONSULTANT'S Proprietary Information is not generally known by the entities with which CONSULTANT competes.

CONSULTANT desires to protect its Proprietary Information. Accordingly, CITY agrees that neither it nor any of its employees, agents, independent CONSULTANTs or other persons or organizations over which it has control, will at any time during or after the term of this Agreement, directly or indirectly use any of CONSULTANT'S Proprietary Information for any purpose not associated with CONSULTANT'S activities. Further, CITY agrees that it nor any of its employees, agents, independent CONSULTANTs or other persons or organizations over which it has control, will disseminate or disclose any of CONSULTANT'S Proprietary Information to any person or organization not connected with CONSULTANT, without the express written consent of CONSULTANT. The CITY also agrees that consistent with its obligations under the California Public Records Act and related disclosure laws, it will undertake all necessary and appropriate steps to maintain the proprietary nature of CONSULTANT'S Proprietary Information.

Any use of the Proprietary Information or any other reports, records, documents or other materials prepared by CONSULTANT hereunder for other projects and/or use of uncompleted documents without specific written authorization by the CONSULTANT will be at the CITY's sole risk and without liability to CONSULTANT, and the CITY shall indemnify the CONSULTANT for all damages resulting therefrom.

10.4 Release of Documents Pursuant to Public Records Act

Notwithstanding any other provision in this Agreement, all obligations relating to disclosure of Proprietary Information remain subject to the Freedom of Information Act or California Public Records Act, Cal. Gov't Code §§ 6250 et seq. (collectively, the "PRA"). The Parties intend that if CITY is served with a request for disclosure under the PRA, or any similar statute, the CITY in good faith will make the determination as to whether the material is discloseable or exempt under the statute, and shall resist the disclosure of Proprietary Information which is exempt from disclosure to the extent allowable under the law. CITY shall advise CONSULTANT in writing five (5) days prior to the intended disclosure of any decision to disclose Proprietary Information, and the reasons therefore, and if CONSULTANT then timely advises CITY in writing that it objects to the disclosure, CITY shall not disclose the

information. In such case, CONSULTANT shall then be solely liable for defending the non-disclosure and shall indemnify and hold CITY harmless for such nondisclosure.

11.0 ENFORCEMENT OF AGREEMENT

11.1 California Law

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and CONSULTANT covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

11.2 Disputes

In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefor. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit CITY's or the CONSULTANT'S right to terminate this Agreement without cause pursuant to Section 11.6.

11.3 Waiver

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

11.4 Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

11.5 Legal Action

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

11.6 Termination Prior to Expiration of Term

This Section shall govern any termination of this Agreement. The Parties reserve the right to terminate this Agreement at any time, with or without cause, upon forty-five (45) days' written notice to the non-terminating party, except that where termination is for cause, the Parties will comply with the dispute resolution process in Section 11.2. Upon issuance of any notice of termination, CONSULTANT shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. The CONSULTANT shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 11.2.

11.7 Attorneys' Fees

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

12.0 CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

12.1 Non-liability of CITY Officers and Employees

No officer or employee of the CITY shall be personally liable to the CONSULTANT, or any successor in interest, in the event of any default or breach by the CITY or for any amount which may become due to the CONSULTANT or to its successor, or for breach of any obligation of the terms of this Agreement.

12.2 Conflict of Interest

No officer or employee of the CITY shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any

13.4 Severability

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

13.5 Corporate Authority

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

CITY OF HEMET

Ronald E. Bradley, Interim City Manager

ATTEST:

By: _____
Sarah McComas, City Clerk

APPROVED AS TO FORM:

By: _____
Eric S. Vail, City Attorney

HdL COREN & CONE
A California Corporation

HdL COREN & CONE

By: _____

By: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____, ____ before me, _____, personally appeared _____, 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: _____

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(S)	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	_____ NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ _____	_____ DATE OF DOCUMENT

SIGNER IS REPRESENTING:
 (NAME OF PERSON(S) OR ENTITY(IES))

 SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

SCHEDULE OF PERFORMANCE

TIMELINE FOR DELIVERABLES

July/August	Data available for purchase from counties
September 30	Dataset and software available for installation on city computers
September-October	Unsecured audits performed and forwarded to county assessor
October-February	Delivery of preliminary property tax reports
December-June	Monthly data updates – Database/software Appeals quarterly updates emailed in counties where the data is available
March	Appeals quarterly updates emailed in counties where the data is available
March/April	General Fund Budget Projections
April/May	Final Books – Addendums emailed to clients
June	Appeals quarterly updates emailed in counties where the data is available
Ongoing	Secured Audits – City Revenue audits of City, and District receipts for correctness Property sales reports City and Successor Agency mid-year budget reviews and budget projections Analytical work at the request of clients

#13



Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Ronald E. Bradley, Interim City Manager
Gary Thornhill, Interim Assistant City Manager
Deanna Elliano, Community Development Director

DATE: September 24, 2013

RE: **DAA 11-001: FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. 04-002** - A proposed amendment to Development Agreement No. 04-002 between the City of Hemet and United Security Bank for the subdivision of 121.3 acres into 177 single family residential lots (VTTM 31513) in the Tres Cerritos Specific Plan (SP 90-009) located on the northeast corner of Old Warren Road and Celeste Road

PROJECT APPLICANT INFORMATION

Owner: United Security Bank
Authorized Agent: Gary Winter, Attorney
Project Location: Northeast corner of Old Warren Road and Celeste Road
APN Information: 441-740-001 thru 005; 441-740-012; and 441-750-001 thru 004.
Lot Area: 121.3± acres

RECOMMENDED ACTION

That the City Council:

1. *Introduce, read by title only, and waive further reading of **Ordinance Bill No. 13-037**, approving DAA 11-00, the First Amendment to Development Agreement 04-002 for the Tres Cerritos West development; and*
2. *Direct staff to file a Notice of Determination with the County Clerk in compliance with the California Environmental Quality Act.*

BACKGROUND

On January 11, 2005, the City Council previously adopted Ordinance No. 1727 approving a Development Agreement (DA 04-002) for the Tres Cerritos West project, located at the northwest corner of Myers Road and Celeste Drive (see Attachment 3 for location). The project involves a Vesting Tentative Tract Map (VTTM 31513) which subdivides 121.3 acres in the westernmost portion of the Tres Cerritos Specific Plan (SP 90-009) into 177 single family residential lots as shown in Attachment No. 4. The property was mass graded several years ago, but a final map has not yet been approved and recorded, due to the downturn in

the housing market. The term of Vesting Tentative Tract Map No. 31513 runs with that of the Development Agreement.

The Tres Cerritos West project is a master-planned, single-family residential community with hillside view lots ranging in size between 6,088 to 15,786 sq. ft., with an average lot size of 8,884 sq.ft. The project preserves 59.1 acres of hillside, creates a 3.5 acre vernal pool preserve (as required by the wildlife agencies), and provides a 1.1 acre private park. An illustrative of the land use plan for the project is provided as Attachment No. 5 to this report.

The term of the original Development Agreement was for ten (10) years and will expire on February 11, 2015. The original agreement was between the City and the prior owner/developer, Corman Brooke, LLC. United Security Bank presently owns the property and is asking for a five (5) year extension of time due to the time lost in the downturn of the economy, and is also requesting some additional clarifications to the original agreement as part of the proposed Amendment. The bank is now actively seeking to sell the property to a developer to complete the project, and desires to clarify certain provisions in the agreement and extend the term in order to provide greater certainty for the new owner.

Development agreements are authorized under the Government Code Sections 65864-65869.5 ("Development Agreement Legislation"). This section of state law gives a local agency the authority to enter into a development agreement with any person or entity having a legal or equitable interest in real property for the development of the property. Development agreements are generally desired in order to provide the developer security and clarity in the development rights associated with an already approved project. In exchange for this assurance, a city may also negotiate for the provision of additional public benefits or improvements that would not otherwise be required as a component of the standard development conditions and fees. Entering into a Development Agreement is voluntary for both parties, and such agreements may also be used to provide incentives to the developer to encourage economic development within the City. A well-crafted development agreement usually represents a "win-win" for both the City and the developer.

PROPOSED DEVELOPMENT AGREEMENT AMENDMENT PROVISIONS

The proposed First Amendment to the Development Agreement is provided as Attachment No. 1A. The original adopted Development Agreement DA 04-002 is included as Attachment No. 6 for reference. The City Attorney's office has reviewed and drafted the provisions of the Amended Agreement in coordination with Staff and the applicant.

a. Extension of the Term

The original term of the Agreement is for a period of ten (10) years which will expire on February 11, 2015. Extending the Agreement by an additional 5 years will allow a future developer to reasonably complete the project. Per the requirements of the original Agreement, the future developer will pay a Development Agreement fee of \$2,997 per unit to the City as the project is built out. These fees would be deposited into the City's general fund and would equate to a developer contribution of \$530,469.00. Fifty percent of the amount is due at the time of the first building permit, and the balance is due at the 80th building permit. However, these fees would only be required of the project if the Agreement is still in effect.

b. Regional Drainage Improvement Obligations

The original Development Agreement has several provisions that are related to solving the regional drainage problems found in the area. The original agreement required that the property owner submit a

regional drainage feasibility study, agree to assist in the formation of a CFD for construction of the needed regional drainage facilities, and agree to assist in providing the needed drainage easements for the properties in the Tres Cerritos East area of the Specific Plan. As part of the proposed Amendment, the applicant is asking for a cap on the percentage of costs of the regional drainage facilities that will be apportioned to the property. The original agreement required that the property owner provide a feasibility study for the regional drainage of the area. The feasibility study has been completed which estimates that the Tres Cerritos West project should contribute a maximum of 40% of the cost of construction of the regional drainage facility (i.e. the perimeter drainage channel at Cawston and Devonshire) proposed for the Tres Cerritos East project. The proposed Amendment serves to outline those provisions of the original Agreement that have already been satisfied, and to provide clarity on the remaining obligations of the project towards the regional drainage system.

c. Participation in Public Safety Community Facilities District (CFD)

In exchange for the City's consideration of extending and modifying the Agreement, the City requested that the project be annexed into the City's Public Safety Community Facilities District to assist in the funding of emergency services operations to new residential developments. The developer will be required to initiate proceedings to annex into the District on or before approval of the Final Map for the project. The applicant has agreed to this provision in the Amendment.

The Agreement also requires that an annual review of the Owner's compliance with the terms, conditions, and covenants of the Agreement be conducted. The costs of such a review will be borne by the developer for an amount not to exceed \$2,500 annually. This is standard language for most development agreements in the City, but had not been required over the past few years as most of the projects subject to these provisions were on hold or in receivership.

PLANNING COMMISSION RECOMMENDATION

The City Council previously adopted Resolution No. 2671, specifying the process for approval of development agreements. The Resolution requires that the Planning Commission make five (5) determinations, (or Findings), in their recommendation to the Council. The Commission's role is to determine consistency with the General Plan, not the terms of the agreement. Those determinations, along with the substantiation for each determination, are indicated in the Planning Commission Resolution No. 13-014 included as Attachment 2 to this report.

The Planning Commission determined that the project remains consistent with the City's General Plan and the Tres Cerritos Specific Plan. The project will contribute to the overall drainage solution for the area, and complies with all development and design standards of the Specific Plan. Two points of public access will provide safe access for residents, visitors and emergency vehicles. Additionally, open space reserve areas have been set aside for sensitive plant and wildlife. The architectural plans for any future development will be reviewed by the Planning Commission as a Site Development Review. Therefore, the Planning Commission unanimously adopted Resolution No. 13-014 at their meeting of August 20, 2013, recommending approval of DAA 11-001 to the City Council.

PUBLIC NOTICE & COMMUNICATIONS

The proposed amendment to the Development Agreement requires a public hearing before both the Planning Commission and the City Council. The 10-day public hearing notice for both hearings was mailed out to all properties within 500 foot radius of the subject site. No members of the public spoke regarding

this item at the Planning Commission hearing, nor were any comments received. As of the date of this report, the Planning Division has not received any letters of comment from the public in response to the public hearing notice for the City Council meeting.

ENVIRONMENTAL DETERMINATION

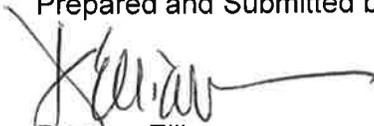
The City Council previously adopted a Mitigated Negative Declaration for the proposed Tres Cerritos West project, including the Vesting TTM 31513 and the original Development Agreement. The proposed amendment to the Development Agreement will not result in an increase in the density or intensity of the project and will not result in project changes that were not previously analyzed under the approved Mitigated Negative Declaration and Mitigation Monitoring Program. As such, DAA 11-001 falls within the scope of, and was analyzed under the previously approved Mitigated Negative Declaration and Mitigation Monitoring Program for the project. Furthermore, based on the Planning Division staff's knowledge of the project and surrounding developments, the Community Development Director concludes that there has been no change in circumstances under which the project is being undertaken that would require additional analysis under CEQA. Finally, the City has not been presented with any information contrary to this conclusion nor any information from which it could be fairly argued that DAA 11-001 involves new significant effects on the environment or substantially increases the severity of a previously identified effect.

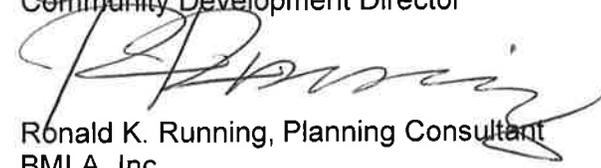
For the reasons stated above, the Planning Commission has recommended that the previously adopted MND adequately addresses the current project, and thus, the proposal qualifies as an exemption from the California Environmental Quality Act ("CEQA") under section 15061(b)(3) of the CEQA Guidelines.

FISCAL IMPACT:

The proposed Amendment to extend the Development Agreement for the Tres Cerritos West subdivision will facilitate the City receiving the fiscal benefits as outlined in the original agreement, including the payment from the developer of \$530,469.00 to the City, participation in the Public Safety CFD, and participation in the regional drainage infrastructure improvements; in addition to the standard permit fees and subdivision improvements required as conditions of the development. Therefore, it is the opinion of Staff and the City Attorney that the extension of the agreement and the approval of DAA 11-001 is a benefit to the City.

Prepared and Submitted by:


Deanna Elliano
Community Development Director


Ronald K. Running, Planning Consultant
BMLA, Inc.

ATTACHMENTS

- 1) City Council Ordinance Bill No. 13-037 to adopt the First Amendment to DA 04-002
 - a. First Amendment to DA 04-002

- 2) Planning Commission Resolution No. 13-014
- 3) Existing Zoning/Vicinity Map
- 4) Existing VTTM 31513
- 5) Adopted SP 90-009 Land Use Plan
- 6) Adopted DA 04-002

Attachment

No. 1

CC Ordinance Bill

No. 13-037

**City Council Meeting of
September 24, 2013**



**CITY OF HEMET
Hemet, California
ORDINANCE BILL NO. 13-037**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
HEMET, CALIFORNIA, APPROVING THE FIRST AMENDMENT
(DAA 11-001) TO DEVELOPMENT AGREEMENT NO. 04-02 FOR
THE TRES CERRITOS WEST PROJECT.**

WHEREAS, on January 11, 2005, the City Council adopted Ordinance No. 1727 approving Development Agreement No. 04-02 for the Tres Cerritos West development project, as well as a Specific Plan Amendment and Vesting Tentative Tract Map 31513; and,

WHEREAS, due to the economic downturn, the current owner of the Tres Cerritos West property, United Security Bank ("Owner") requested certain amendments be made to the Development Agreement, including an extension of the term and a cap on the percentage of the costs of regional drainage facilities that will be apportioned to the property; and,

WHEREAS, the City also desired to amend the Development Agreement to require the property to be annexed into the City's existing Citywide Public Safety Community Facilities District in lieu of creating a new Community Facilities District; and,

WHEREAS, the City and Developer have reached mutual agreement and desire voluntarily to enter into a First Amendment to Development Agreement No. 04-02 to extend the term of the Development Agreement by five years, cap the project's contributions to regional drainage facilities to forty percent of the total costs, and require the property to annex into the City's Public Safety Community Facilities District ("First Amendment"); and

WHEREAS, the City Council finds that the approval of this First Amendment does not trigger the application of any new or increased development fees or exactions

1 or new or changed land use regulations to the project because Vesting Tentative Tract
2 Map 31513 confers on the Owner a vested right to develop the project in accordance
3 with the ordinances, policies and standards that were in effect at the time Vesting
4 Tentative Tract Map 31513 was approved; and,

5 **WHEREAS**, on August 20, 2013, the Planning Commission, after duly noticed
6 public hearing, recommended approval of the First Amendment; and,

7 **NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET DOES**
8 **HEREBY ORDAIN AS FOLLOWS:**

9 **SECTION 1: APPROVAL OF FIRST AMENDMENT.**

10 The First Amendment, attached hereto as Exhibit "A" and incorporated herein by
11 this reference, is hereby approved and adopted by the City Council and the City
12 Manager is authorized to execute said First Amendment.

13 **SECTION 2: 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 3: EFFECTIVE DATE.**

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

25 **SECTION 4: PUBLICATION.**

26 The City Clerk is authorized and directed to cause this Ordinance to be published
27 within fifteen (15) days after its passage in a newspaper of general circulation and
28 circulated within the City in accordance with Government Code Section 36933(a) or, to

1 cause this Ordinance to be published in the manner required by law using the
2 alternative summary and pasting procedure authorized under Government Code
3 Section 39633(c).

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

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

6

7

Robert Youssef, Mayor

8

9 **ATTEST:**

APPROVED AS TO FORM:

10

11 _____
Sarah McComas, City Clerk

Eric S. Vail, City Attorney

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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:**

12
13 _____
14 Sarah McComas, City Clerk
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit

No. 1A

**First Amendment to
DA 04-002**

**City Council Meeting of
September 25, 2013**

PLEASE COMPLETE THIS INFORMATION
RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
M	A	L	465	426	PCOR	NCOR	SMF	NCHG	EXAM
						T:	CTY	UNI	

Space above this line for recorder's use only

**EXEMPT FROM RECORDER FEES PURSUANT TO
GOV. CODE § 27383**

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT NO. 04-02
"Tres Cerritos West"**

by and between

the

CITY OF HEMET

and

UNITED SECURITY BANK

Dated _____, 2013

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. 04-02
“Tres Cerritos West”

This First Amendment to Development Agreement No. 04-02 (“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 (“City”), and **UNITED SECURITY BANK**, a California limited liability company (“Owner”), as follows. City and Owner may be collectively referred to herein as the “Parties.”

RECITALS

- A. City and Corman Brooke LLC, (“Original Owner”) entered into a Development Agreement on January 11, 2005, recorded by the Riverside County Recorder as Document Number 2005-0104610 (“Agreement”), providing the terms and conditions under which the Original Owner planned to develop approximately 121 acres of land located within the City, the legal description of which is attached as Exhibit “A” hereto, (“TC-West Property”) with a mixed density housing development with open space, recreational amenities, landscaping and certain Public Improvements (“TC-West Project”).
- B. The TC-West Property is now under new ownership. Owner is now in control of the TC-West Property and per Section 1.16 of the Agreement has succeeded in interest to the rights and obligations of the Original Owner under the Agreement.
- C. The original Term of the Agreement was for ten (10) years. The Parties contemplated that TC-West Project would be entirely built-out by the expiration of the original Term. Due to national, state, and regional market and economic conditions beyond the control of either the Original Owner, the Owner or the City, the TC-West Project requires additional time for completion. Therefore, the Parties desire to extend the Term of the Development Agreement by five (5) years as provided herein.
- D. The Parties further concur that the Owner will cause the TC-West Project to annex into the Public Safety Services Community Facilities District as provided herein.
- E. The City finds that this Amendment is not a Subsequent Development Approval, as that phrase is defined in the Agreement, because this Amendment does not materially and substantially change the TC-West Project, the Agreement, or any of the Existing Development Approvals for the TC-West Project. Therefore, this Amendment will not trigger the application of any Subsequent Land Use Regulations, new or increased Development Exactions or Development Impact Fees, including TUMF and the MSHCP Fee pursuant to Section 5.4.2 of the Agreement.
- F. Pursuant to Government Code Section 66498.1(b) and Hemet Municipal Code Section 70-166(a), the approval of VTTM 31513 for the TC-West Project conferred on the Owner a vested right to develop the TC-West Project in accordance with the ordinances, policies and standards that were in effect at the time VTTM 31513 was approved. Therefore, notwithstanding Section 28-70.3(f)(4) of the Hemet Municipal Code, this Amendment

does not subject the TC-West Project to TUMF program, and the TC-West Project remains exempt from the payment of the TUMF.

G. The Parties acknowledge that the following obligations contained in the Agreement have been satisfied and this Amendment is not intended to revive any obligations that have been satisfied:

1. The offer of dedication by Signal Hill Family Limited partnership for Regional Drainage Facilities.
2. Provision of the Feasibility Study to analyze the course for the Regional Drainage Facilities.
3. Specific Plan Amendment (SPA 06-001) for the Tres Cerritos East Property has been submitted and approved by City Council by Ordinance No. 1847 on April 10, 2012, effective May 10, 2012.
4. Owner has agreed to the formation of a funding mechanism (Community Facilities District) for the financing of the Regional Drainage Facilities.

OPERATIVE PROVISIONS

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

1. **INCORPORATION OF RECITALS.** The City Council finds that the foregoing recitals are true and correct and incorporates them herein by reference.

2. **AMENDMENTS.** The Agreement is hereby amended as follows:

2.1 **Development Impact Fees.** Section 1.6 of the Agreement is hereby amended to read:

“Development Impact Fees” shall mean those standard development impact fees imposed and levied by the City to recover the cost of planned public facilities and to mitigate impacts of projects on the City.”

2.2 **Term.** Section 2.4 of the Agreement is hereby amended to read:

Term. The term of this Agreement shall commence on the Effective Date and shall extend for a period of fifteen (15) years thereafter, unless this Agreement is terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto. This Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order after exhaustion of any appeals directed against the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval by the City Council of City of this Agreement.”

2.3 Feasibility Study. Subsection 3.6.2 (“Feasibility Study”) of the Agreement is hereby amended to read:

“Feasibility Study. Owner has completed and submitted to City a Feasibility Study analyzing the potential cost of designing, constructing, and maintaining the various alternative locations, designs, configurations, and alignments of the Regional Drainage Facilities being considered by the City which recommended a fair and equitable apportionment of the potential cost of such facilities to be borne by the TC-West Project and TC-West Property through the Drainage CFD. However, the TC-West Project and TC-West Property shall not be apportioned any more than forty percent (40%) of the total estimated costs of such Regional Drainage Facilities assumed to be the perimeter flood control channel along Cawston Avenue and Devonshire Avenue east of Myers Street. If owner has not caused Signal Hill Family Limited partnership to dedicate the irrevocable offer of dedication for the Regional Drainage Facilities, then Owner shall cause the Feasibility Study to analyze alternative course for the Regional Drainage Facilities that would not require location of such facilities on property owned or controlled by Signal Hill Family Limited Partnership.

2.4 Financing of Public Services. Section 3.8 (“Financing of Public Services”) of the Agreement is hereby amended to read:

“Financing of Public Services. The City has established a Public Safety Services Community Facilities District (the “Services CFD”) pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, to finance public safety services City-wide. Owner agrees that it will initiate proceedings with the City to annex the TC-West Property into the Services CFD on or before the City’s approval of a final map for VTTM 31513.”

2.5 Notices. Section 10.4 (“Notices”) of the Agreement is hereby amended by replacing the existing addresses for notice with the following:

To City: City of Hemet
Attn: City Manager
445 E. Florida Ave.
Hemet, CA 92543
Facsimile: (951) 765-3785

With a copy to: Burke, Williams & Sorensen, LLP
Attn: Eric Vail
2280 Market St., Suite 300
Riverside, CA 92501
Facsimile: (951) 788-5785

To Owner: United Security Bank
Attn: Ken Donahue, Executive Vice President and Chief
Administrative Officer

2126 Inyo Street
Fresno, CA 93721
Facsimile: () -

With a copy to: The Law Offices of Gary L. Winter, Inc.
Attn: Gary Winter, Esq.
2525 Alluvial Ave. Suite 101
Clovis, CA 93611
Facsimile: (559)354-5278

3. GENERAL PROVISIONS.

3.1 **Remainder Unchanged.** Except as specifically modified and amended in this Amendment, the Agreement remains in full force and effect and binding upon the parties.

3.2 **Definitions.** Except as otherwise stated in this Amendment, the terms and phrases used herein shall be interpreted in accordance with the definitions stated in the Agreement.

3.3 **Integration.** This Amendment consists of pages 1 through 5 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 Amendment.

3.4 **Effective Date.** This 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 City and Owner.

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

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

[Remainder of page intentionally left blank]

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

CITY:

THE CITY OF HEMET

By: Ronald E. Bradley, Interim City Manager

ATTEST:

Sarah McComas, City Clerk

APPROVED AS TO FORM

Eric S. Vail, City Attorney

UNITED SECURITY BANK

By: Dennis Woods
Dennis Woods
President and Chief Executive Officer

By: Ken Donahue
Ken Donahue
Executive Vice President and Chief
Administrative Officer

NOTE: OWNER'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 OWNER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On 9-12, 13 before me, Scott A. Fitzpatrick, personally appeared Dennis Woods and Ken Donahue, 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/het/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 Scott A. Fitzpatrick, (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

Individual: []
Corporate Officers: [X] Dennis R. Woods, President & CEO; Ken Donahue, EVP/CAO

First Amendment To Development Agreement
TITLE OR TYPE OF DOCUMENT "Tres Cerritos West" No. 04-02

3-pages printed both sides
NUMBER OF PAGES

Partner(s): [] Limited [] General []

DATE OF DOCUMENT

Attorney-in-fact: []

Trustee(s): []

NONE
SIGNER(S) OTHER THAN NAMED ABOVE

Guardian/conservator: []

Other: []

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))
United Security Bank

EXHIBIT "A"

LEGAL DESCRIPTION OF TC-WEST PROPERTY

In the City of Hemet, County of Riverside, State of California, being portions of Tract 29550 as shown on a map filed in Book 299, Pages 78 thru 99, inclusive of maps, in the office of the recorder of said County, being more particular:

Lots 1 thru 7; Lots "A" thru "I"; Lot "K"; Lot "L"; Lot "EEE"; Lot "FFF"; Lot "LLL"; and Lot "MMM", all of said Tract.

Attachment No. 2

Planning Commission
Reso. No. 13-014

City Council Meeting of
September 24, 2013



CITY OF HEMET
Hemet, California

RESOLUTION NO. 13- 014

A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF HEMET, CALIFORNIA, RECOMMENDING
TO THE CITY COUNCIL APPROVAL OF AN
AMENDMENT DEVELOPMENT AGREEMENT NO. 04-002
[TRES CERRITOS WEST] BETWEEN THE CITY OF
HEMET AND UNITED SECURITY BANK.

WHEREAS, on January 11, 2005, the City Council adopted Ordinance No. 1727 approving Development Agreement No. 04-002 for the Tres Cerritos West development project, as well as a Specific Plan Amendment and Vesting Tentative Tract Map 31513 to assist in the subdivision of 121.3 acres of land into 177 single family residential lots; and,

WHEREAS, a public notice was published in the Hemet News section of the Press Enterprise giving notice of a public hearing to be held by the Planning Commission on Development Agreement Amendment No. 11-001. The public hearing was held before the Planning Commission on the 20th day of August, 2013, at the hour of 6:00 p.m., with all testimony received being made a part of the public record; and,

NOW, THEREFORE, be it resolved that in consideration of the evidence and findings in the Staff Report dated August 20, 2013. And in consideration of the evidence received at the hearing, and for the reasons discussed by the Commission members at said hearing, the Planning Commission now finds, determines and resolves as follows:

SECTION 1: Development Agreement Findings

- A. The development agreement is consistent with the objectives, policies, general land uses and programs in the General Plan and any specific plan.
- *The proposed amendment to Development Agreement No. 04-002 will assist in the development of the Tres Cerritos Specific Plan (SP 90-9) as amended by SPA 03-2 and SPA 06-001. The proposed development of single family residential lots with the approved Vesting Tentative Tract Map 31513 at a density of 3.3 d.u./ac. is consistent with the Low Density*

Planning Commission Resolution No. 13-014
Development Agreement Amendment No. 11-001 for DA No. 04-002
TRES CERRITOS WEST – TRACT 31513

1 Residential designation which allows for a density range of 2.1 to 5.0
2 d.u./ac.

- 3 • The Specific Plan has land use plans, design guidelines and standards
4 that eliminate conflicts between adjacent lands uses, while providing clear
5 buffers and transitions between dissimilar uses. The Specific Plan
6 preserves significant environmental features and incorporates open space
7 into the fabric of the new development.
- 8 • The Hemet General Plan calls for master planned communities and
9 facilities that reduce the cost of facilities and public infrastructure
10 improvements by eliminating uncertainties as to future utility,
11 transportation, and school capacities. The Tres Cerritos Specific plan
12 provides master utility, circulation and open space plans for future
13 development.

- 14
- 15 B. The development agreement is compatible with the use authorized in, and
16 the regulations prescribed for, the land use districts in which the real
17 property is located.

18
19 *The Development Agreement specifies development that is only allowed in
20 the Tres Cerritos Specific Plan (SP 90-009) for detached single family
21 residential.*

- 22
- 23 C. The development agreement is in conformity with public convenience,
24 general welfare and good land use practice.

25
26 *The proposed development is designed to provide safe access for
27 residents, visitors and emergency vehicles. Two points of access will be
28 provided for all development. Open space reserve areas have been set
29 aside to protect and preserve the sensitive wildlife habitat found in the area.
30 The unique topographic features of the site have been retained with the
31 steeper portions of the site kept in open space preserves.*

- 32
- 33 D. The adoption of the development agreement will not be detrimental to the
34 health, safety, and general welfare.

35
36 *The adoption of the Development Agreement will convey vested rights to
37 develop the Tres Cerritos West portion of the Tres Cerritos Specific Plan.
38 Future land uses and intensities have been analyzed so as to determine
39 compatibility and safety for existing development surrounding these areas
40 as well as future residents, visitors and businesses in these particular
41 areas. Adequate parking and vehicular and pedestrian access is provided.
42 Off-site improvements will be constructed which will insure traffic safety.
43 Landscaping in appropriate areas will be installed to prevent erosion and
44 allow adequate drainage and storm water flow. Conditions of approval*

1 have been required which will provide for improved streets, curbs, gutters,
2 sidewalks, sewer, water, and drainage improvements.

- 3
4 E. The adoption of the development agreement will not adversely affect the
5 orderly development of property or the preservation of the property value.
6

7 *The Development Agreement requires that future development be*
8 *constructed in accordance with the plans and specifications submitted to*
9 *and approve by the City of Hemet. The plans and specifications of the City*
10 *of Hemet have been developed specifically to implement the Hemet*
11 *General Plan, federal, state and local regulations, and to preserve and*
12 *protect property values. Substantial land use buffering is proposed in the*
13 *development to adequately protect the surrounding areas.*
14

15 **SECTION 3: PLANNING COMMISSION ACTIONS**

16
17 The Planning Commission hereby takes the following actions:

- 18
19 1. The Planning Commission, based upon the findings herein, recommends that the
20 City Council adopt the attached ordinance incorporating the proposed amendment to
21 Development Agreement No. 04-002.
22

23
24 **PASSED, APPROVED AND ADOPTED** this 20th day of August, 2013, by the
25 following vote:
26

27
28 **AYES:** Chairman John Gifford, Vice Chairman Greg Vasquez, and
29 Commissioners Rick Crimeni, Vince Overmyer and Michael Perciful

30 **NOES:** None

31 **ABSTAIN:** None

32 **ABSENT:** None
33

34
35
36
37 
38 _____
39 John Gifford, Chairman
40 Hemet Planning Commission

41
42
43 **ATTEST:**

44 _____
45 Melissa Couden, Records Secretary
Hemet Planning Commission

Planning Commission Resolution No. 13-014
Development Agreement Amendment No. 11-001 for DA No. 04-002
TRES CERRITOS WEST – TRACT 31513

**Attachment
No. 3
Zoning/Vicinity Map**

**City Council Meeting of
September 24, 2013**

Attachment No. 4

VTTM 31513

**City Council Meeting of
September 25, 2013**

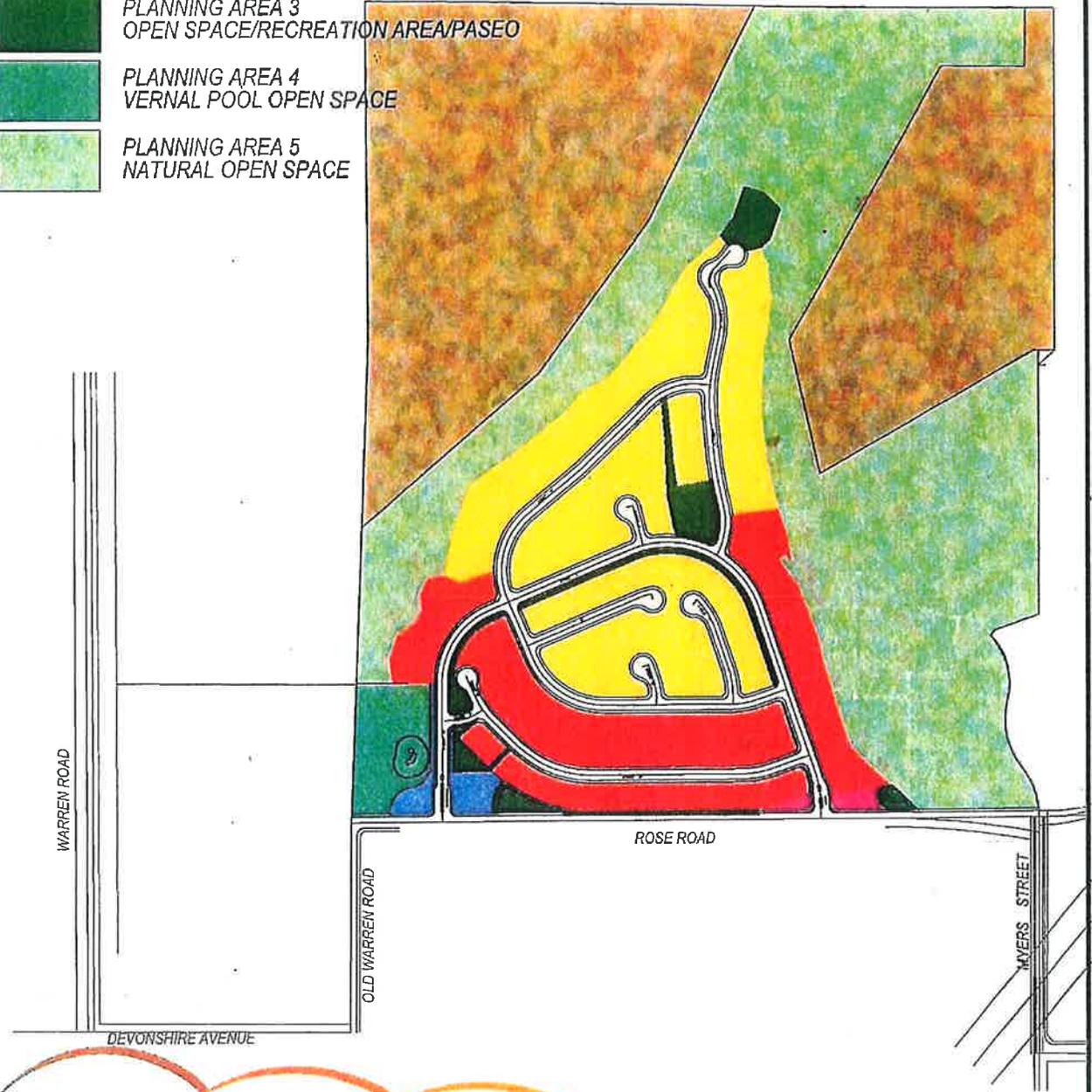
Attachment No. 5

SP 90-009
Land Use Plan

City Council Meeting of
September 24, 2013

TRES CERRITOS WEST

-  **PLANNING AREA 1**
6,000 S.F. LOT SIZE
-  **PLANNING AREA 2**
8,000 S.F. LOT SIZE
-  **PLANNING AREA 3**
OPEN SPACE/RECREATION AREA/PASEO
-  **PLANNING AREA 4**
VERNAL POOL OPEN SPACE
-  **PLANNING AREA 5**
NATURAL OPEN SPACE



TRES CERRITOS WEST CONCEPTUAL LAND USE PLAN

EXHIBIT 3.1

Attachment No. 6

DA 04-002

City Council Meeting of
September 24, 2013

DEVELOPMENT AGREEMENT

[DA NO. 04-02]

"Tres Cerritos West"

By and Between

the

CITY OF HEMET

and

CORMAN BROOKE LLC

DATED January 11, 2005

[For Reference Only]

TABLE OF CONTENTS

	<u>Page No.</u>
1.0 DEFINITIONS.....	3
1.1 "Action"	3
1.2 "City"	3
1.3 "County"	3
1.4 "Development Costs"	3
1.5 "Development Exaction"	4
1.6 "Development Impact Fees"	4
1.7 "Effective Date"	4
1.8 "Existing Development Approval(s)"	4
1.9 "Existing Land Use Regulation(s)"	4
1.10 "Golf-Course Deed Restrictions"	4
1.11 "Hazardous Substances"	5
1.12 "Implementing Approvals"	5
1.13 "Land Use Regulations"	6
1.14 "Litigation Expenses"	6
1.15 "Multi-Species Habitat Conservation Plan Fee"	6
1.16 "Owner"	6
1.17 "Public Improvements"	7
1.18 "Regional Drainage Facilities"	7
1.19 "Subsequent Development Approvals"	7
1.20 "Subsequent Land Use Regulation"	7
1.21 "Transportation Uniform Mitigation Fee Program"	7
1.22 "Tres Cerritos East Easement" and "TC-East Easement"	8
1.23 "Tres Cerritos East Property" and "TC-East Property"	8
1.24 "Tres Cerritos West Project" and "TC-West Project"	8
1.25 "Tres Cerritos West Property" and "TC-West Property"	8
2.0 SCOPE OF DEVELOPMENT	8
2.1 Scope of Development.....	8
2.2 Best Effort to Develop.....	9
2.3 Relinquish Rights to Golf-Course Deed Restrictions.....	9

2.4	Term.....	9
2.4.1	Extension of Tentative Maps.....	9
2.5	Maximum Density /Intensity of Use/ Number of Units.....	9
2.6	Maximum Building Height.....	10
2.7	Maximum Building Size.....	10
2.8	Development Costs.....	10
2.9	Dedication of Rights-of-Way for Public Improvements.....	10
2.10	Schedule of Performance.....	10
2.10.1	Planning and Financing Activities.....	10
2.10.2	Timing of Development.....	11
2.10.3	Schedule Not Limit On Development.....	11
2.10.4	Amendments to Schedule.....	11
2.11	Owner's Representations and Warranties.....	12
2.11.1	Title and Possession.....	12
2.11.2	No Legal Actions.....	12
2.11.3	No Legal Impediments to Agreement.....	12
2.12	Cooperation.....	12
2.13	Activities Related to the TC-East Property.....	12
3.0	PUBLIC BENEFITS & IMPROVEMENTS.....	13
3.1	Public Benefit.....	13
3.2	Development Agreement Fec.....	13
3.2.1	Timing of Payment.....	13
3.3	Dedication of TC-East Easement.....	13
3.4	Public Improvements.....	14
3.4.1	On & Off-Site Improvements.....	14
3.4.2	Credits and Reimbursements.....	14
3.4.3	Public Works Standards.....	14
3.5	Compliance with Prevailing Wage Law.....	14
3.5.1	No Monetary Assistance to Project.....	14
3.5.2	Public Improvements.....	15
3.5.3	Waiver of Actions.....	16
3.6	Financing of Regional Drainage Facilities.....	16

3.6.1 Initiate CFD.16

3.6.2 Feasibility Study.16

3.6.3 Administration Fee.....17

3.6.4 City Processing.17

3.7 Financing of Public Improvements.17

3.8 Financing of Public Services.17

3.9 Maximum Aggregate Tax Rate.....18

3.10 Joint Facilities Agreements.....18

4.0 MANAGEMENT AND MAINTENANCE.....18

4.1 Management.18

4.2 Maintenance.....18

4.3 Compliance with Laws.19

4.4 Effect and Duration of Covenants.....19

4.5 Covenants Do Not Bar Subdivision.....19

5.0 VESTING AND RESERVATION OF AUTHORITY.....19

5.1 Vested Right to Develop.19

5.2 Effect of Agreement.....20

5.2.1 Applicable Land Use Regulations.20

5.2.2 Applicable Development Exactions.....20

5.2.3 Moratoria.....20

5.3 Reservation of Authority.....20

5.3.1 Filing and Processing Fees.....20

5.3.2 Development Impact Fees.....21

5.3.3 Procedural Requirements.21

5.3.4 Taxes of General Applicability.....21

5.3.5 Uniform Codes.....21

5.3.6 Health & Safety Regulations.21

5.3.7 Modification or Suspension by State or Federal Law.....22

5.3.8 Regulation by Other Public Agencies.....22

5.4 Subsequent Approvals.22

5.4.1 Implementing Approvals.22

5.4.2 Subsequent Development Approvals.....22

5.5	Changes and Amendments.....	23
5.5.1	Amendment or Cancellation of Agreement	23
5.5.2	Review by City Council	23
6.0	ASSIGNMENT AND RIGHTS OF HOLDERS	24
6.1	Assignment	24
6.1.1	Right to Assign	24
6.1.2	Release of Transferring Owner.....	24
6.1.3	Subsequent Assignment	25
6.1.4	Conveyance of Lot to Homebuyer.....	25
6.2	Rights of Mortgagees.....	25
6.2.1	Mortgagee Protection.....	25
6.3	Notice of Default to Mortgagee; Right to Cure.....	25
6.4	Cure by Mortgagee.....	26
6.5	Mortgagee Rights.....	27
7.0	INDEMNITY, RELEASE & RESERVATION OF RIGHTS	27
7.1	General Indemnity.....	27
7.2	Third Party Litigation Concerning Agreement	27
7.3	Hazardous Substances Indemnity.....	28
7.4	Release.....	28
7.5	Reservation of Rights.....	29
8.0	PERIODIC REVIEW PROCEDURE.....	29
8.1	Timing.....	29
8.2	Evidence for Annual Review.....	29
8.3	Certificate of Compliance.....	29
9.0	DEFAULT AND ENFORCEMENT	30
9.1	Default.....	30
9.2	Default by Owner.....	30
9.3	Default by City.....	30
9.4	Waiver.....	31
9.5	Legal and Equitable Actions	31
9.5.1	Jurisdiction and Venue.....	31

9.5.2 Applicable Law.....31

9.5.3 Litigation Expenses.....31

9.5.4 Specific Performance Remedy.....31

9.6 Remedies are Cumulative.....31

9.7 Termination by City.....32

10.0 GENERAL PROVISIONS32

10.1 Forced Delays; Extension of Times.....32

10.2 Binding Effect of Agreement.....33

10.3 TC-West Project as a Private Undertaking/Relationship of Parties.....33

10.4 Notices.....33

10.5 Further Actions and Instruments.....34

10.6 No Third Party Beneficiaries.....34

10.7 Entire Agreement.....34

10.8 Recitals and Definitions.....34

10.9 Integration.....34

10.10 Titles and Captions.....35

10.11 Interpretation.....35

10.12 Computation of Time.....35

10.13 Severability.....35

10.14 Amendments to Agreement.....35

10.15 Administration.....35

10.16 Ceremonies.....36

10.17 Authority to Execute.....36

10.18 Memorandum of Agreement.....36

10.19 Counterparts.....36

10.20 Effective Date.....36

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement"), dated for reference purposes as first indicated on the cover page, is entered into by and between the CITY OF HEMET, a California general law city and municipal corporation ("City") and CORMAN BROOKE LLC, a California limited liability company ("Owner") as follows:

RECITALS

A. The Legislature of the State of California has adopted California Government Code Section 65864-65869.5 ("Development Agreement Laws") which authorizes a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries for the development of such property in order to, among other things, encourage and provide for the development of public facilities; to support development projects; provide certainty in approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage an investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public land; provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules and regulations and subject to the conditions of approval of such projects as provided in such development agreements.

B. Pursuant to the Development Agreement Laws, Hemet Resolution 2671 adopted June 28, 1988, and by Hemet Ordinance No. 1639 adopted January 23, 2001 adding Section 58-67 of the Hemet Municipal Code, the City is authorized to enter into binding agreements with persons having legal or equitable interest in real property located within the City's municipal boundaries thereby establishing the conditions under which such property may be developed in the City.

C. Owner is the equitable owner of approximately 121 acres of undeveloped land located within the City, hereinafter referred to as the "TC-West Property". The TC-West Property represents the western portion of the land covered by the Hemet Valley Country Club Estates Specific Plan ("SPA-1") as is more particularly described and depicted in the legal description and diagram attached hereto and incorporated herein as Attachments "1" and "2" respectively. A substantial portion of the TC-West Property was originally contemplated to be developed as a golf course and a significant portion was to be dedicated to high density residential use. In the intervening years since adoption of SPA-1, other golf course facilities and high density residential developments have occurred in the City and these facilities are no longer desirable to the City or financially feasible or environmentally sound for the Owner. As such, Owner has requested that the City consider entering into this Agreement for the TC-West Property as part of Owner's comprehensive planning effort for the Tres Cerritos West Project ("TC-West Project"), as more particularly described herein, in order to create an environment in which the Owner may be certain of, and vested with, its rights to develop the TC-West Project on the TC-West Property.

D. The terms and conditions of this Agreement have been found to be fair, just, and reasonable after extensive review by the staff of the City, the City's Planning Commission, the City Council of the City of Hemet, and the Owner, and the following actions have been taken:

(1) On or about September 4, 1991, the City Council adopted General Plan Amendment Nos. 90-002, 90-003, and 90-004 regarding the Tres Cerritos site.

(2) On or about November 12, 1991, the City Council enacted Ordinance 1431 approving a zone change, in part, for the TC-West Property and approving the Tres Cerritos Specific Plan No. 90-009, and adopting a Negative Declaration, together with the attached Traffic Study, Hydrology Study, Geotechnical Report, Biological Assessment, Kangaroo Rat Trapping Report, and Archaeological Study, in compliance with the California Environmental Quality Act ("CEQA").

(3) On or about August 10, 1999, the City Council enacted Ordinance 1608 approving an amendment to Tres Cerritos Specific Plan No. 90-009, renaming it as the Hemet Valley Country Club Estates Specific Plan ("SPA-1") and adopting a Negative Declaration, together with the attached Traffic Study, Biology Report, Gnatcatcher Study, Kangaroo Rat Study, Archaeological Report, and Geotechnical Report, in compliance with CEQA.

(4) On November 16, 2004, the City's Planning Commission considered, at a duly noticed public hearing, and voted to recommend the approval by the City Council of the following approvals: Vesting Tentative Map 31513 ("VTM 31513"); Tres Cerritos West Specific Plan Amendment 03-2 ("SPA-2"); and Development Agreement No. 04-1, (collectively referred to as the "TC-West Project"); and a related Mitigated Negative Declaration and Mitigation Monitoring Program, by PC Resolution 04-15EA.

(5) On November 23, 2004, the City Council considered and approved, after a duly noticed public hearing, the Mitigated Negative Declaration and Mitigation Monitoring Program for the TC-West Project by Resolution No. 3865.

(6) On January 11, 2005, the City Council considered and approved, after a duly noticed public hearing, SPA-2 by Ordinance 1726.

(7) On January 11, 2005, the City Council considered and approved, after a duly noticed public hearing, VTM 31513 by Resolution No. 3887.

(8) On January 11, 2005, the City Council considered and approved, after a duly noticed public hearing, this Development Agreement by Ordinance 1727.

E. In adopting this Agreement, City understands that Owner will acquire certain vested rights regarding development of the TC-West Project on the TC-West Property and that this Agreement will bind future City Councils to its terms to the extent allowed by law.

F. In adopting this Agreement, City has determined that the TC-West Project will not impose any unmitigated impact on the local transportation and traffic circulation system

or its infrastructure. Owner has been conditioned to pay, and is paying, the full amount of Development Impact Fees and MSHCP Fees required under the Hemet Municipal Code and corresponding fees resolutions in effect as of the issuance of building permits for the TC-West Project, except as to TUMF from which the TC-West Project is exempt, and has agreed under this Agreement to the formation of a Community Facilities District to partially fund the cost of designing and constructing the drainage facilities contemplated under SPA-1, as may be more particularly identified in the City's Master Drainage Plan now in preparation. Owner has agreed for itself and its successors-in-interest to the TC-West Property to incur these obligations and costs as partial consideration for obtaining the private rights and benefits conferred upon Owner and the TC-West Property under this Agreement. City acknowledges the benefit such additional improvements will provide to the community and desires to encourage the undertaking and completion of the TC-West Project and to provide a greater level of development certainty for the Owner by entering into this Agreement.

G. City finds and determines that it will be in the best interests of its citizens and the public health, safety and welfare will be served by entering into this Agreement.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the above Recitals and of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1.0 DEFINITIONS

In this Agreement, unless the context otherwise requires, the following words and phrases shall have the meaning set forth below:

1.1 "Action" shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (whether administrative or judicial), arbitration or mediation (whether voluntary, court-ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument.

1.2 "City" shall mean the City of Hemet, a general law, municipal corporation formed and existing under the laws of the State of California and any successor-in-interest to the rights, obligations, and powers of the City.

1.3 "County" shall mean the County of Riverside.

1.4 "Development Costs" shall mean all the costs and expenses which must necessarily be incurred in the design, development, construction and completion of the TC-West Project, including but not limited to: predevelopment costs; Owner's overhead and related costs; design and engineering costs; development costs; construction costs; fees payable to accountants, appraisers, architects, attorneys, biologists, construction managers, engineers, geologists, hydrologists, inspectors, planners, testing facilities, and other consultants; impact, development, park, school and other fees and charges imposed by governmental entities as a condition

approval on the TC-West Project; costs for obtaining permits and approvals; taxes; assessments; costs related to testing for and remediation of Hazardous Substances; utility connection fees and other utility related charges; costs relating to financing including principal, interest, points, fees and other lender charges; escrow fees and closing costs; recording fees; court costs; costs relating to insurance; costs relating to title insurance; costs relating to bonds; and all other costs and expenses of Owner related to the performance of this Agreement.

1.5 "Development Exaction" shall mean any requirement of City in connection with or pursuant to any Land Use Regulation or Existing Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.6 "Development Impact Fees" shall mean those standard development impact fees imposed and levied by the City to recover the cost of planned public facilities and to mitigate impacts of projects on the City as follows:

- Traffic Control Facility Fee (Transportation-Signals Fee)
- Road and/or Bridge Facility Fee (Transportation - Roads, Bridge Fee)
- General Facility & Equipment Fee
- Solid Waste Facility & Equipment Fee
- Storm Drainage Facilities Fee
- Streets & Thoroughfares Fee
- Fire Protection Facilities & Equipment Fee (Fire Mitigation Fee)
- Administrative Program Processing Fee
- Law Enforcement Facilities Fee
- Archeological Resource Mitigation Fee
- Park, Regional Parks, and/or Open Space Mitigation Fee
- Public Facilities Fee

1.7 "Effective Date" shall mean the date upon which the Ordinance approving this Agreement becomes effective, which date is thirty (30) days following the date the City Council adopted such Ordinance absent a referendum challenge.

1.8 "Existing Development Approval(s)" shall mean those land use, development, building permits and approvals issued, approved, and/or certified by the City Council, the City's Planning Commission, the Planning Director, or Building Official (as is authorized under the Hemet Municipal Code) as of the Effective Date of this Agreement that pertain to TC-West Project on the TC-West Property. The Existing Development Approvals expressly include, but are not limited to, SPA-2 and VITM 31513, and the Mitigated Negative Declaration and Mitigation Monitoring Program prepared for the TC-West Project.

1.9 "Existing Land Use Regulation(s)" shall mean a Land Use Regulation existing, effective, and made a matter of public record as of the Effective Date of this Agreement.

1.10 "Golf-Course Deed Restrictions" shall mean those restrictions, conditions subsequent, and right-of-reentry set forth in the deed for that parcel of real property commonly

known as Assessor's Parcel Numbers 441-740-003-3 and 441-740-012-1, as more particularly described in the legal description attached hereto and incorporated herein by reference as Attachment "5" ("Golf-Course Parcels"), to which the City of Hemet is the beneficiary.

1.11 "*Hazardous Substances*" shall mean any and all of the following:

(i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability arises for misuse, pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C.S. § 2601, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136, et seq.; the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 6901, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; the Solid Waste Disposal Act, 42 U.S.C. §6901, et seq.; the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201, et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 655 and 657; the Hazardous Waste Control Act, California Health and Safety Code ("H.&S.C.") § 25100, et seq.; the Hazardous Substance Account Act, H.&S.C. § 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. § 25249.5, et seq.; the Underground Storage of Hazardous Substances, H.&S.C. § 25280, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, H.&S.C. § 25300, et seq.; the Hazardous Waste Management Act, H.&S.C. §25170.1, et seq.; the Hazardous Materials Response Plans and Inventory, H.&S.C. § 25001, et seq.; the Porter-Cologne Water Quality Control Act, Water Code § 13000, et seq., all as they may from time to time be amended;

(ii) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability for misuse arises pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree due to its hazardous, toxic or dangerous nature;

(iii) any petroleum, crude oil or any substance, product, waste, or other material of any nature whatsoever which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles; and

(iv) polychlorinated biphenyls (PCB), radon gas, urea formaldehyde, asbestos and lead.

1.12 "*Implementing Approvals*" shall mean those procedures, reviews, permits and approvals that are ministerial (except as provided herein) in nature and necessary to implement the Existing Development Approvals and this Agreement, including, but not limited to approval of final maps, grading plan check, grading permits, building plan check, building permits, encroachment permits, sign review, sign permits, landscape plan review, engineering plan check, and encroachment permits.

1.13 "*Land Use Regulations*" shall mean all ordinances, resolutions, codes, rules, regulations, and official policies of City, governing the development and use of land including without limitation, the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; the provisions for reservation or dedication of land for public purposes; and the design, improvement, and construction standards and specifications applicable to the development of the TC-West Property which have been adopted and are effective and are a matter of public record as of the Effective Date of this Agreement. "Land Use Regulations" does not include any County or City ordinance, resolution, code, rule, regulation, or official policy, governing:

- (a) The licensing or regulation of businesses, professions, and occupations;
- (b) Sales taxes, ad valorem property taxes, or voter approved general or special taxes and assessments;
- (c) The control and abatement of nuisances;
- (d) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property, and/or
- (e) The exercise of the power of eminent domain.

1.14 "*Litigation Expenses*" shall mean all costs and expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other cost or expense reasonably and necessarily incurred by the prevailing party in good faith and directly related to the Action. Where attorneys' fees are to be paid by Owner to the City's law firm on behalf of, or in defense of, City, the rate to be paid shall be the full litigation rate charged by the City's law firm to the City in accord with the City's contract with that law firm.

1.15 "*Multi-Species Habitat Conservation Plan Fee*" shall mean the impact fee imposed and levied under City of Hemet Ordinance No. 1712 adopting the "Multi-Species Habitat Conservation Plan" ("MSHCP"). The MSHCP establishes a fee know as the "MSHCP-Fee, the purpose of which is to mitigate the incidental take of listed, threatened, and protected species and their habitats within areas of Western Riverside County, including the City of Hemet. The City has decided to participate in the MSHCP through the adoption of Ordinance No. 1712. It is acknowledged that the TC-West Project is NOT exempt from the MSHCP-Fee.

1.16 "*Owner*" shall mean Corman Brooke LLC, a California limited liability company, having its principle place of business at 32823 Highway 79 South, Temecula, California 92592, and who is authorized to conduct business, and is doing business, within California. As of the Effective Date of this Agreement, Owner is the equitable owner as the buyer of the TC-West Property under a legally binding Purchase and Sales Agreement dated November 22, 2002 with R. Johnson Properties, Inc and Hemet Valley Country Club Estates, LLC. The term "Owner"

shall also include all assignees, to the extent permitted under this Agreement, of the rights and obligations of Owner under this Agreement, and any successor-in-interest to Owner having a legal and/or equitable interest in the TC-West Property.

1.17 "*Public Improvements*" shall mean those public improvements, including but not limited to, streets, street lights, traffic signals, curbs, gutters, sidewalks, parkway landscaping, irrigation systems, storm drains, sewers, and other public facilities related to the TC-West Project and required to be constructed and installed in the existing public rights-of-way and/or on areas of the TC-West Property to be dedicated to the City by Owner as a condition of obtaining the Existing Development Approvals.

1.18 "*Regional Drainage Facilities*" shall mean the storm drain and other drainage facilities over, across and through the TC-East Property as described herein. The parties acknowledge that Section I.C. (Flood Control), Section IV.E (Drainage) and Exhibit 4.9 (Master Hydrology Plan) of SPA-1 contemplated the construction of drainage facilities on the TC-East Property that were a component of regional drainage facilities addressed in the City's Master Plan of Drainage. The parties also acknowledge that SPA-1 only discussed these drainage facilities in a conceptual manner and that SPA-1 provided that more detailed design plans were to be submitted at the time the TC-East Property was developed. As such, SP 90-009 did not fix the ultimate location, design, configuration, and alignment of the Regional Drainage Facilities, in part, to permit flexibility in the event the City revised its Master Plan of Drainage prior to development of the TC-East Property. To date, no development has occurred on the TC-East Property and development of that property is not the subject of this Agreement. The City is currently preparing an update to its Master Plan of Drainage which may result in revisions to, or modifications of, the originally contemplated location, design, and configuration of the drainage facilities contemplated for the TC-East Property. The City does not contemplate completing the update of its Master Plan of Drainage prior to the Effective Date of this Agreement. Therefore, for purposes of this Agreement, "*Regional Drainage Facilities*" shall mean those storm drain and other drainage facilities ultimately required to be located, installed and constructed on the TC-East Site upon completion of the update to the City's Master Plan of Drainage.

1.19 "*Subsequent Development Approvals*" shall mean any land use, development, or building permit or approval obtained after the Effective Date of this Agreement that substantially modifies the TC-West Project as contemplated in this Agreement, or the approval, granting or issuance of which would require the material and substantial amendment of any of the Existing Development Approvals and/or this Agreement.

1.20 "*Subsequent Land Use Regulation*" means any Land Use Regulation adopted, effective, and made a matter of public record after the Effective Date of this Agreement.

1.21 "*Transportation Uniform Mitigation Fee Program*" shall mean the development impact fee imposed and levied under City of Hemet Ordinance No. 03-013 adopting the "Transportation Uniform Mitigation Fee Program". This program establishes a fee known as the Transportation Uniform Mitigation Fee ("TUMF"). The purpose of the TUMF is to mitigate the traffic impacts of local development on, and to provide funds for the improvement and expansion of, existing and planned regional transportation and circulation facilities (including, but not limited to, regionally significant state, county, and local, arterials, highways, and freeways)

within Riverside County or such other sub-region of Riverside County, the boundaries of which exceed the boundaries of the City of Hemet as they exist on the Effective Date of this Agreement and as they may hereafter be expanded by approved annexation. The City has decided to participate in this regional program through the adoption of Ordinance No. 03-013. It is acknowledged that the TC-West Project IS EXEMPT from TUMF pursuant to HMC § 58.70.2.F.xii because the application for VTTM 31513 was deemed substantially complete prior to the effective date of Ordinance 03-013.

1.22 *"Tres Cerritos East Easement" and "TC-East Easement"* shall mean that easement and right-of-way necessary for the future location, installation, construction, operation and maintenance of the Regional Drainage Facilities on, over, across and through the TC-East Property. Owner will make, and shall use best efforts to cause Signal Hill Family Limited Partnership to make, an irrevocable offer of dedication of the easement and right-of-way to the City as provided in 3.3 [Dedication of TC-East Easement] of this Agreement. Because the ultimate location, design, configuration and alignment of the Regional Drainage Facilities over, across and through the TC-East Property will not be known with sufficient specificity as of the Effective Date of this Agreement, the parties cannot at this time accurately describe a definite fixed easement area to be dedicated. Therefore, the irrevocable offers of dedication shall be with reference to the area of the TC-East Property shown in the then current version or draft of the update to the City's Master Plan of Drainage and shall allow for the future delineation of the precise easement area at such time as the City has determined the location, design, configuration and alignment of the Regional Drainage Facilities.

1.23 *"Tres Cerritos East Property" and "TC-East Property"* shall mean that certain real property of approximately 220 acres comprising the eastern portion of land subject to SPA-1, within the City of Hemet, County of Riverside, California as more particularly described and depicted in the legal description and diagram attached hereto and incorporated herein by reference as Attachments "3" and "4" respectively.

1.24 *"Tres Cerritos West Project" and "TC-West Project"* shall mean that certain mixed density residential housing development consisting of approximately 177 single family homes to be constructed on the TC-West Property together with open space, recreational, and resident amenities, landscaping, and Public Improvements, as required under, and as more fully described in, the Existing Development Approvals.

1.25 *"Tres Cerritos West Property" and "TC-West Property"* shall mean that certain real property of approximately 121 acres comprising the western portion of land within SPA-1, within the City of Hemet, County of Riverside, California, that is the subject of SPA-2 and VTTM 31513 and as more particularly described in the legal description and as depicted in the diagram attached hereto and incorporated herein by reference as Attachment 1 and Attachment 2 respectively.

2.0 SCOPE OF DEVELOPMENT

2.1 Scope of Development. During the Term of this Agreement, Owner shall be entitled to, and vested with the right to, develop the TC-West Project on the TC-West Property,

subject to the terms and conditions of this Agreement and in accordance with the following provisions set forth under Article 2.0.

2.2 Best Effort to Develop. Owner hereby covenants and agrees to use its best efforts to timely complete development and to construct the TC-West Project on the TC-West Property during the Term of the Agreement as permitted under the Existing Development Approvals and as more particularly specified in, and subject to the terms and conditions of, this Agreement.

2.3 Relinquish Rights to Golf-Course Deed Restrictions. The parties acknowledge that the Golf-Course Parcels, as defined herein, included within the TC-West Property were previously designated for use as a championship golf course under SPA-1. In addition, the City is the beneficiary of the Golf-Course Deed Restrictions set forth in the deed conveying title to these Golf-Course Parcels to Owner's predecessor-in-interest that required the Golf-Course Parcels to be used for golf course purposes only. Under this Agreement, the parties have agreed that integration of a golf course into the TC-West Project does not confer additional benefits to the community and may not be financially feasible or environmentally sound. Therefore, City agrees that it will quitclaim any and all interest it has in the Golf-Course Parcels and shall relinquish and abandon the Golf-Course Deed Restrictions upon Owner's acquisition of fee title to the TC-West Property and Owner's full and timely satisfaction of activities (a) through (d), but excluding (e) identified in under Section 2.10.1 [Planning and Financing Activities] of this Agreement.

2.4 Term. The term of this Agreement shall commence on the Effective Date and shall extend for a period of ten (10) years thereafter, unless this Agreement is terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto. This Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order after exhaustion of any appeals directed against the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval by the City Council of City of this Agreement.

2.4.1 Extension of Tentative Maps. In accordance with Government Code § 66452.6, VTTM 31513 and any other tentative tract map or tentative parcel map previously approved, but which has not expired prior to the Effective Date of this Agreement, and any other tentative tract map or tentative parcel map approved after the Effective Date of this Agreement, in connection with development of the TC-West Property or TC-West Project shall be deemed to have been granted an extension of time, without further review or approval required from the City, for the duration of the Term of this Agreement and shall expire commensurately with the expiration of the Term hereof. All such tentative tract maps and tentative parcel maps shall indicate on their face that the life thereof has been extended pursuant to this Section 2.4.1 of the Agreement.

2.5 Maximum Density /Intensity of Use/ Number of Units. The maximum density, intensity of use, and number of dwelling units permitted on the TC-West Property shall be that which is permitted under the Existing Development Approvals, as more particularly stated in SPA-2, after applying to the requirements stated in the Existing Development Approvals, and the Existing Land Use Regulations, to the extent applicable, pertaining to minimum lot sizes,

parking, landscaping, and setbacks. The parties mutually understand that application of these Existing Development Approvals and Existing Land Use Regulations will permit development of not more than 177 single family homes on the TC-West Property.

2.6 Maximum Building Height. The maximum height of any building or other structure on the TC-West Property shall be that which is permitted under the Existing Development Approvals, as more particularly stated in SPA-2.

2.7 Maximum Building Size. The maximum size of any building or other structure on the TC-West Property shall be that which is permitted under the Existing Development Approvals, as more particularly stated in SPA-2.

2.8 Development Costs. Owner shall be solely responsible for payment of all Development Costs incurred in connection with developing the TC-West Project or TC-West Property.

2.9 Dedication of Rights-of-Way for Public Improvements. In addition to Owner's obligations with regard to the TC-East Easement as provided in 3.3 [Dedication of TC-East Easement] of this Agreement, Owner shall give and dedicate such rights-of-way, easements, agreements, licenses, and other grants of rights ("Dedications") to the City as are reasonably required to accomplish the survey, design, construction, inspection, testing, operation, maintenance and repair of the Public Improvements. It is understood, acknowledged, and agreed by Owner that such Dedications may include, but are not limited to, fee parcels, and permanent or temporary rights-of-way or easements for public purposes (including street and utility use, slope, drainage, maintenance, construction, entry and/or access, and encroachment permits). Owner agrees that the making of such Dedications are part of the consideration provided by Owner for this Agreement, that Owner shall not seek, nor have a right to seek, any compensation from City for such Dedications, and that Owner shall not pursue any legal action for compensation, including inverse condemnation or eminent domain, with regard to such Dedications.

2.10 Schedule of Performance. Owner shall, in good faith, use commercially reasonable efforts to undertake, commence, and thereafter diligently pursue to completion, construction of the TC-West Project subject to the following provisions:

2.10.1 Planning and Financing Activities. Generally, the timing of development of the TC-West Project shall be governed by Section 2.10.2 [Timing of Development], however, as further consideration for this Agreement, Owner shall undertake and complete the following planning and financing activities within the time periods provided:

(a) TC-East Easement. Owner shall record, and shall use best efforts to cause Signal Hill Family Limited Partnership, to record, with the Recorder for the County of Riverside, the irrevocable offers of dedication for the TC-East Easement as required under 3.3 [Dedication of TC-East Easement] within thirty (30) calendar days from and after the Effective Date of this Agreement.

(b) Feasibility Study. The feasibility study required under Section 3.6 [Financing of Regional Drainage Facilities] of this Agreement shall be completed and delivered to City by Owner on or before the City Council approves the final map for VTTM 31513.

(c) Specific Plan Amendment for TC-East Property. Owner shall file an application for the amendment of SPA-1 (and SP 90-009 to the extent necessary) pertaining to the TC-East Property with the City on or before the City Council approves the final map for VTTM 31513.

(d) Drainage Facility CFD. Owner shall have requested initiation of the procedures contemplated in Section 3.6 [Financing of Regional Drainage Facilities] of this Agreement on or before the City Council approves the final map for VTTM 31513.

(e) Payment of Development Agreement Fee. Owner shall pay the Development Agreement Fee required under Section 3.2 [Development Agreement Fee] within the time provided in Section 3.2.1 [Timing of Payment].

2.10.2 Timing of Development. Subject to the provisions of Section 2.10.4 [Amendments to Schedule], the parties acknowledge that Owner cannot at this time specifically predict when, or the rate at which, the 177 single family homes of the TC-West Project will be constructed and completed. Such decisions depend upon numerous factors, which are not within the control of Owner, such as market orientation and demand, availability of financing, interest rates, absorption, competition, and other similar market factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties, it is the intent of City and Owner to cure any possible deficiency in this Agreement arising from the same legal infirmity, by acknowledging and providing that the Owner shall have the right to develop the TC-West Project on the TC-West Property in such order, at such rate, and at such times during the Term of the Agreement, as the Owner deems appropriate within the reasonable exercise of its independent business judgment.

2.10.3 Schedule Not Limit On Development. The timing of development provided in this Section shall not limit Owner's right to commence and complete all of the TC-West Project in such phases as Owner determines to be commercially reasonable and that are in compliance with the Existing Development Approvals.

2.10.4 Amendments to Schedule. The parties agree that the Schedule of Performance may need to be amended from time-to-time, for good cause, based on market and other factors beyond the reasonable control of the parties. Any amendment to the Schedule of Performance shall be mutually agreed upon by the parties in writing. The City shall not be obligated to consider or approve Owner's request to amend the Schedule of Performance in the event that Owner is in Default of the Agreement, or the necessity of the amendment is due to conditions which Owner reasonably controls.

2.11 Owner's Representations and Warranties. Owner represents and warrants that, to the best of its knowledge, the following are accurate and true as of the Effective Date of this Agreement:

2.11.1 Title and Possession. Owner owns equitable title to the TC-West Property, is the sole entity in legal possession of the TC-West Property, and all other persons holding legal or equitable interests in the TC-West Property shall be bound by this Agreement.

2.11.2 No Legal Actions. No Action to acquire, partition, or quiet title or any interest in the TC-West Property, or any Action that is reasonably likely to impair, encumber, or otherwise adversely impact title to the TC-West Property or Owner's rights, title, or interest to or in the TC-West Property is pending or otherwise imminent (including written threats to commence such Action), and to the best of Owner's knowledge there are no facts upon which a third party could reasonable base, maintain, or threaten such an Action.

2.11.3 No Legal Impediments to Agreement. No contract, lease, or other agreement, whether recorded or unrecorded, bars, prohibits, limits or otherwise impairs Owner's ability to enter into this Agreement and to encumber the TC-West Property with this Agreement.

2.12 Cooperation. City agrees that it shall accept for processing and promptly take action on all applications for Implementing Approvals, provided they are in a proper form and acceptable for required processing in accordance with the Existing Development Approvals and the provisions of this Agreement. City agrees to establish, in conjunction with Owner, a "fast-tracking" procedure for implementation of the TC-West Project on the TC-West Property. City shall cooperate with Owner in providing expeditious review of any such applications, permits, or land use approvals and, upon request and payment of any costs and/or extra fees associated therewith by Owner, City shall assign to such applications, planner(s), building inspector(s), and/or other staff personnel as the City deems reasonably necessary to facilitate the timely processing, consideration for approval, and inspection of the TC-West Project. City agrees that, at Owner's request the City will retain the services of one or more professional consultants to provide planning, environmental, plan checking, and inspection services to facilitate timely processing, consideration of approval, and inspection of the TC-West Project, provided that Owner first deposits the full amount of the estimated costs of such services with the City and that Owner shall be responsible for one hundred percent (100%) of the cost of such professional consultant's work. The City agrees to consult with Owner concerning the professional consultant(s) to be retained by the City, but City shall have the sole and absolute discretion in selecting the professional consultant(s).

2.13 Activities Related to the TC-East Property. The parties acknowledge and agree that this Agreement, except as concerning the dedication of the TC-East Easement as provided in Section 3.3 [Dedication of TC-East Easement], does not impose any obligation on Owner to develop any specific project or improvements on the TC-East Property, does not vest Owner with any right to develop any specific project on the TC-East Property, and does not alter the provisions of SPA-1 with regard to the TC-East Property. Notwithstanding the foregoing, the parties contemplate that Owner is in the process of investigating acquisition of the TC-East Property and may pursue development thereon. In such event, Owner agrees that it will undertake and apply for an amendment of SPA-1 pertaining to the TC-East Property, shall pay

for the appropriate environmental review document required under the California Environmental Quality Act (Public Resources Code § 21000 et seq.) and shall include within its development plans the creation of a Community Facilities District on the TC-East Property pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with § 53311) of Part 1 of Division 2 of Title 5 of the Government Code, or other types of assessment districts to finance the design, construction, installation, maintenance, and acquisition of the Regional Drainage Facilities, and the acquisition of the parcels of real property, rights-of-way and easements required for the location of those facilities.

3.0 PUBLIC BENEFITS & IMPROVEMENTS

3.1 Public Benefit. The parties acknowledge and agree that this Agreement confers private benefits on the Owner that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on the Owner by: (i) imposition of the Development Agreement Fee set forth in Section 3.2 [Development Agreement Fee] hereof which fee will be utilized to further mitigate the impact of the TC-West Project and to construct needed area road infrastructure; and (ii) the establishment of a Community Facilities District for the TC-West Property to fund a portion of the cost of the Regional Drainage Improvements as provided in Section 3.3 [Dedication of TC-East Easement] hereof.

3.2 Development Agreement Fee. Owner shall pay to City a Development Agreement Fee equal to Two Thousand Nine Hundred Ninety-Seven Dollars and No Cents (\$2,997.00) for each single family home to be constructed on the TC-West Property (totaling Five Hundred Thirty Thousand Four Hundred Dollars and No Cents (\$530,400.00 assuming 177 units). Payment of the Development Agreement Fee is subject to the following:

3.2.1 Timing of Payment. Owner shall pay the Development Agreement Fee to City in good and sufficient funds as follows: (i) Owner shall pay fifty percent (50%) of the Development Agreement Fee on or before issuance of the building permit for the first (1st) dwelling unit in the TC-West Project; (ii) Owner shall pay the remaining balance of the Development Agreement Fee on or before issuance of the building permit for the eightieth (80th) dwelling unit in the TC-West Project.

3.3 Dedication of TC-East Easement. Owner shall irrevocably offer to dedicate, and shall use best efforts to cause Signal Hill Family Limited Partnership, to irrevocably offer to dedicate, the TC-East Easement to the City as provided herein. Due to the City's ongoing effort to update its Master Plan of Drainage, the ultimate location, configuration, design, and alignment of the Regional Drainage Facilities contemplated under SPA-1 and the contemporaneous version of the City's Master Plan of Drainage, are subject to redesign and other modifications. Therefore, as of the Effective Date of this Agreement, the ultimate location, configuration, design, and alignment of the Regional Drainage Facilities over, across and through the TC-East Property will not be known with sufficient specificity to allow the parties to accurately describe a definite fixed easement area to be dedicated. However, in order to secure the City's right to locate, design, install, construct, and operate the Regional Drainage Facilities over, across, and through the TC-East Property in the future, the irrevocable offers of dedication shall be made with reference to the area of the TC-East Property shown in the then current version or draft of

the update to the City's Master Plan of Drainage and shall allow for the future delineation of the precise easement area at such time as the City has determined the final location, configuration, design, and alignment of the Regional Drainage Facilities over, across, and through the TC-East Property. At such time, the City shall accept the irrevocable offers of dedication as to the definite and fixed easement area necessary for the Regional Drainage Facilities, which shall be described in the City's recorded acceptance of the irrevocable offers of dedication.

3.4 Public Improvements. Owner shall, at its sole cost and expense, unless expressly provided to the contrary herein, design, install, and construct the following Public Improvements related to the TC-West Project:

3.4.1 On & Off-Site Improvements. Owner shall design, install and construct all on-site, off-site, and Public Improvements for the TC-West Project as may be identified or imposed as conditions of approval in the Existing Development Approvals.

3.4.2 Credits and Reimbursements. Notwithstanding the foregoing, it is the intent of the parties that Owner remain eligible to obtain credits against Development Impact Fees paid or to be paid and/or to obtain reimbursement of costs incurred or to be incurred in designing and constructing Public Improvements to the extent Owner would otherwise qualify under the Existing Land Use Regulations, including, but not limited to, Hemet Municipal Code §§ 58-64, 58-65, and/or 58-66, provided that Owner shall not be entitled to any credit against Development Impact Fees paid for, or attributable to, or special taxes or special assessment levied by, or bond proceeds obtained by, a Community Facilities District on the TC-West Property, and used to pay for, the design, installation, and construction of the Regional Drainage Facilities.

3.4.3 Public Works Standards. Owner is required by this Agreement, or any other obligation, to construct any Public Improvements or public facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work in the same manner and subject to the same requirements as would be applicable to City or such other public agency should it have undertaken such construction.

3.5 Compliance with Prevailing Wage Law. The following provisions regarding the application of prevailing wages shall apply to the Project:

3.5.1 No Monetary Assistance to Project. The parties acknowledge that this Agreement does not, and is not intended to, vest the Owner with any right to obtain monetary assistance from the City for design, construction or installation of any part of the TC-West Project. With the exception of certain Public Improvements described herein, the TC-West Project is a privately funded, privately constructed project which the parties understand, based on existing law, decisions of the California courts, and public works determinations of the Director of the Department of Industrial Relations, is not a "public work" within the meaning of Labor Code § 1720 and is not subject to payment of prevailing wages or other compliance with the Prevailing Wage Laws (Labor Code § 1720 et seq.).

3.5.2 Public Improvements. City and Owner acknowledge that the design, construction, and installation of certain Public Improvements identified in the Existing Development Approvals are required as conditions of approval upon development of the TC-West Project. However, as of the Effective Date of this Agreement, the exact method and manner by which these Public Improvements will be financed and completed has not been determined. Although this Agreement does not provide the Owner with a vested right to any City provided assistance for the design, construction or installation of the Public Improvements, the parties acknowledge: (i) that Owner may request that City form a Community Facilities District or other form of assessment or special tax district to pay for, or reimburse, the cost of designing, constructing and installing the Public Improvements; (ii) that City may request Owner to design certain facilities with supplemental capacity and to reimburse Owner for the incremental additional cost of such facilities; or (iii) that Owner may seek credits against certain Development Impact Fees levied by City against the Project for Owner's design, installation, and construction of the Public Improvements.

(a) In the event that one or more Public Improvement(s) is/are financed, funded or otherwise paid for, in whole or in part, as described in clause (i) or (ii) above, the parties agree the Owner and its contractors and their subcontractors shall pay prevailing wages for the design, installation, and construction of such Public Improvement and shall also comply with the requirements of the Prevailing Wage Laws. The prevailing wage rate for each classification of trade necessary for the design, installation, and construction of the Public Improvement is on file with the Office of the City Clerk of City. Furthermore, the parties, intend that the safe harbor provided in Labor Code § 1720(c)(2) apply, agree that no more money, or the equivalent of money, than is necessary to complete the Public Improvement(s) shall be provided by City or such special district and City shall maintain no proprietary interest in the Project.

(b) In the event that Owner seeks credits for the design, construction and/or installation of one or more Public Improvement(s) as described in clause (iii) above, the parties acknowledge that the state of existing law is unclear as to whether such projects are required to comply with the Prevailing Wage Law or not. Therefore, at the time such Public Improvements are to be designed, installed, and constructed for which Owner intends to seek a credit against the payment of Development Impact Fees, then the parties shall review the then existing law, court decisions, and public works determinations and consult as to whether compliance with the Prevailing Wage Law is required. If the parties agree that work is considered a public work under Labor Code § 1720, then the Owner and its contractors and their subcontractors shall pay prevailing wages for the design, construction and installation of the Public Improvement(s) and otherwise comply with the Prevailing Wage Law as provided subdivision (a) above. If the parties agree that work is not considered a public work under Labor Code § 1720, then the Owner and its contractors and their subcontractors shall not be required to pay prevailing wages for the design, construction and installation of the Public Improvement(s) and otherwise comply with the Prevailing Wage Law as provided in subdivision (a) above. If the parties cannot, in good faith, agree on the application of the Prevailing Wage Law, then Owner shall deposit with the City a payment bond meeting the following requirements: (1) the payment bond shall be issued by an "admitted surety insurer," as that term is defined in Code of Civil Procedure § 995.120(a), that is acceptable to the City; (2) to the extent applicable, the payment bond shall comply with the California Bonds and Undertaking Law (Code of Civil Procedure §

995.010 et seq.); (3) the payment bond shall be for an amount equal to one hundred fifty percent (150%) of the City's calculation of the difference between total wages to be paid by the Owner using non-prevailing wage rates, and total wages that would be paid if the prevailing wage rate was utilized; (4) the payment bond shall provide that the surety will pay, on demand of City, the amount of wages, penalties, interest, costs, and attorneys fees that are determined by the DIR, DLSE or similar department or agency of the State to be due, but which are unpaid by Owner or its contractors, for work on the Public Improvement; (5) the payment bond shall provide for non-release of the surety as provided in Civil Code § 3225; and (7) the payment bond shall remain in full force and effect until the statute of limitations on such wage claims has expired. A complete and executed payment bond shall be provided to the City at least ten (10) days prior to commencement of any construction activities on the Public Improvement.

3.5.3 Waiver of Actions. Owner, for itself and its contractors, hereby expressly agrees that City has satisfied its obligations under the Prevailing Wage Laws to identify projects as being subject to the Prevailing Wage Laws and any other obligations imposed upon the City under Labor Code § 1726 and/or § 1781 that are owed to or may be actionable by Owner and its contractors. Furthermore, Owner, for itself and its contractors hereby expressly waives any right of action against the City created under Labor Code § 1726 and/or § 1781, whether known, or unknown, foreseen or unforeseen relating to the Project and/or any Public Improvement.

3.6 Financing of Regional Drainage Facilities. Owner acknowledges that development of the TC-West Project should bear a fair and equitable share of cost to design, install, construct, and maintain the Regional Drainage Facilities as defined in this Agreement. Therefore, Owner and City agrees as follows:

3.6.1 Initiate CFD. On or before the City Council's approvals of a final map for VTTM 31513, Owner shall request that City conduct proceedings for, support the establishment of, and issue bonds of a Community Facilities District(s) (the "Drainage CFD") pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with § 53311) of Part 1 of Division 2 of Title 5 of the Government Code (the "Act"), or other types of assessment districts to finance the design, construction, installation, maintenance, and acquisition of the Regional Drainage Facilities, and the acquisition of the parcels of real property, rights-of-way and easements where those facilities will be located.

3.6.2 Feasibility Study. On or before the City Council's approval of a final map for VTTM 31513, Owner shall complete and submit to City a Feasibility Study analyzing the potential cost of designing, constructing, and maintaining the various alternative locations, designs, configurations, and alignments of the Regional Drainage Facilities being considered by the City and shall recommend a fair and equitable apportionment of the potential cost of such facilities to be borne by the TC-West Project and TC-West Property through the Drainage CFD. However, the TC-West Project and TC-West Property shall not be apportioned less than forty percent (40%) of the total estimated costs of such Regional Drainage Facilities. If Owner has not caused Signal Hill Family Limited Partnership to dedicate the irrevocable offer of dedication for the Regional Drainage Facilities, then Owner shall cause the Feasibility Study to analyze alternative courses for the Regional Drainage Facilities that would not require location of such facilities on property owned or controlled by Signal Hill Family Limited Partnership.

3.6.3 **Administration Fee.** In the event the City establishes and issues bonds of the Drainage CFD then City shall be entitled to reimbursement for the actual costs to establish the Drainage CFD, but shall impose no additional fee or charge for such proceedings, provided however, that Owner shall pay an "Administration Fee" to City in an amount determined to be appropriate by the parties, payable at the time of issuance of the first building permit on the TC-West Property.

3.6.4 **City Processing.** In connection with the formation of a Drainage CFD for the TC-West Property, City agrees to (i) timely process any request by Owner for the formation of a Drainage CFD for the TC-West Property, (ii) cooperate with Owner, consultants, bond counsel and underwriters in the design and analysis of a Facilities CFD, and (iii) provided that Owner, bond counsel, the underwriters, and other necessary consultants have in good faith cooperated with City and have otherwise timely completed, and used their best efforts to complete, their tasks, City shall use its best efforts to cause the City Council and any other appropriate committee or bodies of the City to consider and make a final determination regarding formation of the Facilities CFD within twelve (12) months of Owner's filing of an application for formation.

3.7 **Financing of Public Improvements.** City and Owner acknowledge that: (i) development of the TC-West Project will require installation and construction of significant Public Improvements; and (ii) the Owner's preferred method of financing such infrastructure and improvements will be through a Community Facilities District that may, in the City's discretion, be created by City and the subsequent issuance of bonds in connection therewith. Accordingly, City acknowledges Owner may request that City conduct proceedings for, support the establishment of, and issue bonds of one or more Community Facilities District(s) (the "Facilities CFD") pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with § 53311) of Part 1 of Division 2 of Title 5 of the Government Code (the "Act"), or other types of assessment districts to finance the planning, design, construction, installation, and acquisition of municipal facilities, and the acquisition of the parcels of real property, rights-of-way and easements where those facilities will be located, as identified in Existing Development Approvals and, if determined to be an appropriate expenditure of the Facilities CFD by bond counsel, underwriter's counsel and legal counsel for the City, payment of the Development Agreement fee provided for in Section 3.2 [Development Agreement Fee] of this Agreement. City's decision to establish and issue bonds of the Facilities CFD shall be made in the reasonable exercise of the City's discretion and nothing in this Agreement shall be interpreted as City's commitment to form the Facilities CFD. Formation of the Facilities CFD, if authorized by the City, shall be subject to, and consistent with, Sections 3.6.3 [Administrative Fee] and 3.6.4 [City Processing] and Section 3.9 [Maximum Aggregate Tax Rate].

3.8 **Financing of Public Services.** Pursuant to Hemet Resolution No. 3821, Owner agrees to support the formation of a services CFD (the "Services CFD") pursuant to the Act, to finance City public safety services to and within the TC-West Project and TC-West Property for which the City, based on the report of an independent fiscal consultant using methodology commonly accepted by fiscal consultants, has determined that revenues received by the City and generated by the TC-West Project and TC-West Property will total less than the cost of City public safety services to and within the TC-West Project and TC-West Property. The maximum tax rate for the Services CFD shall not exceed Three Hundred Dollars and No Cents (\$300.00)

per residential unit annually. Formation of the Services CFD shall be subject to and consistent with Sections 3.6.3 [Administrative Fee] and 3.6.4 [City Processing] and Section 3.9 [Maximum Aggregate Tax Rate].

3.9 Maximum Aggregate Tax Rate. Notwithstanding anything in Sections 3.6 [Financing of Regional Drainage Facilities], 3.7 [Financing of Public Improvements], and 3.8 [Financing of Public Services] to the contrary, the parties agree that the creation of the Community Facilities Districts and the imposition and levy of the special taxes pursuant thereto, shall not cause the aggregate property tax rate (include *ad valorem* taxes and special taxes) on the TC-West Property or individual parcels therein, to be in excess of 2.0% of the weighted average estimated sales price of the single family homes contemplated in the TC-West Project. In the event the parties determine that the maximum special tax rate proposed for the CFD's authorized under Sections 3.6 [Financing of Regional Drainage Facilities], 3.7 [Financing of Public Improvements], and 3.8 [Financing of Public Services] will cause the Maximum Aggregate Tax Rate to be exceeded, then priority in the allocation of available taxing capacity shall be given first to the CFD called for under Section 3.6 [Financing of Regional Drainage Facilities], next to the CFD called for under Section 3.8 [Financing of Public Services], and lastly to the CFD authorized under Section 3.7 [Financing of Public Improvements] of this Agreement.

3.10 Joint Facilities Agreements. The parties acknowledge that other governmental entities providing services to the TC-West Property may request that the City enter into a Joint Community Facilities Agreement with the entity(ies), as provided for under Government Code § 53316.2, for the financing of the Public Improvements, other City facilities, and the facilities of the other governmental entity(ies), in connection with the creation of one or more of the CFDs contemplated under this Agreement, or in connection with the creation of a CFD by other governmental entity(ies). Nothing in this Agreement shall bind or commit the City Council of City to approve or enter into any such Joint Community Facilities Agreement, however, City agrees to give any such request reasonable and timely consideration.

4.0 **MANAGEMENT AND MAINTENANCE**

4.1 Management. Owner, and its successors and assigns, shall manage the development of the TC-West Project, or cause the TC-West Project to be managed, in a commercially reasonable manner using best management practices.

4.2 Maintenance. At all times while Owner retains ownership of any parcel comprising the TC-West Property, Owner shall keep and maintain that portion of the TC-West Property in a clean, sanitary and orderly condition free from debris, graffiti and waste materials and in good order, repair and safe condition, except that construction materials may be allowed to accumulate, to the extent reasonable, in areas in which construction is currently on-going, provided construction waste and debris are regularly removed from the TC-West Property. In addition, Owner shall observe and comply with all Governmental Requirements, as that term is defined in Section 4.3. [Compliance with Laws] hereof, provided, however, that Owner does not waive its right to challenge the validity of applicability of any such Governmental Requirements.

4.3 Compliance with Laws. Except as may be provided to the contrary in Section 5.0 [Vesting and Reservation of Authority] of this Agreement, Owner shall carry out the design, development and construction of the TC-West Project in substantial conformity with all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Riverside, the City and any other political subdivision in which the TC-West Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City or Owner (collectively "Governmental Requirements"). Except as expressly stated, nothing in this Section shall be construed to require Owner to comply with any laws, regulations or standards which would not be applicable in the absence of this Agreement.

4.4 Effect and Duration of Covenants. The covenants established in this Agreement shall, without regard to technical classification and designation, burden the TC-West Property and run with the land, and shall be binding upon Owner and its successors and assign and any person claiming an interest in the TC-West Property by or through them. The covenants are for the benefit and in favor of Owner, the TC-West Project, and the City. The City shall have the right, but not the obligation, to enforce any or all of the covenants provided herein. Each of the covenants shall be binding and valid for the duration of the Term of this Agreement and upon the expiration of the Term shall cease to be binding and be of no further force or effect without any action required by either party. In the event of the early Termination of this Agreement, the covenants shall continue to be binding, valid, and in full force and effect for the unexpired portion of the Term, unless cancelled and released by the City in a written instrument recorded with the Recorder for the County of Riverside.

4.5 Covenants Do Not Bar Subdivision. The requirements of this Article 4.0 do not, and shall not be construed to prohibit Owner from subsequently subdividing the TC-West Property and selling the individual parcels or lots. However, each such parcel or lot created and sold shall be conveyed subject to covenants incorporating each of the obligations set forth in this Article 4.0, except as is expressly provided to the contrary in Section 6.1.4 [Conveyance of Lot to Homebuyer] of this Agreement.

5.0 VESTING AND RESERVATION OF AUTHORITY

5.1 Vested Right to Develop. Subject to the terms, conditions, and covenants of this Agreement, Owner shall have a vested right to develop the TC-West Project on the TC-West Property in accordance with, and to the extent permitted in, the Existing Development Approvals, Existing Land Use Regulations, and this Agreement. The parties acknowledge and agree that the City is restricted in its authority to limit the exercises of its policy power by contract. As such, the parties agree that this Section adequately reserves to the City all of its respective police powers while providing the Owner, to the fullest extent allowed under the Development Agreement Laws and interpreting decisions of courts of competent jurisdiction, vested rights to develop the TC-West Project. Subject to the foregoing, and to the maximum extent permitted under the law, this Agreement is intended to, and shall, bind future City Councils to its terms.

5.2 Effect of Agreement.

5.2.1 Applicable Land Use Regulations. Except as may otherwise be expressly provided to the contrary in this Agreement, pursuant to Government Code § 65865.4 and § 65866, the rules, regulations, and official policies governing permitted uses of the TC-West Property, the maximum density / intensity of use/ and number of units, the maximum height and size of proposed buildings, the design, improvement and construction standards and specifications applicable to the TC-West Project, and provisions for reservation and dedication of land for public purposes, shall be those set forth in the Existing Development Approvals, Existing Land Use Regulations, and this Agreement as existing, approved, effective and made a matter of public record on or as of the Effective Date of this Agreement. As such, this Agreement shall remain enforceable by either party notwithstanding any subsequent change in the Land Use Regulations, including, but not limited to, the City's General Plan, Zoning Ordinance, Subdivision Ordinance, development standards or guidelines. However, development of the TC-West Project shall be subject to the Implementing Approvals and Subsequent Development Approvals, if any, as provided for below.

5.2.2 Applicable Development Exactions. Except as may otherwise be expressly provided to the contrary in this Agreement, and except as is provided for Development Impact Fees and the MSHCP-Fee in Section 5.3.2 [Development Impact Fees], and except for School Fees (Government Code § 69570 *et seq.*) and other fees imposed by governmental entities other than the City having jurisdiction over the TC-West Property or the TC-West Project, Owner shall only be required to comply with those Development Exactions for the development of the TC-West Project, as are required and imposed under the Existing Development Approvals and the Existing Land Use Regulations, in the amount and to the extent applicable as existing, approved, effective, and made a matter of public record on or as of the Effective Date of this Agreement. Notwithstanding the foregoing, Owner shall not be required to pay the TUMF for development of the TC-West Project because the TC-West Project is exempt pursuant to Hemet Municipal Code § 58.70.2.F.xii.

5.2.3 Moratoria. It is the intention of the parties in adopting this Agreement that no moratorium, whether enacted by initiative or otherwise, affecting any subject matter arising from or related to the subject matter of this Agreement, shall apply to the development of the TC-West Project, to the extent such moratorium is inconsistent or in conflict with this Agreement. Further, it is specifically the intent of the parties that the schedule or rate of development shall be determined as provided in Section 2.10 [Schedule of Performance] of this Agreement and shall not be affected by any initiative measure establishing growth control and that the rule of Pardee Construction Company v. City of Camarillo (1984) 37 Cal. 3d 465, shall have no effect on Owner's discretion to schedule the rate of development.

5.3 Reservation of Authority. Notwithstanding any other provision of this Agreement, the City reserves its authority to impose any of the following rules, policies, regulations, ordinances, or requirements on development of the TC-West Project:

5.3.1 Filing and Processing Fees. Notwithstanding Section 5.2.2. [Applicable Development Exactions], Owner shall pay all customary and typical filing and permit processing

fees imposed for Implementing Approvals and Subsequent Development Approvals as required under ordinances and resolutions then in effect.

5.3.2 **Development Impact Fees.** Owner shall pay all customary and typical Development Impact Fees relating to the TC-West Project required under ordinances and resolutions adopted, valid, and in effect as of the issuance of the first building permit for a single family home in the TC-West Project and thereafter the type and amount of the Development Impact Fees levied against the TC-West project shall be deemed fixed. Notwithstanding the foregoing, Owner shall be obligated to pay the MSHCP-Fee in the amount effective as of the issuance of each building permit for each residential dwelling unit.

5.3.3 **Procedural Requirements.** Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure.

5.3.4 **Taxes of General Applicability.** Any law, ordinance, or resolution that imposes a general or special tax of general applicability to be applied uniformly to business and/or development in the City, whether such tax is for licensing or other purposes, except for Subsequent Regional Traffic Impact Fees.

5.3.5 **Uniform Codes.** This Agreement does not prevent the City from adopting and amending in compliance with State law certain uniform codes or uniform standards which are based on recommendations of a multi-state professional organization and which become applicable throughout the City -- including the TC-West Project and TC-West Property subject to this Agreement. Such Uniform Codes include, but are not limited to, the Uniform Building Code, Uniform Mechanical Code, National Electrical Code, Uniform Fire Code, and uniform standards for the construction of public works.

5.3.6 **Health & Safety Regulations.** Nothing in Section 5.2 [Effect of Agreement] or otherwise in this Agreement shall prevent the City from applying to the development of the TC-West Project on the TC-West Property, or the subsequent use of the TC-West Property, any ordinances, rules, regulations, policies, or procedures ("Laws"), the primary purpose of which is to protect health, safety, and welfare, or the primary purpose of which is the general regulation of business activity within the City. These matters may include, but are not limited to: (i) Laws regarding the abatement of public nuisances; (ii) Laws regulating hazardous materials, trash and related rubbish and solid waste, weeds, dust, graffiti, and inoperative vehicles; (iii) Laws regarding emergency situations including fires, floods, earthquakes, and other natural disasters; (iv) Laws prohibiting criminal acts; (v) Laws regulating the keeping and use of animals; (vi) Laws regulating prurient interests including the regulations of adult businesses and activities, smoking, and the sale and consumption of alcoholic beverages; (vii) Laws regulating the conduct of business within the City including the requirement to obtain a business license; and (viii) Laws regulating the use and placement of signs within the City, and (ix) building, plumbing, electrical, mechanical, fire, dangerous buildings, and similar uniform codes adopted by the City. In the event Owner contests that application of such Health & Safety Regulations to development of the TC-West Project or the TC-West Property as being in conflict with any of the Existing Development Approvals, or as impairing or prohibiting Owners ability to develop the TC-West Project as contemplated in this Agreement, then Owner shall so notify

the City in writing prior to adoption of the Health & Safety Regulations, in which event City shall not impose such regulation unless and until the City adopts a finding that imposition of the regulation is reasonably necessary to correct or avoid a condition generally injurious or detrimental to the public health, safety or welfare. These findings shall be based upon substantial evidence in the record from a hearing conducted by the City Council.

5.3.7 Modification or Suspension by State or Federal Law. Pursuant to Government Code § 65869.5, in the event that any State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

5.3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the TC-West Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies.

5.4 Subsequent Approvals. The parties contemplate that development of the TC-West Project will require Owner to obtain certain Implementing Approvals and that Owner may find it necessary to seek certain Subsequent Development Approvals from the City for the TC-West Project. Such approvals shall be governed by the following:

5.4.1 Implementing Approvals. The parties acknowledge and agree that Owner shall need certain Implementing Approvals, such as site development review, grading permits and building permits, to undertake and complete the TC-West Project as contemplated under this Agreement and the Existing Development Approvals existing, approved, effective and made a matter of public record on or as of the Effective Date of this Agreement. These Implementing Approvals are to be of a ministerial or only limited discretionary nature and shall not cause a substantial or significant change in the TC-West Project or in any Existing Development Approval, although a minor change to the TC-West Project or the Existing Development Approvals may be made through an Implementing Approval and shall not require amendment of this Agreement. Implementing Approvals shall be subject to Section 5.2. [Effect of Agreement] and no Subsequent Land Use Regulation, or Development Exaction (except for Development Impact Fees and MSHCP-Fees), not imposed under the Existing Development Approvals or Existing Land Use Regulations, as existing, approved, effective and made a matter of public record on or as of the Effective Date of this Agreement, shall be imposed as a condition of approval on an Implementing Approval. City shall accept for processing, review, and action all applications for Implementing Approvals and such applications shall be processed in the normal manner for processing such matters. City may, at the request of Owner, contract for planning and engineering consultant services to expedite the review and processing of Implementing Approvals, the cost of which shall be borne by Owner.

5.4.2 Subsequent Development Approvals. The parties acknowledge and agree that Owner may need to seek Subsequent Development Approvals in response to changed

market conditions, unknown site conditions, or other conditions over which Owner has no reasonable control. Subsequent Development Approvals are anticipated to be major discretionary approvals that are adjudicatory or legislative in nature, the granting of which would cause a substantial or significant change in the TC-West Project and/or the Existing Development Approvals. The parties agree that any application which, if approved, would have any of the following effects, impacts, or characteristics, is to be considered a Subsequent Development Approval:

- (a) Substantially alter the permitted uses of the TC-West Property;
- (b) Increase the density or intensity of use of the TC-West Property by more than ten percent (10%);
- (c) Increase the maximum height and size of permitted buildings by more than ten percent (10%);
- (d) Delete a requirement for the reservation or dedication of land for public purposes within the TC-West Property;
- (e) Constitute a project requiring a subsequent or a supplemental Mitigated Negative Declaration or an Environmental Impact Report.

Although this Agreement shall not prohibit the processing or approval of Subsequent Development Approvals, the parties agree that such approvals will require amendment of this Agreement in accordance with Section 5.5 [Changes and Amendments]. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying the Subsequent Land Use Regulations, imposing new or increased Development Exactions, Development Impact Fees, including TUMF and the Multi-specific Habitat Conservation Plan fee, and imposing other conditions of approval or mitigation measures, or denying the application, in the reasonable exercise of the City's discretion.

5.5 Changes and Amendments. Substantial changes to the TC-West Project or the Existing Development Approvals and amendments of this Agreement shall be subject to the following:

5.5.1 Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only by mutual consent of the parties and in the manner provided for in Government Code §§ 65868, 65867, and 65867.5. The provisions of this Section do not impact the right of the City to terminate this Agreement because of Owner's breach or failure to comply in good faith with the requirements of this Agreement.

5.5.2 Review by City Council. Any amendment to this Agreement shall require review and approval by the City Council. The City agrees to not unreasonably disapprove an amendment requested by Owner provided the amendment is: (i) related to a Subsequent Development Approval that is necessary to effectuate the purpose of this Agreement in response to changed market conditions, unknown site conditions, or other conditions over which Owner has no reasonable control; (ii) is necessary to correct an inconsistency or inaccuracy in the Agreement; or (iii) the proposed change and amendment is appropriate and

mutually desirable. If approved, any such amendment shall be incorporated herein. Owner, shall, within thirty (30) days of written demand by City, reimburse City for any and all reasonable costs associated with any amendment or change to this Agreement that is initiated by Owner or Owner's successor – without regard to the outcome of the request for amendment or change to this Agreement.

6.0 ASSIGNMENT AND RIGHTS OF HOLDERS

6.1 Assignment

6.1.1 **Right to Assign.** The Owner shall have the right to sell, transfer, or assign the TC-West Property in whole or in part, provided that no such partial transfer shall violate the Subdivision Map Act, Government Code § 66410, et seq., as the same was incorporated by reference into the Hemet Municipal Code at § 70-1 et seq. (Ordinance No. 1564) to any person, partnership, joint venture, firm, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties, and obligations arising under or from this Agreement and be made in strict compliance with ALL the following conditions precedent:

(a) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the TC-West Property, Owner agrees to provide specific notice of this Agreement, including the record or document number, where a true and correct copy of this Agreement may be obtained from the County Clerk/County Recorder of the County of Riverside, in any grant deed or other document purporting to transfer the title or an interest in the TC-West Property during the term of Agreement or any extension thereof.

(b) Within thirty (30) calendar days prior to any such sale, transfer, or assignment, Owner shall notify City, in writing, of such sale, transfer, or assignment and shall provide City with an executed agreement, in a form reasonably acceptable to the City Attorney, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of the owner under this Agreement.

(c) Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute default by the Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee (the "Assignee") to execute the agreement required by Paragraph (b) of this Subsection, the burdens of this Agreement shall be binding upon the Assignee, but the benefits of this Agreement shall not inure to the Assignee until and unless such Agreement is executed.

6.1.2 **Release of Transferring Owner.** Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring Owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring Owner of ALL of the following conditions:

(a) The Owner no longer has a legal interest in all or any part of the TC-West Property sold, transferred or assigned except as a beneficiary under a deed of trust.

- (b) The Owner is not then in default under this Agreement.
- (c) The Owner or Assignee has provided City with the notice and executed agreement required under Paragraph (b) of Subsection 6.1.1 above.
- (d) The Assignee provides City with security equivalent to any security previously provided by Owner to secure performance of its obligations hereunder.
- (e) The Owner has reimbursed City for any and all City costs associated with Owner's transfer of all or a portion of the TC-West Property.

6.1.3 **Subsequent Assignment.** Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section.

6.1.4 **Conveyance of Lot to Homebuyer.** Notwithstanding the foregoing provisions of this Article 6.0, if Owner conveys a subdivided lot to any person intending to occupy such lot as their primary or secondary residence or to lease or rent such lot to persons who will occupy the lot as their primary or secondary residence, then such conveyance shall be free and clear of the Agreement and the grantee of such lot shall have no obligation hereunder.

6.2 Rights of Mortgagees.

6.2.1 **Mortgagee Protection.** Neither entering into this Agreement nor committing a Default under this Agreement shall defeat, render invalid, diminish, or impair the lien of Mortgagees having a mortgage, deed of trust or other security interest on any portion of the TC-West Property made in good faith and for value, unless otherwise required by law. No Mortgagee shall have an obligation or duty under this Agreement to perform Owner's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu of foreclosure, but upon acquiring the right to possession pursuant to a mortgage, deed of trust or other security interest on the TC-West Property or any portion thereof, the Mortgagee shall be subject to the terms and conditions of this Agreement. Notwithstanding the foregoing, Mortgagee shall have no obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion thereof; provided, however, that Mortgagee shall not be entitled to devote the TC-West Property to any uses or to construct any improvements thereon other than those improvements provided for or authorized by this Agreement and the Existing Development Approvals. The term of this Agreement shall not be extended based on the fact that a Mortgagee held title to the TC-West Property for all or any part of the term of this Agreement.

6.3 Notice of Default to Mortgagee; Right to Cure.

6.3.1 If the City Clerk timely receives notice from a Mortgagee requesting a copy of any Notice of Default given to Owner under the terms of the Agreement, the City shall provide a copy of that notice to the Mortgagee concurrently with sending the Notice of Default to Owner. City shall have no liability for damages or otherwise to Owner, Owner's successor, or to any Mortgagee or its successor for failure to provide such notice.

6.3.2 The Mortgagee shall have the right, but not the obligation, for a period up to ninety (90) days after the receipt of such notice from the City to cure or remedy, or to commence to cure or remedy, the Default unless a further extension of time to cure is granted in writing by the City. However, a Mortgagee to avail itself of the rights provided by this Section must notify the City in writing of its intent to attempt to remedy or cure within twenty (20) days of the date of the Notice of Default from City to Mortgagee. A failure by a Mortgagee to provide such timely notice to City shall extinguish the rights and protections provided by this Section. By providing the notice to City, Mortgagee is agreeing and consenting to the provisions of this Section and is further waiving the right to claim a prior lien on the TC-West Property. If the Default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continually through foreclosure, a receiver, or otherwise, and shall thereafter remedy or cure the Default within ninety (90) days after obtaining possession. If the Default cannot, with diligence, be remedied or cured within this ninety (90) day period, then the Mortgagee shall have such additional time as the City Council determines is reasonably necessary to remedy or cure the Default, if the Mortgagee commences cure during the ninety (90) day period and thereafter diligently pursues and completes the cure.

6.3.3 Such diligence by the Mortgagee on effectuating such cure shall be reviewed by the City Council every thirty (30) days thereafter until any and all Defaults are cured. If at any such review, the City Council determines that the Mortgagee is not making good faith efforts to cure any and all Defaults, the City Council shall have the authority to terminate this Agreement.

6.3.4 In return for City granting to Owner, Owner's successors and transferees, and the Mortgagees of each of them, an extended time to remedy or cure a Default, Owner, Owner's successors and transferees, and the Mortgagees of each of them agree that once a Default is declared by City's City Council, the City may take the actions set forth below and lien and burden the TC-West Property for the costs thereof - irrespective of any lien priority, construction loan, deed of trust, or other encumbrance. Such actions include the following:

- (a) Abating public nuisances following the City-adopted public nuisance ordinance;
- (b) Remedy any health or safety threat posed by the TC-West Property, construction, or other activities going on the TC-West Property;
- (c) Screen any unsightly appearance on the TC-West Property for aesthetic purposes;
- (d) Abate weeds; and,
- (e) Control noise, dust, or other offensive conditions on the TC-West Property.

6.4 Cure by Mortgagee. In the event any obligation of Owner is for the payment of money or fees, other than standard permit or processing fees, and a Default is declared by City

based upon such failure to pay, a Mortgagee may be granted an extended time to remedy or cure until such time as Mortgagee obtains possession of the TC-West Property; provided, Mortgagee agrees that any money due City which remains unpaid shall bear the higher of the legal rate of interest or the Consumer Price Index as the measure of inflation.

6.5 Mortgagee Rights. The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the TC-West Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the TC-West Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with the Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Owner shall reimburse City for any and all of City's reasonable costs associated with said negotiations, interpretations, and modifications and shall make reimbursement payments to City within thirty (30) days of receipt of an invoice from City.

Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage on the TC-West Property made in good faith and for value, unless otherwise required by law or specified herein.

7.0 INDEMNITY, RELEASE & RESERVATION OF RIGHTS

7.1 General Indemnity. Except as to the sole negligence, active negligence or willful misconduct of City, Owner expressly agrees to and shall indemnify, defend, release, and hold City, their elected and approved officers, officials, agents, servants, employees, attorneys and contractors harmless from and against, any Action, claim, liability, loss, damage, entry, costs, or expenses (including, but not limited to, attorney's fees, expert fees, and court costs) which arises out of, or is in any way connected with any challenge to the TC-West Project, this Agreement, Owner's performance under this Agreement, or any work performed by Owner or any services rendered to Owner in performance of this Agreement by any of Owner's employees, agents, servants, or subcontractors, notwithstanding that City may have benefited from their services, and any environmental review, analysis, and/or determinations required under the California Environmental Quality Act (Public Resources Code § 21000 et seq.) or other applicable state or federal law. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Owner's employees, agents, servants, or subcontractors. City shall not be responsible for any acts, errors or omissions of any person or entity except the City and their respective officers, agents, servants, employees or contractors. The Parties expressly agree that the obligations of Owner under this Section shall survive the expiration or Termination of the Agreement.

7.2 Third Party Litigation Concerning Agreement. Owner shall indemnify, protect, defend, at its expense - including Litigation Expenses, and hold harmless City, its officers, employees, or agents against any Action, loss, cost, expense, claim, or counter-claim, complaint, or proceeding to attack, set aside, void, or annul the approval of this Agreement, the

approving Ordinance, any Existing Development Approval(s), any Implementing Approval(s), and any environmental review, analysis, and/or determinations required under the California Environmental Quality Act (Public Resources Code § 21000 et seq.) or other applicable state or federal law, or the approval of any permit granted pursuant to this Agreement, brought by a third party. City shall promptly notify Owner of any such claim, Action, or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, Action, or proceeding, or if City fails to cooperate in the defense, Owner shall not thereafter be responsible to indemnify, protect, defend, or hold harmless City. City may in its discretion participate in the costs associated with the defense of any such claim, Action, or proceeding.

7.3 Hazardous Substances Indemnity. Owner expressly agrees to indemnify, defend, release and hold City and their respective elected and appointed officials, officers, employees, agents, and contractors harmless from and against any Action, claim, liability, loss, injury, damage, judgment, encumbrance or cost and expense that foreseeably or unforeseeably, directly or indirectly, arises from or is in any way related to, the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from the TC-West Project of any Hazardous Substances by Owner or its officers, directors, partners, employees, agents, and contractors. For the purpose of this Section, costs and expenses include, but are not limited to, natural resources damages, punitive damages, interest, fines, charges, penalties, Litigation Expenses, the cost of any required or necessary remediation or removal of Hazardous Substances, any cost of repair of improvements on the TC-West Property or surrounding properties necessitated by the remediation or removal of Hazardous Substances, and the costs of any testing, sampling, or other investigations or preparation of remediation or other required plans undertaken in connection with the remediation or removal of Hazardous Substances. Notwithstanding the foregoing, Owner expressly agrees to, at its sole expense and with legal counsel of City's choice, defend City and their respective elected and appointed officials, officers, employees, agents, and contractors in any Action, in which City and their respective elected and appointed officials, officers, employees, agents, and contractors become involved as a result of the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from the TC-West Project of any Hazardous Substances by Owner or its officers, directors, partners, employees, agents, and contractors. Owner's obligations under this Section shall survive the Termination of this Agreement. The foregoing indemnity extends beyond the term of this Agreement and is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, "CERCLA," 42 U.S.C. Section 9667(e), and California Health and Safety Code Section 25364, and their successor statutes, to insure, protect, hold harmless, and indemnify City from liability.

7.4 Release. Except for non-damage remedies, including the remedy of specific performance as provided for in Section 9.5 [Legal and Equitable Actions], Owner, for itself, its successors and assignees, hereby releases the City, its officers, agents, and employees from any and all Actions and damages of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, any environmental review, analysis, and/or determinations required under the California Environmental Quality Act (Public Resources Code § 21000 et seq.) or other applicable state or federal law, and any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or

because of the terms of this Agreement. Owner, for itself and its successors and assigns, expressly agrees that this Release includes all Actions and damages of any kind or nature or other liabilities that Owner may incur in any way related to or arising from its recordation of the irrevocable offers of dedication for the TC-East Easement and City's subsequent acceptance of the irrevocable offers of dedication of the easement area and right-of-way necessary for the final location, design, configuration and alignment of the Regional Drainage Facilities on, over, across and through the TC-East Property as determined by the City. Specifically in this regard, Owner acknowledges and agrees that City's designation of the final location, design, configuration, and alignment of the Regional Drainage Facilities on, over, across, and through the TC-East Property may have a significant and detrimental effect on the timing, pace, density, number of units, scope, extent, feasibility, and profitability of development on the TC-East Property.

7.5 Reservation of Rights. With respect to Sections 7.1 to 7.3 herein, City reserves the right to either (i) approve the attorney(s) which Owner selects, hires, or otherwise engages to defend City hereunder, which approval shall not be unreasonably withheld, or (ii) conduct its own defense, provided, however, that Owner shall reimburse City forthwith for any and all reasonable expenses incurred for such defense, including attorney's fees, upon billing and accounting therefor.

8.0 PERIODIC REVIEW PROCEDURE

8.1 Timing. Pursuant to Government Code § 65865.1, City shall review this Owner's compliance with the terms, conditions, and covenants of this Agreement. Such review shall be undertaken at least once during every twelve (12) month period from the Effective Date of this Agreement and for the Term or until Owner's obligations under this Agreement has been satisfied. The Owner or successor shall reimburse City for the actual, reasonable and necessary costs of this review, not to exceed Two Thousand Five Hundred Dollars (\$2,500.00), excluding cost incurred under Article 9.0 [Default and Enforcement], within thirty (30) days of written demand from City.

8.2 Evidence for Annual Review. Owner shall deliver to City within thirty (30) days of the date of receipt of a written request from City, evidence to demonstrate the Owner's good faith compliance with the terms of this Agreement. The City shall bear no responsibility or obligation to research, investigate, or otherwise obtain evidence of Owner's good faith compliance with this Agreement. It shall be Owner's sole responsibility and obligation to provide evidence of its good faith compliance with this Agreement. Prior to making a determination, the City shall make available to the Owner any public staff reports and documents to be used or relied upon by City to determine Owner's good faith compliance with this Agreement. The Owner shall be permitted an opportunity to respond to the City's evaluation of its performance, either orally or at a public hearing or in a written statement. Such response shall be made to the Director or its designee for purposes of review of compliance with this Agreement.

8.3 Certificate of Compliance. With respect to each year for which an annual review of compliance with this Agreement is conducted, and for which the City has determined that Owner is in good faith compliance with this Agreement, the City, upon written request of the Owner, shall provide Owner with a written certificate of good-faith compliance, in recordable

form, duly executed and acknowledged by the City. The Owner shall have the right, in the Owner's sole discretion, to record this notice of compliance.

9.0 DEFAULT AND ENFORCEMENT

9.1 Default. Either party's failure or unreasonable delay in performing any term, provision or covenant of this Agreement constitutes a Default of this Agreement. In the event of a Default, the injured party may give written "Notice of Default" to the defaulting party, specifying the Default. Delay in giving or failure to give such notice shall not constitute a waiver of the Default. If the defaulting party fails to cure the Default within forty-five (45) business days after receipt of a Notice of Default, or, if the Default is of a nature that cannot be cured within forty-five (45) business days, the defaulting party fails to commence to cure the Default within said forty-five (45) business days and thereafter diligently prosecute such cure to completion, then the defaulting party shall be liable to the injured party for any and all damages caused by such Default, unless otherwise provided for by this Agreement.

9.2 Default by Owner. Owner is in default under this Agreement upon the happening of one or more of the following events or conditions:

9.2.1 If a warranty, representation, or statement made or furnished by Owner to City is false or proves to have been false in any material respect when it was made.

9.2.2 More than forty-five (45) days have passed since City's making of a written request to Owner for payment or reimbursement for a fee or service authorized or agreed to pursuant to this Agreement.

9.2.3 A finding and determination by City that upon the basis of information provided by Owner, and reviewed and investigated by City, the Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

9.2.4 Owner failed to substantially comply with any material term, condition, or covenant of this Agreement, including failing to timely provide the evidence required under Section 8.2 of this Agreement.

9.3 Default by City. If City has failed to cure its Default after notice and an opportunity to cure as provided in Section 9.1. [Default], Owner may pursue any legal or equitable remedy available to it under this Agreement without further notice to City, except as may be required under the law for service of summons and other legal papers. It is acknowledged by the parties that City would not have entered into this Agreement if City was to be subject to or liable for damages -- including monetary damages -- under or with respect to this Agreement or the application thereof. Owner, for himself or any successor thereto, expressly waives the right to seek damages -- including monetary damages -- against the City or any officer, employee, or agent thereof, for any default or breach of this Agreement. Owner covenants and agrees not to sue for or claim any damages -- including monetary damages -- for any purported breach of this Agreement by City. During the time when Owner alleges the existence of a City Default and without limiting any of its other available remedies, Owner shall not be obligated to proceed with or complete the TC-West Project or any phase of the TC-West Project, nor to reserve or dedicate any property pursuant to this Agreement. Upon a City

Default, any resulting delays in Owner's performance shall neither be an Owner Default nor constitute grounds for termination or cancellation of this Agreement by the City.

9.4 Waiver. Failure or delay in giving Notice of Default, or failing to commence a legal or equitable action as a result of the Default, shall not waive a Party's right to give future Notice of the same or any other Default.

9.5 Legal and Equitable Actions In addition to any other rights and remedies any party may institute a legal action to require the cure of any Default and to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. The following provisions shall apply to any such legal action:

9.5.1 Jurisdiction and Venue. Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, Central Division, State of California, or in the United States District Court for the Central District of California. Owner specifically waives any rights provided to it pursuant to California Code of Civil Procedure § 394 or federal or state statutes or judicial decisions of like effect.

9.5.2 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

9.5.3 Litigation Expenses. In the event either party commences an Action against the other party which arises out of a Default of, breach of, failure to perform this Agreement or otherwise related to this Agreement, then the Prevailing Party in the Action shall be entitled to recover its Litigation Expenses from the other party in addition to whatever relief to which the prevailing party may be entitled. For the purposes of this Section, the term "Prevailing Party," shall have the meaning ascribed in Code of Civil Procedure §1032(a) (4).

9.5.4 Specific Performance Remedy. Due to the elimination of damages as a remedy against City and to the size, nature, and scope of the TC-West Project, it will not be practical or possible to restore the TC-West Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have had to utilize the TC-West Property and provide for other benefits. Owner has invested significant time and resources and performed extensive planning and processing of the TC-West Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the TC-West Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money, which would adequately compensate Owner for such efforts. For the above reasons, the City and Owner agree that damages would not be an adequate remedy if the City fails to carry out its obligations under this Agreement. Therefore, no money damages are available against City, or any officer, employee, or agent thereof. Specific performance of this Agreement is necessary to compensate Owner if the City fails to carry out its obligations under this Agreement and is also available to City, if Owner defaults hereunder.

9.6 Remedies are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude

the exercise by it, at the same or different time, of any other rights or remedies for the same Default or any other Default by another Party.

9.7 Termination by City. City may terminate this Agreement, but City shall not terminate the Agreement without first holding a public hearing at which Owner may appear and be heard, for which Owner is given fifteen (15) days notice, and the decision by the City is supported by substantial evidence in the record, upon the occurrence of any of the following events:

9.7.1 Owner (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein in violation of this Agreement;

9.7.2 Owner (or any successor in interest) becoming insolvent or Owner (or any successor in interest) voluntarily or involuntarily making an assignment or transfer for the benefit of creditors other than the City, and/or the voluntary or involuntary appointment of a receiver, custodian, liquidator or trustee of Owner's property;

9.7.3 Owner is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 9.1 [Default] hereof

If, after the occurrence of any of the above-entitled events, City elects, in its sole discretion, to terminate this Agreement, then all rights of Owner and any person or entity claiming by or through Owner arising under this Agreement or with regard to the TC-West Project as may arise under this Agreement shall immediately cease and be terminated, except that any obligations of Owner to indemnify or reimburse City shall continue in full force and effect and City shall have all of the remedies to enforce a Default of this Agreement as may be provided hereunder and under the law, including its right of revision and option to repurchase.

10.0 GENERAL PROVISIONS

10.1 Forced Delays; Extension of Times Notwithstanding the times stated in this Agreement for the performance of obligations by parties, including but not limited to the Schedule of Performance, a party shall not be deemed to be in Default due to its inability to timely perform an obligation as required under this Agreement where the inability to perform, or the delay in performance is directly caused by any of the following: (i) actions challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; (ii) inability to secure necessary labor materials or tools for the Project due to national, state, or local shortages, strikes, lockouts, or freight embargoes; (iii) delays of any contractor, sub-contractor or supplier beyond the reasonable control of Participant and not caused by any act or omission of Participant; (iv) withdrawal of financing for the Project that is beyond the reasonable control of Participant and not caused by any act or omission of Participant; (v) war or insurrection; (vi) civil disturbances, such as riots and looting; (vii) acts of terrorism and other acts of a public enemy; (viii) acts of God, including, but not limited to, floods, famine, earthquakes, fires, abnormally dangerous or damaging weather conditions; (ix) epidemics, quarantine restrictions, or other nation, state, or local mass medical emergencies; (x) any national, state, or local state of emergency declared by a duly authorized public official; (xi) casualties resulting from any of the foregoing; (xii) any

delays resulting from the unreasonable delay or failure of a governmental agency or entity, including the City, to perform any act or to issue any permit or approval necessary for the Project where such delay or failure is beyond the reasonable control of the Participant and not caused by any act or omission of the Participant; and (xiii) any other causes beyond the reasonable control or arising without the fault of the party claiming an extension of time to perform. In the event of the occurrence of any such event that directly affects the performance of an obligation under this Agreement, the time to perform such obligation shall be extended by the period of the enforced delay, but not to exceed ninety (90) days without the concurrence of the parties. The period of forced delay shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within twenty (20) days of the commencement of the cause.

10.2 Binding Effect of Agreement. The burdens of this Agreement bind and the benefits of the Agreement inure to the successors-in-interest to the parties to it in accordance with the provisions of and subject to the limitations of this Agreement.

10.3 TC-West Project as a Private Undertaking/Relationship of Parties. It is specifically understood and agreed by and between the parties hereto that the development of the TC-West Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. No partnership, joint venture, or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

10.4 Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by registered mail, postage prepaid to the person and address provided below. Delivery shall be presumed delivered upon actual receipt by personal delivery or within three (3) days following deposit thereof in United States Mail or within two (2) days of delivery by facsimile, provided that if notice is by facsimile, then a copy of the notice shall also be contemporaneously sent by regular mail, postage prepaid to the person and address provided below.

Notice required to be given to City shall be addressed as follows:

To City: City of Hemet
 Attn: City Manager
 445 E. Florida
 Hemet, CA 92543
 Facsimile: (909) 765-3785

With a copy to: Assistant City Attorney
 Attn: Eric S. Vail, Esq.
 Burke, Williams & Sorensen, LLP
 3403 Tenth Street, Suite 300
 Riverside, CA 92501
 Facsimile: (909) 788-5785

Notices required to be given to Owner shall be addressed as follows:

To Owner: Coman Leigh Communities'
Attn: Rick Scott, Chief Operating Officer
32823 Highway 79 South
Temecula, CA 92592
Facsimile: (951) 296-5071

With a copy to: Hewitt & O'Neil LLP
Attn: Dennis D. O'Neil
19900 MacArthur Blvd., #1050
Irvine, CA 92612
Facsimile: (949) 798-0511

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

10.5 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement. In the event, Owner or Owner's successor requires supplemental or additional agreements for purposes of securing financing or similar purposes, City will endeavor to assist in this respect, provided, however, Owner or Owner's successor shall reimburse the City for any and all costs associated with processing, reviewing, negotiating, or acting on such agreements. Owner or Owner's successor agrees to reimburse City within thirty (30) days of written demand therefor.

10.6 No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the City of Hemet and Owner. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties' obligations under this Agreement.

10.7 Entire Agreement. This Agreement and the attachments hereto contain the complete, final, entire, and exclusive expression of the agreement between the parties hereto, and are intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto not expressly set forth in this Agreement shall be null and void.

10.8 Recitals and Definitions. The Recitals and Definitions set forth at the beginning of this Agreement are a substantive and integral part of this Agreement and are incorporated by reference in the Operative Provisions portion of this Agreement.

10.9 Integration. This Agreement consists of pages 1 through 37, excluding the cover page, and Attachments 1 through 6 attached hereto and incorporated herein by this reference, 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 subject matter hereof.

10.10 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms. References to section numbers are to Sections of this Agreement unless expressly stated otherwise.

10.11 Interpretation. City and Owner acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction, which provides the ambiguities in a document, shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the parties hereto.

10.12 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code § 6700 and § 6701. If any act is to be done by a particular time during a day, that time shall be Pacific Standard Zone time.

10.13 Severability. Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

10.14 Amendments to Agreement. Each Party agrees to consider reasonable requests for amendments to this Agreement which may be made by the other Party, lending institutions, bond counsel or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of City and Owner. On behalf of City, the City Manager shall have the authority to make minor amendments to this Agreement, including, but not limited to, the granting of extensions of time to Owner, on behalf of City so long as such actions do not materially change the Agreement or make a commitment of additional funds of City. All other changes, modifications, and amendments shall require the prior approval of City Council.

10.15 Administration. This Agreement shall be administered for the City by, and the City shall maintain authority over this Agreement through, the City Manager, or his/her designated representative, following approval of this Agreement by the City Council. The City Manager (or his/her designated representative) shall have the authority to issue interpretations of

this Agreement on behalf of the City so long as such actions do not materially change the Agreement or make a commitment of additional funds of the City. All other changes, modifications, and amendments shall require the prior approval of the City Council.

10.16 Ceremonies. To ensure proper protocol and recognition of City, Owner shall cooperate with City staff in the organization of any TC-West Project-related groundbreakings, grand openings or any such inaugural events/ceremonies sponsored by Owner celebrating the development, which is the subject of this Agreement.

10.17 Authority to Execute. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

10.18 Memorandum of Agreement. The parties agree that in lieu of recording this entire Agreement, a Memorandum of Agreement may be recorded in a form substantially similar to that attached to this agreement as Attachment "6".

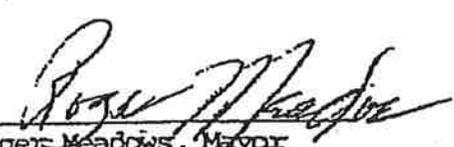
10.19 Counterparts. This Agreement may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

10.20 Effective Date This Agreement shall not become effective until an adopting Ordinance has been formally approved by the City Council and thirty (30) days have elapsed and the Agreement has been executed by the appropriate authorities of City and Owner.

IN WITNESS WHEREOF this Agreement has been executed by the authorized representatives of the parties hereto.

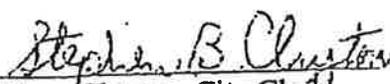
"CITY"

CITY OF HEMET

By: 

Roger Meadows, Mayor

ATTEST:


Steve Clayton, City Clerk

APPROVED AS TO FORM:

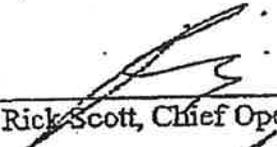

Eric S. Vail, ~~Assistant~~ City Attorney

"OWNER"

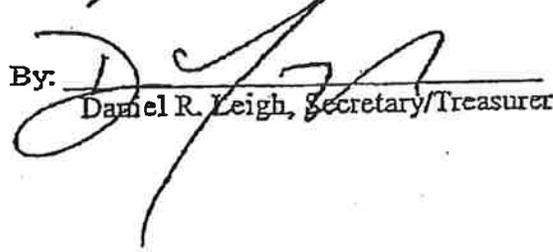
CORMAN BROOKE LLC
a California limited liability company

By: **Corman Leigh Communities**
a California corporation
Its Managing Partner

[NOTARY ACKNOWLEDGEMENT REQUIRED]

By: 
Rick Scott, Chief Operating Officer

[NOTARY ACKNOWLEDGEMENT REQUIRED]

By: 
Daniel R. Leigh, Secretary/Treasurer

ATTACHMENT 1

TC-WEST PROPERTY LEGAL DESCRIPTION

ATTACHMENT 1

TC-WEST PROPERTY LEGAL DESCRIPTION

ATTACHMENT 1

TC-WEST PROPERTY LEGAL DESCRIPTION

ATTACHMENT 1

TC - WEST PROPERTY LEGAL DESCRIPTION

IN THE CITY OF HEMET, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING PORTIONS OF TRACT 29550 AS SHOWN ON A MAP FILED IN BOOK 299, PAGES 78 THRU 99, INCLUSIVE OF MAPS, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, BEING MORE PARTICULAR:

LOTS 1 THRU 7; LOTS "A" THRU "I"; LOT "K"; LOT "L"; LOT "EEE", LOT "FFF"; LOT "LLL" AND LOT "MMM", ALL OF SAID TRACT.

THIS DOCUMENT WAS PREPARED BY ME
ON NOVEMBER 16, 2004.


PAUL A. CUOMO, P.L.S. 4136
MY LICENSE EXPIRES 6/30/06



ATTACHMENT 2

TC-WEST PROPERTY SITE DIAGRAM

ATTACHMENT 2

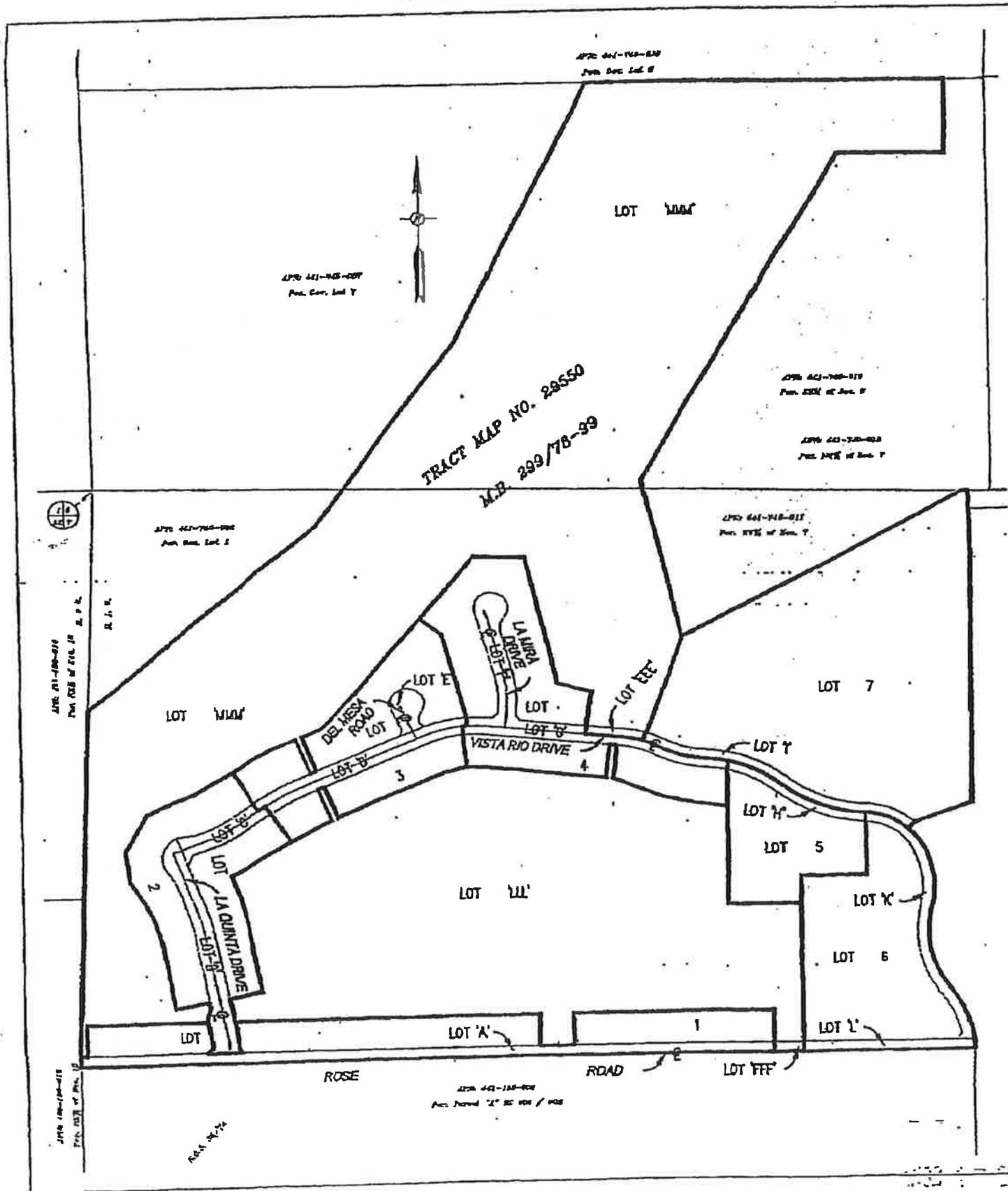
TC-WEST PROPERTY SITE DIAGRAM

ATTACHMENT 2

TC-WEST PROPERTY SITE DIAGRAM

ATTACHMENT 2

TC-WEST PROPERTY



ATTACHMENT 3

TC-EAST PROPERTY LEGAL DESCRIPTION

ATTACHMENT 3

TC-EAST PROPERTY LEGAL DESCRIPTION

ATTACHMENT 3

TC-EAST PROPERTY LEGAL DESCRIPTION

ATTACHMENT 3

TC - EAST PROPERTY LEGAL DESCRIPTION

IN THE CITY OF HEMET, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING PORTIONS OF TRACT 29550 AS SHOWN ON A MAP FILED IN BOOK 299, PAGES 78 THRU 99, INCLUSIVE OF MAPS, IN THE OFFICE OF THE RECORDER OF SAJD COUNTY, BEING MORE PARTICULAR:

LOTS 8 THRU 23; LOT "J"; LOTS "M" THRU "Z"; LOTS "AA" THRU "ZZ"; LOTS "AAA THRU "DDD" AND LOTS "GGG" THRU "KKK", ALL OF SAID TRACT.

THIS DOCUMENT WAS PREPARED BY ME
ON NOVEMBER 16, 2004.

Paul A. Cuomo

PAUL A. CUOMO, P.L.S. 4136
MY LICENSE EXPTRES 6/30/06



ATTACHMENT 4

TC-EAST PROPERTY SITE DIAGRAM

ATTACHMENT 4

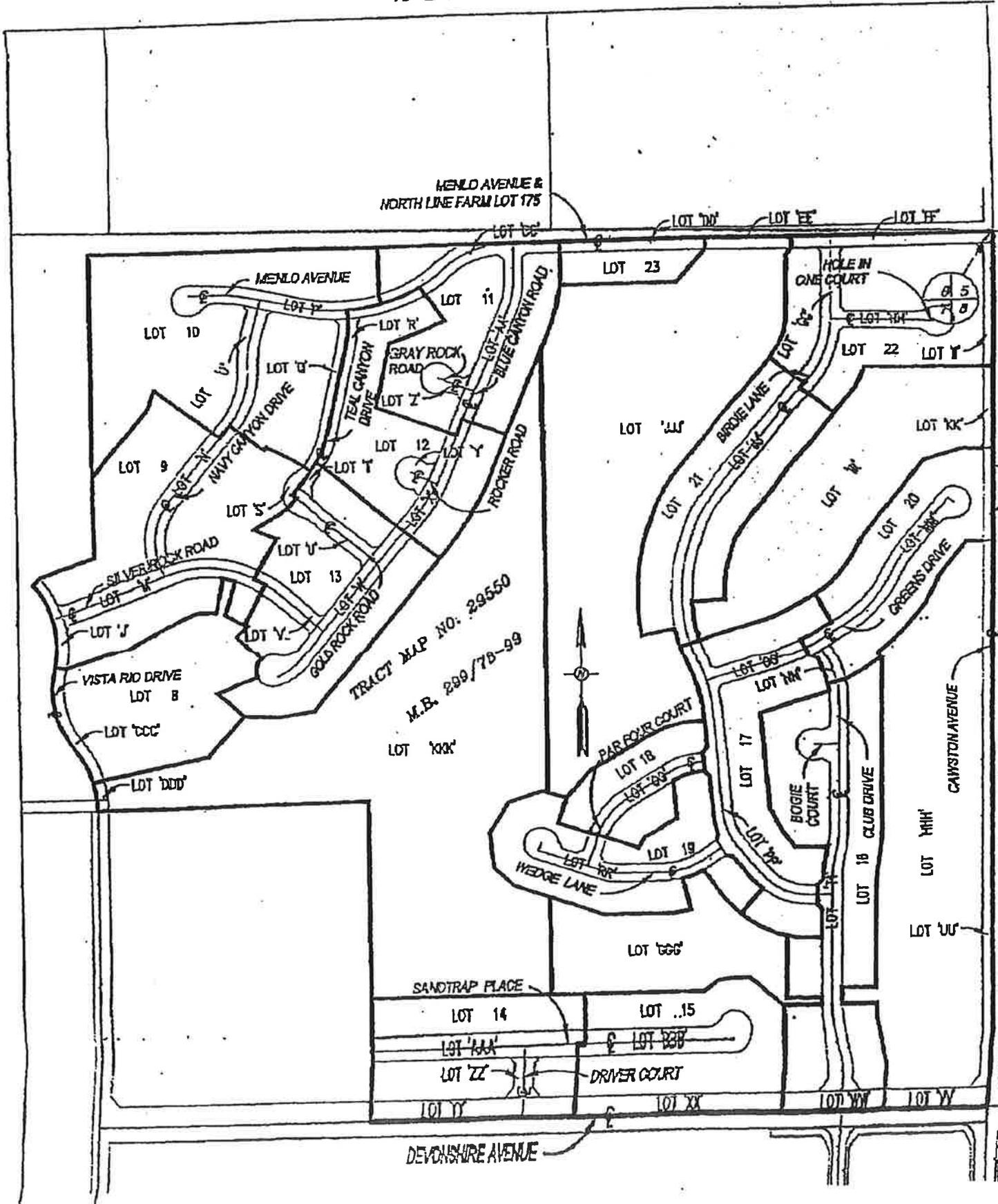
TC-EAST PROPERTY SITE DIAGRAM

ATTACHMENT 4

TC-EAST PROPERTY SITE DIAGRAM

ATTACHMENT 4

TC-EAST PROPERTY



ATTACHMENT 5
GOLF-COURSE PARCELS LEGAL DESCRIPTION

ATTACHMENT 5
GOLF-COURSE PARCELS LEGAL DESCRIPTION

ATTACHMENT 5
GOLF-COURSE PARCELS LEGAL DESCRIPTION

ATTACHMENT 5

GOLF COURSE PARCELS LEGAL DESCRIPTION

IN THE CITY OF HEMET, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING PORTIONS OF TRACT 29550 AS SHOWN ON A MAP FILED IN BOOK 299, PAGES 78 THRU 99, INCLUSIVE OF MAPS, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, BEING MORE PARTICULAR:

LOTS "GGG" THRU "MMM", ALL OF SAID TRACT.

THIS DOCUMENT WAS PREPARED BY ME
ON NOVEMBER 16, 2004.

Paul A. Cuomo
PAUL A. CUOMO, P.L.S. 4136
MY LICENSE EXPIRES 6/30/06





Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Ronald E. Bradley, Interim City Manager
Gary Thornhill, Interim Assistant City Manager
Deanna Elliano, Community Development Director *DE*

DATE: September 24, 2013

RE: **MUNICIPAL CODE AMENDMENT NO. 13-007**: An amendment to Article XIV of Chapter 18 of the Hemet Municipal Code regarding the Residential Rental Unit Registration and Crime Free Housing Program, and adoption of the associated Fee Schedule.

RECOMMENDED ACTION:

That the City Council:

1. *Introduce, read by title only, and waive further reading of **Ordinance Bill No. 13-045**, amending Article XIV of Chapter 18 of the Hemet Municipal Code regarding provisions of the Residential Rental Unit Registration and Crime-Free Housing Program; and*
2. *Adopt **Resolution Bill No. 13-042**, establishing a fee schedule for the registration and inspection of residential rental units in accordance with the provisions of City Council adopted Ordinance 1870 and Ordinance Bill No. 13-045*

BACKGROUND:

At the Council meeting of August 27, 2013, the City Council adopted Ordinance No. 1870 which established a Residential Rental Registration and Crime Free Rental Housing Program for the City of Hemet, as a component of the Hemet ROCS ordinances. The new ordinance also authorized the implementation of fees to cover the actual staff costs associated with administering the program in regard to rental unit registration, registration renewal, inspection, re-inspection, and for properties applying for the Landlord in Good Standing Program. A resolution to adopt the implementing fee schedule was presented to the Council at a public hearing held on September 10, 2013.

During the course of the discussion concerning the adoption of the fees, the Council concluded that the adopted ordinance and the fee schedule should be revised to delete the requirement that owners with properties under the "Good Landlord" designation be required to renew their properties in the Program every three years. The Council directed that properties with this designation would not be subject to any subsequent inspections, registration renewal, or the associated fees unless complaints were received and the property fell out of compliance with the maintenance standards in the ordinance, or if the property changed ownership.

The proposed amendments to the adopted Residential Rental Registration ordinance are presented in red-line format in the attached Ordinance Bill No. 13-045 (Attachment No. 1). The text of the existing adopted ordinance has been revised to delete any requirements for registration renewal for the properties with the Landlord in Good Standing Designation, except under the specific circumstances noted above.

Staff is also recommending an additional change to the ordinance regarding the initial registration deadlines for the Multi-family and Single-family rental properties, as shown in Ordinance Bill No. 13-045. As a result of the proposed changes in the ordinance concerning the Good Landlord provisions, the effective date of the new provisions will be November 7, 2013. Staff believes additional time is needed to properly identify, notify, and outreach to the Multi-family property owners and managers regarding the Rental Registration Program, and to give them an opportunity to have their registration applications submitted, including completion of the Crime Free Housing Training. Council had also expressed concerns as to the potential magnitude of the inspections to be conducted by staff and suggested that we re-examine the phasing of the program. Therefore, staff is recommending that the registration deadline for the Multi-family units be shifted from December 31, 2013 to March 31, 2014; and the registration deadline for Single-family units be shifted from July 1, 2014 to September 30, 2014. This will also give staff an opportunity to have ample experience in implementing the Multi-family portion before starting the registration and inspection process for the single-family units. However, even with the delayed start of the formal program, code enforcement and building staff will still respond to individual complaints or concerns from the public regarding substandard housing and blighted property conditions, just not on a “pro-active” or comprehensive basis until the registration is in place.

The proposed Fee Schedule for the Program has been revised to remove the renewal fees for the Good Landlord properties, and is included as Attachment No. 2. The proposed Resolution Bill No. 13-042 sets forth the fee categories and amounts to implement the Program, and provides the rationale for how the fees were derived based on the estimated staff time to perform the work. The proposed fees will remain in effect until or unless the City Council amends the fees pursuant to a subsequent public hearing and fee resolution.

The fees outlined in the proposed resolution were very carefully formulated to be limited to the actual costs of the registration and inspection, and to represent a fair and equitable fee schedule. Staff and the City Attorney reviewed the fee schedules of over 24 jurisdictions with similar programs, and we believe that what is proposed in Hemet is the most reasonable, legally defensible, and detailed of the cost recovery schedules that were analyzed.

COORDINATION & PUBLIC REVIEW:

A public hearing notification for the proposed amendment to the ordinance and the associated fee resolution was published in the Press Enterprise on September 14, 2013. Any comments received from the public regarding the proposed ordinance amendments or the fee schedule will be presented to the Council prior to or at the public hearing. The proposed amendments to the ordinance have been coordinated with the City Attorney’s office.

CONSISTENCY WITH ADOPTED GOALS, PLANS, AND PROGRAMS:

The proposed Ordinance amendment and Resolution are components 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 program 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.*

POLICY LU-4.6: *Provide pro-active, equitable, consistent and effective code compliance activities, nuisance abatement, property maintenance enforcement functionsto insure that Hemet's neighborhoods and business district are attractive, safe, and retain property values.*

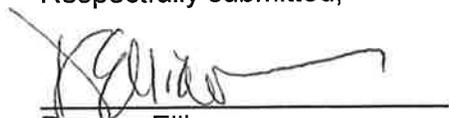
CEQA REVIEW AND COMPLIANCE:

The City has analyzed this proposed ordinance and resolution 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. Whereas 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 amendment of this section to Chapter 18 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 and Fee Resolution is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

FISCAL IMPACT:

The proposed Fees are designed and administered to only cover the actual cost of the services provided regarding the City staff time associated with the implementation of the registration and inspection program.

Respectfully submitted,



Dearna Elliano
Community Development Director

Attachments:

1. Proposed Ordinance Bill No. 13-045, amending Chapter 18, Article XIV of the Hemet Municipal Code
2. Proposed Resolution Bill No. 13-042 establishing Residential Rental Registration & Inspection Program Fees

Attachment 1



1
2
3 **CITY OF HEMET**
4 **Hemet, California**
5 **ORDINANCE BILL NO. 13-045**

6 **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF**
7 **HEMET, CALIFORNIA AMENDING ARTICLE XIV OF CHAPTER**
8 **18 [BUSINESSES] OF THE HEMET MUNICIPAL CODE**
9 **REGARDING THE REGISTRATION DEADLINES AND**
10 **LANDLORD IN GOOD STANDING PROVISIONS OF THE**
11 **RESIDENTIAL RENTAL REGISTRATION AND CRIME-FREE**
12 **RENTAL HOUSING PROGRAM, AN ELEMENT OF THE HEMET**
13 **ROCS PROGRAM.**

14 **WHEREAS**, the City Council determined that the City has experienced a
15 significant increase in the occurrence of substandard maintenance, unsafe conditions,
16 and public nuisances in residential rental units, especially those rented by absentee
17 landlords; and

18 **WHEREAS**, rental units are responsible for a disproportionate share of code
19 enforcement and police calls for service that necessitates a disproportionate
20 expenditure of public funds for such properties; and

21 **WHEREAS**, the City Council determined that these conditions interfere with the
22 health, safety, quality of life, quiet enjoyment and general welfare of the individuals
23 residing near rental units and may contribute to a decline in the value of surrounding
24 properties; and

25 **WHEREAS**, the City Council deemed it is necessary to implement a “Residential
26 Rental Registration And Crime-Free Rental Housing Program” to alleviate these
27 problems and improve living conditions for renters and protect the general welfare of
28 individuals in affected neighborhoods; and

1 **WHEREAS**, the City Council adopted Ordinance 1870 on August 27, 2013
2 establishing a Residential Rental Registration and Crime Free Housing Program as
3 Article XIV of Chapter 18 of the Hemet Municipal Code; and

4 **WHEREAS**, in subsequently considering the establishment of the associated fee
5 schedule for the Program, the City Council determined that Owners of rental properties
6 that had obtained a "Landlord in Good Standing Designation" should not be burdened
7 with the time and expense of renewing their registration or designation unless the
8 designation had been revoked due to non-compliance pursuant to the ordinance, or the
9 ownership status of the property had changed; and

10 **WHEREAS**, minor amendments to Ordinance 1870 are required in order to
11 implement the desired modifications to the Program, and to revise the registration
12 deadlines to reflect the new effective date of the amended ordinance and to provide
13 sufficient time to notify rental property owners of the registration requirements.

14 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET DOES**
15 **HEREBY ORDAIN AS FOLLOWS:**

16 **SECTION 1: AMENDMENT OF ARTICLE XIV TO CHAPTER 18 OF THE HEMET**
17 **MUNICIPAL CODE.**

18 Article XIV "Residential Rental Registration And Crime-Free Rental Housing
19 Program" of Chapter 18 of the Hemet Municipal Code, is hereby amended and shall
20 read as shown in Exhibit "A" hereto.

21 **SECTION 2: CEQA FINDINGS.**

22 The adoption of this Ordinance is exempt from CEQA review pursuant to CEQA
23 Guidelines Section 15061(b)(3), because it can be seen with certainty that this project
24 would not have a significant effect on the environment. This Ordinance does not
25 approve any particular uses, and the development of any rental dwelling unit will still
26 undergo CEQA review.

27 *////*

1 **SECTION 3: SEVERABILITY.**

2 If any section, subsection, subdivision, sentence, clause, phrase, or portion of
3 this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of
4 any court of competent jurisdiction, such decision shall not affect the validity of the
5 remaining portions of this Ordinance. The City Council hereby declares that it would
6 have adopted this Ordinance, and each section, subsection, subdivision, sentence,
7 clause, phrase, or portion thereof, irrespective of the fact that any one or more sections,
8 subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared
9 invalid or unconstitutional.

10 **SECTION 4: EFFECTIVE DATE.**

11 This Ordinance shall take effect thirty (30) days from its passage by the City
12 Council of the City of Hemet.

13 **SECTION 5: PUBLICATION.**

14 The City Clerk is authorized and directed to cause this Ordinance to be published
15 within fifteen (15) days after its passage in a newspaper of general circulation and
16 circulated within the City in accordance with Government Code Section 36933(a) or, to
17 cause this Ordinance to be published in the manner required by law using the
18 alternative summary and pasting procedure authorized under Government Code
19 Section 39633(c).

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

21 **APPROVED AND ADOPTED** this ____ day of _____ 2013.

22

23

24

Robert Youssef, Mayor

25 **ATTEST:**

APPROVED AS TO FORM:

26

27 _____
Sarah McComas, City Clerk

Eric S. Vail, City Attorney

28

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

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

7
8 **AYES:**

9 **NOES:**

10 **ABSTAIN:**

11 **ABSENT:**

12
13 Sarah McComas, City Clerk

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "A"

**"ARTICLE XIV. RESIDENTIAL RENTAL REGISTRATION
AND CRIME-FREE RENTAL HOUSING PROGRAM"**

- Sec. 18-466. – Purpose.
- Sec. 18-467. – Definitions.
- Sec. 18-468. – Scope.
- Sec. 18-469. – Exemptions From Residential Rental Registration Program.
- Sec. 18-470. – Residential Rental Registration Program.
- Sec. 18-471. – Inspections.
- Sec. 18-472. – Fees.
- Sec. 18-473. – Appeals.
- Sec. 18-474. – Enforcement.

18-466 Purpose.

The purpose of this article is to identify Residential Rental Dwelling Units in the City of Hemet, to ensure that such units afford tenants a safe and decent place to dwell, and to require rental units with substandard conditions to meet and maintain minimum building and housing code standards, exterior maintenance standards, and to reduce criminal activity. The City Council has determined that requiring that all Residential Rental Dwelling Units be registered with the City and inspected, and landlords obtain a Crime-Free Rental Housing Certification, serves these legitimate governmental interests.

18-467 Definitions.

- A. *"Applicable Codes"* means and includes all federal, state and local statutes, ordinances and regulations that pertain to the condition, habitability and safety of Dwelling Units and residential property. Applicable Codes, include, but are not limited to, the State Housing Law (CA Health & Safety Code, Sections 17910 et. seq.), Titles 24 and 25 of the California Code of Regulations, as adopted and amended by the City in Chapter 14 of this Code, and the Hemet Municipal Code, including but not limited to Chapter 14 [Building], Chapter 30 [Environment], and Chapter 90 [Zoning].
- B. *"Code Enforcement Officer"* means an individual who is designated by the City Manager to enforce Applicable Codes, and may include but not be limited to, building inspectors, fire prevention inspectors, police officers, and code enforcement officers.
- C. *"Crime Free Lease Addendum"* means the lease addendum described in Section 18-470.

- D. *“Director”* means the Community Development Director, or his or her designee.
- E. *“Dwelling Unit”* means one or more rooms, including bathroom(s) and a kitchen, designed, occupied or intended for use as a separate living quarter for one single-housekeeping unit.
- F. *“Fair Housing Laws”* means the federal Fair Housing Act, as amended, (42 U.S.C. Sec. 3601 et seq.), the California Fair Housing and Employment Act (Government Code Sec. 12900 et seq.), and the Unruh Civil Rights Act (Civil Code Sec. 51).
- G. *“Local property management company”* shall mean an entity located within 40 miles of the subject property that is responsible for the day-to-day maintenance, upkeep, and security of the property and is operated by a person who is licensed with the California Department of Real Estate as a real estate broker.
- H. *“Local property manager”* shall mean a person whose primary residence is located within 40 miles of the subject property and who is responsible for the day-to-day maintenance, upkeep, and security of the property. The local property manager may be the owner of the property.
- I. *“Owner”* means any person having legal title to real property, including all individuals shown as owners on the last equalized assessment roll of the Riverside County Assessor’s Office, or an Owner’s Authorized Representative.
- J. *“Owner’s Authorized Representative”* shall mean a person, designated in writing by the Owner, to act as the Owner’s agent with respect to a Residential Rental Dwelling Unit.
- K. *“Residential Rental Dwelling Unit”* means a residential dwelling unit that is not occupied by the Owner and for which the Owner receives consideration in any form for allowing a person or persons to reside in the dwelling unit. This includes:
1. Single-family dwellings, whether detached or a duplex.
 2. Units within Multifamily or multipurpose dwellings;
 3. Apartments, condominiums, cooperative housing projects, boarding homes, as defined by Section 90-4, and group homes, as defined by Section 90-262; and,
 4. Any room or group of rooms located within a dwelling and forming a single unit with facilities that are used or intended to be used for

living, sleeping, cooking or eating and which is hired, rented or leased by a person within the meaning of California Civil Code Section 1940.

18-468 Scope.

- A. Applicability. Unless specifically exempted in this article, the provisions of this article shall apply to all Residential Rental Dwelling Units located within the City of Hemet and all accessory uses thereon, including but not limited to, parking lots, driveways, landscaping, accessory structures, fences, walls, interior and exterior common areas, swimming pools, hot tubs and spas.

- B. Construction. Nothing in this article shall be construed to:
 - 1. Excuse, waive, limit, or modify any requirements or obligations in the Applicable Codes;
 - 2. Limit any right of the City to investigate and abate nuisances or to enforce any provisions of the Applicable Codes or any other provision of law;
 - 3. Excuse any Owner from obtaining a City business license as required by Article II of this Chapter; or
 - 4. Conflict with any rights or obligations under the Fair Housing Laws or the Americans with Disabilities Act, as amended [42 USC §§ 12111 et seq].

18-469 Exemptions From Residential Rental Registration Program.

The provisions of this article shall not apply to any of the following:

- 1. Housing accommodations in any hospital, nursing home, extended medical care facility, small licensed residential care facility (as defined in Section 90-262), or any other similar state-licensed residential facilities.
- 2. Dormitory housing owned by an educational or religious institution.
- 3. Any mobilehome park or recreational vehicle park that is regulated under Title 25 of the California Code of Regulations.
- 4. Hotels, motels, inns, and bed and breakfasts, unless fifty percent of the units in such use are rented to persons for periods of thirty days or more (“extended stay units”), in which event the extended stay units shall be subject to this article.

18-470 Residential Rental Registration Program.

- A. **Registration Required.** As a condition of exercising the privilege of renting or leasing a Residential Rental Dwelling Unit to any person and/or entity, and as a prerequisite to collecting any rent from a tenant or lessee, the Owner of the Residential Rental Dwelling Unit shall register with the City all Residential Rental Dwelling Units owned or operated by the person or entity and maintain such registration as follows:
1. **Registration.** The Owner shall complete and submit a separate registration form for each separate street address to the Director. Units sharing the same street address and/or Assessor's Parcel Number, but which have an individual unit designation (e.g. Unit A, or Unit 1), may be combined on one registration form. Registration forms will be provided by the Director. The Director will accept registration forms for Residential Rental Dwelling Units that are complete and for which the applicable fees have been paid as provided in this Section. Registration of a Residential Rental Dwelling Unit is deemed complete upon the Director's acceptance of registration form. The Registration is valid for a one-year period commencing with the registration deadlines set forth in Section 18-470(A)(5) and shall be renewed annually in accordance with Section B of this article.
 2. **Contents of Registration and Payment of Fees.** The Registration form shall contain all of the information reasonably requested by the Director, including the persons or company responsible for management of the property, and shall be accompanied by payment of the registration fee, the inspection fee, and a certification, signed by the Owner, that he or she will comply with and enforce the Crime-Free Lease Addendum required by Section 18-470(C).
 3. **Non-Transferrable.** Registration of a Residential Rental Dwelling Unit accepted by the Director pursuant to this article is non-transferrable to a new Owner of the Residential Rental Dwelling Unit.
 4. **Revocation.** Registration for a Residential Rental Dwelling Unit may be revoked if the Director determines that the Owner has violated paragraph C of this Section or has failed to pay any required registration, inspection, and/or re-inspection fees, or if the Residential Rental Dwelling Unit has been cited by a City or County employee for, or received written notice from a City or County employee of, a violation of the Applicable Codes, including, without limitation, any public nuisance violation, any violation of sections

46-50 et seq. [Drug- and Gang-Related Nuisance on Residential Property] and Sections 46-60 et seq. [Abatement of Chronic Nuisance Properties] of the Municipal Code, property maintenance violations, Health and Safety Code violations, or violations of any of the building regulations under Chapter 14, and the Owner has failed to remedy such violation within the period of time specified in the citation or written notice. The Director shall provide written notice of the revocation to the Owner by first-class mail to the address listed in the Registration. The revocation shall take effect 10 days after such notice is placed in the mail. Within ten days of the mailing of such notice, the Owner may request a hearing before the Director regarding the revocation. Following such a hearing, the Director shall issue a written decision either confirming or withdrawing the revocation. The Director's decision is appealable pursuant to Section 18-473. Upon revocation or confirmation of a revocation following appeal, the Owner may not rent or lease the Residential Rental Dwelling Unit(s) identified in the Owner's registration or collect rent from tenants of the Residential Rental Dwelling Unit(s) identified in the Owner's registration.

5. Registration Deadlines. Owners of multi-family structures containing three or more Residential Rental Dwelling Units must register under this article by ~~December 31, 2013~~ March 31, 2014. Owners of single-family Residential Rental Dwelling Units, whether they are detached units or a duplex, must register under this article by ~~July 1, 2014~~ September 30, 2014.

- B. Annual Registration Renewal. The Owner of multi-family structures containing three or more Residential Rental Dwelling Units shall annually renew the registration for each such Residential Rental Dwelling Unit on or before ~~December 31st~~ March 31st of each year, to be in effect for the following calendar year, by following the registration procedure in this section. Owners of single-family Residential Rental Dwelling Units, whether they are detached units or a duplex, shall annually renew the registration for each such Residential Rental Dwelling Unit on or before ~~July 1st~~ September 30th of each year, to be in effect for the following calendar year, by following the registration procedure in this section. An Owner who qualifies as a Landlord in Good Standing and continues to maintain that qualification, as provided in this section, is ~~only not~~ only not required to renew the registration ~~every three years~~ unless the ownership changes. An Owner who no longer qualifies as a Landlord in Good Standing, as provided in this section, must re-register the affected Residential Rental Dwelling Unit(s) annually.

- C. **Crime-Free Rental Housing Certification and Lease Addendum.** The Owner of a Residential Rental Dwelling Unit shall complete a Crime-Free Rental Housing Program Seminar and include a Crime-Free Lease Addendum in a form approved by the Director in all rental agreements and leases executed or extended after September 26, 2013.
1. **Pledge to Enforce.** As a requirement of registering their Residential Rental Dwelling Unit(s) Owner agrees to implement and enforce the Crime Fee Lease Addendum. Owners shall not allow any person to occupy the Residential Rental Dwelling Unit(s) in violation of any provision of the Crime-Free Lease Addendum. Owners shall utilize such equitable and legal remedies as may be afforded under the law to address and resolve their tenant's violations of the Crime Free Lease Addendum.
 2. **Failure to Enforce.** Failure of the Owner to enforce the Crime Free Lease Addendum is cause for revocation of the Owner's registration of his or her Residential Rental Dwelling Units.
 3. **Crime Free Rental Housing Seminar.** An Owner of a Residential Rental Dwelling Unit shall complete a Crime-Free Rental Housing Program Seminar prior to registration under this article, or as soon thereafter as the Seminar is offered. When a property is transferred to a new owner or property management company, the new owner or owner's representative shall complete the Seminar within 90 days after the transfer of the property or operation, or as soon as the Seminar is conducted, whichever is later.
- D. **Landlord in Good Standing Designation.** At the time of registration, an Owner of a Residential Rental Dwelling Unit may apply to be designated as a Landlord in Good Standing by the Director as to one or more single-family dwelling, multifamily or multipurpose dwelling, apartment, condominium, cooperative housing project, boarding home, as defined by Section 90-4, group home, as defined by Section 90-262, or any room or group of rooms located within a dwelling and forming a single unit with facilities that are used or intended to be used for living, sleeping, cooking or eating and which is hired, rented or leased by a person within the meaning of California Civil Code Section 1940. An Owner applying for designation as a Landlord in Good Standing as to a specified structure shall pay a Landlord in Good Standing **Application** Fee in lieu of the inspection fee. In the event that the Director denies the application, the Landlord in Good Standing **Application** fee shall be applied toward the required inspection fee and the Owner must pay any remaining balance in order to register a Residential Rental Dwelling Unit. The Director will

designate an Owner as a Landlord in Good Standing as to a specified structure when all of the following conditions are satisfied:

1. The City and County do not have any record that any of the specified Residential Rental Dwelling Units have been cited by a City or County employee for, or have been the subject of written notice of any violation of any Applicable Codes, including without limitation, violations of the Hemet Municipal Code, any public nuisance violation, any violation of Section 46-50 et seq. [Drug- and Gang-Related Nuisance on Residential Property] and Section 46-60 et seq. [Abatement of Chronic Nuisance Properties] of the Municipal Code, property maintenance violations, Health and Safety Code violations, California Housing Code or California Fire Code violations, or violations of any of the building regulations under Chapter 14. However, a written notice of violation shall not disqualify an Owner from receiving a Landlord in Good Standing designation if:
 - a. The Owner, local property management company, or local property manager corrected the violation within the time specified by the City or County;
 - b. The applicant for Landlord in Good Standing designation was not the owner of the cited property at the time the written notice of violation was issued; or
 - c. The written notice of violation related to a violation committed by a tenant after the Owner had initiated an eviction proceeding against the tenant.
2. A Code Enforcement Officer determines that the specified Residential Rental Dwelling Unit is well-maintained based on an exterior inspection and, if deemed necessary, an interior inspection of the specified Residential Rental Dwelling Unit. If a violation of any Applicable Code exists, the Owner may still qualify for a Landlord in Good Standing designation by correcting the violation(s) by the date specified in writing by the Code Enforcement Officer.
3. The Owner, local property management company, or current local property manager for the specified unit has attended and completed a Crime-Free Housing seminar approved by the City of Hemet and has provided the Director with a certification or other proof of attendance and completion of the seminar.
4. If the Residential Rental Registration relates to a multi-family dwelling with three or more units, the Owner has designated a local

property manager or hired a local property management company to oversee the Residential Rental Dwelling Unit or has an on-site manager living on the premises. In order to qualify for this exemption, the Owner shall provide the name, telephone number, address, and e-mail address of the local property manager, local property management company, or on-site manager to the City. The City shall be notified of any subsequent changes to the designated owner, property manager, or management company within 15 days of the effective date of the change. Failure to notify the City within the stated timeframe shall be subject to enforcement action pursuant to Section 18-474 of this chapter.

5. The Owner is not delinquent on any payment to the City of fees, penalties, taxes, or any other monies related to the property on which the Residential Rental Dwelling Unit is located.

E. **Duration of Designation.** An Owner's designation as a Landlord in Good Standing will remain in effect ~~for a period of three years unless the designation is revoked per section 18-470 (F), or the ownership of the property changes.~~ **As a new Owner of the property** may renew this designation under the following circumstances:

1. The Owner has complied with the requirements of this article, ~~including re-registration and the submittal of a Landlord in Good Standing Application. at all times in which the Landlord in Good Standing designation has been in effect.~~
2. ~~During the time in which the Landlord in Good Standing designation has been in effect, there has been no more than one written notice of, or one citation for, violations of the Applicable Codes and the Owner corrected all of the violations within the time specified in writing in the notice or citation, or the written notice or citation related to violations committed by a tenant after the Owner had initiated an eviction proceeding against the tenant.~~
2. The Owner is not delinquent on any payment to the City of fees, penalties, taxes, or any other monies related to the property on which the Residential Rental Dwelling Unit is located.

~~F. **Self-Certification Renewal.** Owners who are eligible to renew their Landlord in Good Standing designation may do so by submitting self-certification inspection reports on forms approved by the Director. Owners submitting a self-certification inspection report are exempt from the annual renewal fee. The self-certification inspection reports shall contain a certification, signed by the Owner, that Owner inspected the Residential Rental Dwelling Unit(s) specified in the Landlord in Good Standing~~

~~designation and each such unit is in compliance with the Applicable Codes.~~

- F. Designation Revocation.** If the Owner's specified Residential Rental Dwelling Unit(s) is the subject of a citation or written notice for any violation referred to in paragraph D.1 above, and the Owner fails to correct the violation(s) within the time specified in the written notice or citation, or the Specified Dwelling Unit(s) have been notified or cited on two or more occasions for violations referred to in paragraph D.1 above, the designation shall be subject to revocation by the Director. In addition, any Landlord in Good Standing designation, or subsequent renewal, that has been obtained through fraud or misrepresentation is subject to revocation. The Director shall notify the Owner in writing by first class mail that the Landlord in Good Standing designation is revoked. The revocation shall take effect 10 days after such notice is placed in the mail. Within ten days of the mailing of such notice, the Owner may request a hearing before the Director regarding the revocation. Following such a hearing, the Director shall issue a written decision either confirming or withdrawing the revocation. The Director's decision is appealable pursuant to Section 18-473. An Owner whose Landlord in Good Standing designation has been revoked must re-register the specified Residential Rental Dwelling Unit(s) as required in paragraph C of this Section. The Owner may reapply for the designation again if the specified Residential Rental Dwelling Unit(s) have passed the required inspections for two consecutive years.

18-471 Inspections

- A. Inspections.** After receiving a completed Residential Rental Registration form/application from an Owner, the City will conduct an exterior inspection of the Residential Rental Dwelling Unit to identify violations of the Applicable Codes. The City may also request an interior inspection to determine the existence of possible health, safety, or housing code violations at the premises. The City may withhold the Owner's Residential Rental Registration until an interior inspection is completed.
- B. Personnel Conducting Inspection.** City Code Enforcement Officers and/or Building and/or Fire Inspectors will be responsible for conducting the inspections authorized by this article. However, the Director may request that other City departments and/or Riverside County enforcement agencies participate in the inspection process.
- C. Entry.** Prior to conducting any interior inspection of a Residential Rental Dwelling Unit, the City will make reasonable efforts to notify the Owner and tenant. If the tenant does not allow entry to the Residential Rental Dwelling Unit, the City will notify the Owner and request that the Owner obtain the tenant's consent to inspect the interior of a Residential Rental

Dwelling Unit or otherwise obtain legal access to the Residential Rental Dwelling Unit under the terms of the applicable lease.

D. Inspection Report. After completion of the inspection, the City shall send a written report of the inspection to the Owner. The report shall contain:

1. An itemization of any violations of the Applicable Codes identified during the inspection;
2. The period of time for correcting each of the identified violations;
3. A statement that the City will re-inspect the Residential Rental Dwelling Unit at the end of the period of time for correction. This initial re-inspection for compliance is considered to be a component of the per-unit inspection fee charged at the time of Registration;
4. The amount of a Re-inspection Fee and the date by which the Re-inspection Fee must be paid if the inspector discovers that the work or action requested was not performed at the time of the initial re-inspection noted in subsection (3) above, and that additional inspections will be required; and
5. A statement that if the violations are not corrected within the period of time for correction the City will revoke the Owner's Residential Rental Registration.

E. Re-Inspection Fees. If the property owner fails to correct violations by the first compliance re-inspection, the owner shall pay a re-inspection fee for the second and subsequent compliance re-inspections in the amount established by City Council resolution.

18-472 Fees

Fees for the administration and enforcement of the regulatory program established by this article shall be set by resolution of the City Council and shall not exceed the City's actual cost of providing the services. Fees may include, without limitation, a fee for Residential Rental Registration, a fee for re-registration, a Landlord in Good Standing Application fee, an initial inspection fee, a re-inspection fee, and a fee to file an appeal. Fees associated with the implementation of this Article are in addition to the Business License Fees collected for rental properties.

18-473 Appeals

Any appeal of a decision of the Director rendered under this article must be filed within 10 calendar days from the date of the decision. Failure of the City Clerk to receive a timely notice of appeal constitutes a waiver of the right to contest such decision hereunder. In this event, the decision is final and binding. Appeals under this article shall be heard as follows:

1. The hearing shall be conducted by the Director or his or her duly authorized designee who shall act as the hearing officer; and who shall herein be referred to as the "Hearing Officer" who shall consider all relevant evidence. Such hearing may be continued from time to time.
2. Upon the conclusion of said hearing, the hearing officer shall, on the basis of the evidence presented at such hearing, determine whether the decision should be upheld, modified or reversed. The determination of the hearing officer shall be final and conclusive.
3. A copy of the hearing officer's decision shall be served upon the owner of the property by United States mail or by personal delivery. In addition, a copy of the order shall be posted in a conspicuous place on the property.

18-474 Enforcement.

- A. Violations Identified During Inspection. If, after a report of inspection is issued pursuant to Section 18-471(D), the Owner fails to correct a violation of the Applicable Codes identified in the report of inspection within the time allowed, the City may issue an administrative citation pursuant to Section 30-80.5, issue a notice of intent to abate pursuant to Section 30-35, or may take any other action authorized by law to enforce the provisions of this Code, including, without limitation, a petition to the Superior Court for the appointment of a receiver over the property.
- B. Failure to Pay Fees. Should an Owner fail to timely pay the annual fee or any re-inspection fee, the City is authorized to recover it, plus accrued interest and penalties, utilizing any remedies authorized by law.
- C. Violation of Section 18-470. The City may enforce a violation of any provisions under Section 18-470 in any manner authorized by law.

Attachment 2



**CITY OF HEMET
Hemet, California
RESOLUTION BILL NO. 13-042**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF HEMET, CALIFORNIA, ESTABLISHING A FEE
SCHEDULE FOR THE RESIDENTIAL RENTAL
REGISTRATION AND CRIME-FREE RENTAL HOUSING
PROGRAM PURSUANT TO ADOPTION OF ORDINANCE
NO. 1870**

WHEREAS, on August 27, 2013, the City Council considered and adopted Ordinance No. 1870, which establishes a “Residential Rental Registration and Crime-Free Rental Housing Program” within the City of Hemet; and

WHEREAS, the purpose of the Residential Rental Registration and Crime-Free Rental Housing Program is to address substandard maintenance, unsafe conditions, and public nuisances that are frequently and increasingly found in rental properties within the City and to alleviate and abate such conditions, improve living conditions for renters, and protect the general welfare of individuals in affected neighborhoods; and

WHEREAS, Ordinance No. 1870 imposed registration and annual re-registration requirements for residential rental properties and authorized the City to conduct inspections of such properties upon registration; and

WHEREAS, the purpose of the initial inspection is to ensure that residential rental properties are in a safe and sanitary condition for tenants; and

WHEREAS, in situations in which an initial property inspection reveals code violations, Ordinance No. 1870 authorizes re-inspections of properties to ensure that the property owner has made the necessary corrections; and

1 **WHEREAS**, Ordinance NO. 1870 established Municipal Code section 18-470,
2 which provides property owners an opportunity to apply for a Landlord in Good Standing
3 Designation; and

4 **WHEREAS**, Ordinance No. 1870 established Municipal Code section 18-472,
5 which authorizes the City Council to establish by resolution the fees required by
6 Ordinance No. 1870, including without limitation the Residential Rental Registration fee,
7 re-registration fee, Landlord in Good Standing application fee, initial inspection fee, and
8 re-inspection fee; and

9 **WHEREAS**, it is necessary to establish Residential Rental Registration fee, re-
10 registration fee, Landlord in Good Standing application fee, initial inspection fee, and re-
11 inspection fee to offset the costs the City incurs when it provides services related to the
12 registration and inspection of residential rental properties as required by Ordinance No.
13 1870; and

14 **WHEREAS**, such fees are authorized pursuant to the City's general police
15 powers under Article XI, Section 7 of the California Constitution and are permissible
16 under Article XIII C, Section 1(e) of the California Constitution; and

17 **WHEREAS**, under Article XIII C, Section 1(e)(1) of the California Constitution, a
18 charge imposed for a specific benefit conferred or privilege granted directly to the payor
19 that is not provided to those not charged, and which does not exceed the reasonable
20 costs of conferring or granting the privilege is not a tax; and

21 **WHEREAS**, the fees established by this Resolution are for conferring or granting
22 the privilege of renting residential dwelling units within the City of Hemet and do not
23 exceed the reasonable costs of conferring or granting such a privilege; and

24 **WHEREAS**, under Article XIII C, Section 1(e)(1) of the California Constitution, a
25 charge imposed for the reasonable regulatory costs to a local government for issuing
26 licenses and permits, performing investigations, inspections, and audits, enforcing
27 agricultural marketing orders, and the administrative enforcement and adjudication

1 thereof is not a tax so long as the charge does not exceed the government's reasonable
2 costs of performing these tasks; and

3 **WHEREAS**, the fees established by this Resolution are for the registration of
4 residential rental dwelling units and the performance of related health and safety
5 inspections, and do not exceed the reasonable costs of performing these tasks; and

6 **WHEREAS**, all legal prerequisites prior to the adoption of this resolution have
7 occurred.

8
9 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA**
10 **DOES HEREBY RESOLVE, DECLARE, AND DETERMINE AND ORDER AS**
11 **FOLLOWS:**

12
13 **SECTION 1.** The City Council finds that the facts, findings and conclusions set forth
14 above are true and correct.

15
16 **Section 2.** Based on the foregoing findings and substantial evidence in the record, the
17 City Council does hereby resolve:

- 18
19 (A) The fee for registration of a residential rental dwelling unit, as defined by
20 Municipal Code section 18-467(K) and as required by Municipal Code
21 section 18-470(A), shall be \$96 per street address.
- 22
23 (B) The \$96 initial registration fee is reasonable in light of the City's actual
24 costs. An initial registration will take a code enforcement clerical staff
25 member 2.5 hours to review the registration form, enter the application
26 information into a database, forward the information to the Hemet Police
27 Department to determine the history of Police calls for service, review
28 Code Enforcement files for the property to determine the property history,
29 including whether there have been prior notices of code violations, refer
30 the property to Code Enforcement and/or the Building Department for
31 inspection, process the applicant's payment, record the status and results
32 of the property inspection and issue the registration. The fully-burdened
33 hourly rate for a code enforcement clerical staff member is \$32 per hour.
34 In addition, an initial registration will take approximately 30 minutes of
35 Police Department staff time to check on the history of calls for service at
36 the property and report the information to Code Enforcement. The fully-
37 burdened hourly rate for a Police Department Public Safety Officer is \$32
38 per hour. Thus, the actual cost to the City of processing the initial
39 registration is \$96.
40

1 (C) The fees for an initial residential rental property inspection, as required by
2 Municipal Code section 18-471, shall be as follows:
3

4 (1) \$32 for single-family residential and duplex structures. This fee is
5 reasonable in light of the City's actual costs. The estimated time for a
6 code enforcement officer or building inspector to perform a residential
7 rental property inspection of a single-family or duplex structure, including
8 the time to prepare a report and identify needed corrections, is 45
9 minutes. The fully-burdened hourly rate for a code enforcement officer or
10 is \$42, resulting in an estimated cost of \$32.
11

12 (2) \$92 for multi-family properties containing between three and 25
13 residential dwelling units. This fee is reasonable in light of the City's
14 actual costs. The estimated time for a code enforcement officer to
15 perform a residential rental property inspection of a multi-family residential
16 structure containing between three and 25 dwelling units, including the
17 time to prepare a report, is 1 hour. In addition, a building inspector will
18 need 1 hour to perform an inspection of a multi-family residential structure
19 containing between three and 20 dwelling units. The fully-burdened hourly
20 rate for a code enforcement officer is \$42. The fully-burdened hourly rate
21 for a building inspector is \$50, resulting in an estimated cost of \$ 92.
22

23 (3) \$84 + \$12.50 per unit x 30 % of the total units in the complex for
24 multi-family structures containing between 26 and 100 residential dwelling
25 units. This fee is reasonable in light of the City's actual costs. The
26 estimated time for a code enforcement officer to perform a residential
27 rental property inspection of a multi-family residential structure containing
28 between 26 and 100 dwelling units, including the time to prepare a report,
29 is 2 hours. In addition, a building inspector will need to perform an initial
30 sample interior inspection of a minimum of 30% of the units at 15 minutes
31 per unit to perform an inspection of a multi-family residential structure
32 containing between 26 and 100 dwelling units. The fully-burdened hourly
33 rate for a code enforcement officer is \$42. The fully-burdened hourly rate
34 for a building inspector is \$50, resulting in an estimated cost of \$84 +
35 \$12.50 per unit x 30% of the total units in the complex.
36

37 (4) \$105 + \$12.50 per unit x 30% of the total units in the complex for
38 multi-family structures containing between 101 and 199 residential
39 dwelling units. This fee is reasonable in light of the City's actual costs.
40 The estimated time for a code enforcement officer to perform a residential
41 rental property inspection of a multi-family residential structure containing
42 between 101 and 199 dwelling units, including the time to prepare a
43 report, is 2.5 hours. In addition, a building inspector will need to perform
44 an initial sample interior inspection of a minimum of 30% of the units at 15
45 minutes per unit to perform an inspection of a multi-family residential
46 structure containing between 101 and 199 dwelling units. The fully-

1 burdened hourly rate for a code enforcement officer is \$42. The fully-
2 burdened hourly rate for a building inspector is \$50, resulting in an
3 estimated cost of \$105 + \$12.50 per unit x 30% of the total units in the
4 complex.
5

6 (5) \$126 + \$12.50 per unit x 30% of the total units in a complex for
7 multi-family structures containing 200 or more residential dwelling units.
8 This fee is reasonable in light of the City's actual costs. The estimated
9 time for a code enforcement officer to perform a residential rental property
10 inspection of a multi-family structure containing 200 or more residential
11 dwelling units, including the time to prepare a report, is 3 hours. In
12 addition, a building inspector will need to perform an initial sample interior
13 inspection of a minimum of 30% of the units at 15 minutes per unit to
14 perform an inspection of a multi-family residential structure containing 200
15 or more dwelling units. The fully-burdened hourly rate for a code
16 enforcement officer is \$42. The fully-burdened hourly rate for a building
17 inspector is \$50, resulting in an estimated cost of \$126 + \$12.50 per unit x
18 30% of the total units in a complex.
19

20 (D) The initial inspection fee is due at the time of the initial registration of a
21 residential rental dwelling unit. An owner need not pay another inspection
22 fee for that particular street address until after the City performs the initial
23 inspection at that street address. The next inspection fee for that street
24 address will be due at the time of the first re-registration following the
25 completion of the initial inspection.
26

27 (E) The fee for the annual re-registration of residential rental dwelling units, as
28 required by Municipal Code section 18-470(B), shall be \$64 per street
29 address. Properties with the Landlord in Good Standing Designation are
30 not subject to the annual re-registration fee.
31

32 (F) The \$64 fee for the annual re-registration is reasonable in light of the
33 City's actual costs of providing the service of reviewing the renewal form.
34 The estimated staff time involved in processing the annual re-registration
35 of a residential rental dwelling unit is approximately 1.5 hour for a code
36 enforcement clerical staff member to enter any updated information
37 regarding the property into the City's database, review the Police
38 Department, Building Department, and Code Enforcement files for the
39 property, and process the re-registration fee, including 30 minutes of
40 Police Public Safety Officer staff time. The fully-burdened rate for a code
41 enforcement clerical staff member or Police Public Safety Officer is \$32
42 per hour. Thus, the actual cost to the City of processing the annual re-
43 registration is \$64.
44

45 (G) The Landlord in Good Standing application fee, as authorized by
46 Municipal Code section 18-470(D) shall be \$21 for single-family or duplex

1 structures and \$42 + \$12.50 per unit x 15% of the total units in the
2 complex for multi-family residential structures with three or more units.
3 The Landlord in Good Standing Application Fee shall be in addition to the
4 initial \$96 Registration Fee pursuant to Section 2 A of this Resolution.
5

6 (H) The Landlord in Good Standing application fees are reasonable in light of
7 the City's actual costs and include the cost of processing the application
8 and conducting the required initial inspections to determine if the property
9 qualifies for the designation. In order to process an application for a
10 Landlord in Good Standing designation, city staff will review the
11 application as part of the Registration process, enter the application
12 information into a database, review Police Department, Building
13 Department, Finance Department, and Code Enforcement files for the
14 property to determine the property history, including whether there have
15 been prior notices of code violations and whether the property owner is
16 delinquent on any payment to the City of fees, penalties, taxes, or other
17 monies, refer the property to Code Enforcement and/or the Building
18 Department for an exterior inspection and sample interior inspection,
19 process the applicant's payment, record the status and results of the
20 property inspection, and issue the registration. For single-family or duplex
21 structures that are the subject of a Landlord in Good Standing Designation
22 application, it will take 30 minutes for a Code Enforcement Officer/Building
23 Inspector to conduct an exterior inspection and sample interior inspection
24 if necessary. The fully-burdened hourly rate for a Code Enforcement
25 Officer is \$42 per hour, resulting in an inspection cost for single-family and
26 duplex structures of \$21. For multi-family structures with three or more
27 dwelling units, it will take 1 hour for a Code Enforcement Officer/Building
28 Inspector to conduct an exterior inspection and 15 minutes per unit to
29 conduct a sample interior inspection of a minimum of 15 % of the units at
30 the complex. The fully-burdened hourly rate for a Code Enforcement
31 Officer is \$42 per hour. The fully-burdened hourly rate for a building
32 inspector is \$50, resulting in an inspection cost for multifamily structures of
33 3 or more units to be \$42 + \$12.50 per unit x 15% of the total units in the
34 complex. Upon completion of the inspection and registration process, if a
35 property fails to qualify for the Landlord in Good Standing designation, the
36 application fees may be applied to the normal inspection fees due for the
37 property.
38

39 (I) Under Municipal Code sections 18-471(D) and (E), the City may perform a
40 re-inspection if a property owner fails to correct code violations identified
41 in an initial inspection of a residential rental dwelling unit, or the Building
42 Official has determined that based on the findings of the sample
43 inspections at the property, there is a reasonable expectation that
44 additional units within the complex are in violation and will require interior
45 inspection. The fee for such a re-inspection shall be \$84 plus \$12.50 per
46 dwelling unit that must be re-inspected as a result of the property owner's

1 failure to correct previously-identified code violations. This fee is
2 reasonable in light of the City's actual costs. In order to perform a re-
3 inspection of a residential rental dwelling unit, it will take a Code
4 Enforcement Officer/Building Inspector two hours to review and evaluate
5 the prior inspection reports, visit the property, determine the status of the
6 property owner's abatement of code violations, and prepare a follow-up
7 report of his or her findings and issue correction or compliance notices. In
8 addition, it will take a building inspector 15 minutes to inspect an individual
9 dwelling unit as identified to evaluate the property owner's abatement of
10 code violations and determine whether the residential rental dwelling unit
11 is in compliance with applicable codes. The fully-burdened hourly rate for
12 a Code Enforcement Officer is \$42 per hour. The fully-burdened hourly
13 rate for a Building Inspector is \$50 per hour.
14

15
16 **SECTION 3.** The City Council finds that the fees adopted by this Resolution do not
17 exceed the estimated reasonable costs of providing the services of reviewing and
18 processing registrations for abandoned or vacant properties and conducting the
19 necessary inspections.
20

21 **SECTION 4.** The City Council finds that, in accordance with Section 21080(b)(8) of the
22 California Public Resources Code, the fees adopted by this Resolution are only for the
23 purpose of meeting operating expenses and are, therefore, exempt from compliance
24 with the California Environmental Quality Act.
25

26 **SECTION 5.** That the City Clerk will certify to the passage and adoption of this
27 Resolution and enter it into the book of original Resolutions.
28

29
30
31 PASSED, APPROVED, AND ADOPTED this ____ day of September, 2013.
32
33
34

35
36 _____
37 Robert Youssef, Mayor

38
39 ATTEST:

40 APPROVED AS TO FORM:
41

42
43 _____
44 Sarah McComas, City Clerk

45 _____
46 Eric S. Vail, City Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

State of California)
County of Riverside)
City of Hemet)

I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the foregoing Resolution is the actual Resolution adopted by the City Council of the City of Hemet and was passed at a regular meeting of the City Council on the ____ day of September, 2013 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Sarah McComas, City Clerk



Staff Report

To: Honorable Mayor and Members of the City Council

From: Gary Thornhill, Interim Assistant City Manager
RCS

Date: September 24, 2013

SUBJECT: Approve a Resolution Supporting Healthy Active Living and Sustainable Communities

RECOMMENDATION:

It is recommended that the City Council adopt the resolution as it has been presented.

BACKGROUND:

In 2006, the League of California Cities adopted a resolution to work with the Institute for Local Government and the Cities Counties and Schools Partnership to develop a resource that cities can use to promote wellness policies and healthier cities and citizens. In response to this resolution, the League, the CCS Partnership, and the California Center for Public Health Advocacy launched the "Healthy Eating Active Living Cities Campaign" (HEAL).

The Healthy Eating Active Living Cities Campaign seeks to decrease chronic disease and health care costs that stem from problems such as obesity for workers and residents in California through the promotion of a healthy lifestyle. Health options promoted by the campaign include healthier eating choices and land use policies that promote wellness.

ANALYSIS/DISCUSSION:

Residents of the City can make individual lifestyle choices to stay healthy. While these lifestyle changes are helpful and often necessary, it takes more than individual effort to fight the increase in obesity that is a problem across the entire nation. Environmental and societal changes are also necessary to support individuals in their efforts to live healthier lives.

Both individuals and the communities they live in face increased health care costs and diminished quality of life that results from the growing problem of obesity.

City leaders throughout the nation are addressing this crisis by implementing land use and employee policies which encourage healthier eating and an active lifestyle. Through

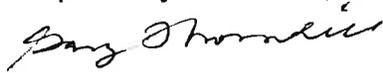
adopting a resolution to launch a local campaign as part of the statewide HEAL program, the City of Hemet will demonstrate its commitment to fostering a healthier community.

By approving a resolution to become a HEAL campaign city, Hemet will join over seventy other cities across the state of California.

FISCAL IMPACT:

There will be no direct fiscal impact to the City resulting from the adoption of the resolution. The City may receive recognition and consideration for awards by adopting the HEAL resolution.

Respectfully submitted,



Gary Thornhill
Interim Assistant City Manager



**CITY OF HEMET
Hemet, California
RESOLUTION BILL NO. 13-044**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HEMET, CALIFORNIA, IN SUPPORT OF HEALTHY ACTIVE
LIVING**

WHEREAS, in 2004, the League of California Cities adopted an Annual Conference resolution to encourage cities to embrace policies that facilitate activities to promote healthier lifestyles and communities, including healthy diet and nutrition and adoption of city design and planning principles that enable citizens of all ages to undertake exercise; and

WHEREAS, the League of California Cities has a strategic goal to promote and develop safe and healthy cities; and

WHEREAS, California Senate Bill 375 and Assembly Bill 32 call on cities to adopt plans to reduce greenhouse emissions which include reducing vehicular miles traveled; and

WHEREAS, the City of Hemet promotes sustainability by advocating non-motorized transportation, local food production, and green house gas emission reductions; and

WHEREAS, supporting the health of residents and the local workforce could decrease chronic disease and health care costs and increase productivity,

NOW, THEREFORE, BE IT RESOLVED AND ORDERED AS FOLLOWS:

- A. The City Council recognizes that obesity is a serious public health threat to the wellbeing of adults, children, and families in Hemet.
- B. The City Council requests that the City of Hemet staff responsible for the design and construction of parks, neighborhoods, streets, and business areas, should make every effort to plan and construct an environment that encourages walking, biking, and other forms of physical activity, and also asks City of Hemet staff to address walking and biking connectivity between residential neighborhoods and schools, parks, recreational resources, and retail.
- C. The City Council asks City of Hemet staff to facilitate the establishment of new grocery stores, community gardens, and farmers markets that provide fresh fruits and vegetables and other healthy foods in areas and communities that lack healthy eating options.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49

- D. The City Council encourages City of Hemet employees to utilize non-motorized transportation at work and at home for meetings, lunch breaks, activity breaks and leisure activities to promote wellness within the City of Hemet and to set a positive example for other businesses.
- E. The City Council asks that restaurants and food retailers that promote sustainability and non-motorized transportation choices be recognized by the City.
- F. The City Council asks the head of each agency or department to report back to the City Council annually regarding steps taken to implement this Resolution, additional steps planned, and any additional actions that would be appropriate to take.

PASSED, APPROVED, AND ADOPTED this 24th day of September, 2013.

Robert Youssef, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

State of California)
County of Riverside)
City of Hemet)

I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the foregoing Resolution is the actual Resolution adopted by the City Council of the City of Hemet and was passed at a regular meeting of the City Council on the 24th day of September, 2013 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Sarah McComas, City Clerk



Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Ronald Bradley, Interim City Manager *RSB*

DATE: September 24, 2013

RE: Appointment of City Manager

RECOMMENDED ACTION:

That the City Council approve the appointment of Mr. Wally Hill as the City Manager of Hemet, California effective November 18, 2013, subject to completion of contract negotiations with Mr. Hill and approval of the employment agreement by City Council.

BACKGROUND:

Hemet has been without a permanent City Manager since its former manager resigned in August of 2012. Consequently the City hired the firm of Bob Murray and Associates to conduct a recruiting campaign for City Manager. A total of 79 applications were received for the position and nine were selected for further review. From the nine, six individuals were invited to interview with the Council on September 7th. At the conclusion of the interviews, Mr. Wally Hill was unanimously selected as the Council's choice for the position of City Manager.

PROJECT DESCRIPTION:

The City Manager is the chief operating officer for the City and is responsible for the day to day activities of the City and implementing the policy direction identified by the City Council.

Mr. Hill most recently served as the City of San Diego's Assistant Chief Operating Officer from 2009 to 2013. Prior to that time he has served in a variety of rolls for Wake County in North Carolina, Deputy County Administrator in Hillsborough County in Florida, and County Administrative Officer in Yuma, Arizona and San Bernardino County, California.

FISCAL IMPACT:

To be determined when salary and benefits are agreed upon by the City and Mr. Hill.

Respectfully submitted,

Ronald E. Bradley
Ronald E. Bradley
Interim City Manager