



# AGENDA

## REGULAR MEETING OF THE HEMET CITY COUNCIL

February 24, 2015

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**5:30 p.m.**

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

**[www.cityofhemet.org](http://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.*

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### Call to Order

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#### Roll Call

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

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#### Work Study

*Discussion regarding these items, with possible direction to staff*

1. Climate Action Plan - Western Riverside Council of Governments (WRCOG)
  2. Community Development Block Grant (CDBG) 2015-2019 Consolidated Plan – CDBG Coordinator Callahan
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### 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.

3. Conference with Labor Negotiators  
Pursuant to Government Code section 54957.6  
Agency designated representatives: City Manager Hill  
Employee organization:  
*Service Employees International Union General Employees  
Hemet Fire Fighters Association  
Hemet Police Officers Association  
Hemet Police Management Association*

4. Conference with Legal Counsel - Anticipated Litigation  
Two (2) matters of significant exposure to litigation pursuant to Government Code section 54956.9(d)(2) & (3)
  5. Public Employee Performance Evaluation  
Pursuant to Government Code section 54962  
Title: *City Manager*
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## **REGULAR SESSION**

**7:00 p.m.**  
**City of Hemet City Council Chambers**  
**450 E. Latham Avenue**

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### **Call to Order**

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### **Roll Call**

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

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### **Invocation**

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### **Pledge of Allegiance**

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## **City Attorney Closed Session Report**

6. Conference with Labor Negotiators  
Pursuant to Government Code section 54957.6  
Agency designated representatives: City Manager Hill  
Employee organization:  
*Service Employees International Union General Employees*  
*Hemet Fire Fighters Association*  
*Hemet Police Officers Association*  
*Hemet Police Management Association*
  7. Conference with Legal Counsel - Anticipated Litigation  
Two (2) matters of significant exposure to litigation pursuant to Government Code section 54956.9(d)(2) & (3)
  8. Public Employee Performance Evaluation  
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

9. **Approval of Minutes** – February 10, 2015
  10. **Receive and File** – Warrant Register
    - a. Warrant registers dated February 5, 2015 in the amount of \$1,142,878.26 and February 9, 2015 in the amount of \$2,088,389.58. Payroll for the period of January 19, 2015 to February 1, 2015 was \$590,923.15.
  11. **Recommendation by Community Development** - Zone Change No. 14-001 – A-10 (Heavy Agriculture) to C-1 (Neighborhood Commercial) – 11.5 acre site, southeast corner of Esplanade Avenue and Warren Road
    - a. Adopt an ordinance approving the zone change for APN: 448-060-001.  
**Ordinance Bill No. 15-005**
  12. **Recommendation by Housing** – Senior and Disable Owner Occupied Home Repair Program – Extension and Increase in amount of Agreements for Services
    - a. Approval of one year contract extension in the amount of \$90,000 for the Senior and Disabled Owner Occupied Home Repair Program. The approved contractors are: Absolute Contractors, Inc.; Ace & Sons Constructions, Inc.; Blue Ribbon Plumbing, Heating and Air Conditioning, Inc.; Dan Marana Construction; Pacific MH Construction, Inc.; and Vizion’s West.
  13. **Recommendation by Fire** – Acceptance of the 2014 State Homeland Security Program (SHSP) Grant for Community Emergency Response Team (CERT) Grant Program Expenditure
    - a. Accept the grant from the California Office of Emergency Services (CalOES) for the Riverside County FY14 Homeland Security Grant Program (HSGP) awarded to the City of Hemet for the CERT Program in the amount of \$13,620.00 for the period of October 10, 2014 through February 28, 2016; and
    - b. Amend the budget in the Public Safety Grant Fund #232 to reflect the award amount of \$13,620.00 to cover the cost of training and the purchase of materials.
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## 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.

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## Discussion/Action Item

14. **Amend Chapter 34, Article IV of the Hemet Municipal Code pertaining to Smoking in Public Areas and Places of Employment** – Public Works Director Jensen
  - a. Introduce, read by title only and waive further reading of an ordinance amending Chapter 34, Article IV (Smoking in Public Areas and Places of Employment) of the Hemet Municipal Code. **Ordinance Bill No. 15-008**
  
15. **Moratorium on Massage Establishments** – City Attorney Vail
  - a. Adopt an urgency ordinance to enact a moratorium on massage establishments. **Ordinance Bill No. 15-009**
  
16. **Award of Contract for Consultant to assist in Water/Sewer System Concession Agreement Request for Proposal, Evaluation, and Negotiations** – City Manager Hill
  - a. Award a consultant contract to PERC Water Corporation in the amount of \$86,000 plus other reimbursable costs to assist in developing a Request for Proposals for a water/sewer system concession agreement, evaluating the proposals, and assistance in drafting and negotiating a concession agreement; and
  - b. Appropriate \$68,800 from water enterprise fund 571 reserves and \$26,756 from sewer special revenue fund 254 reserves, to establish a project budget of \$95,556.

## City Council Reports

### 17. CITY COUNCIL REPORTS AND COMMENTS

#### A. Council Member Milne

1. Riverside County Habitat Conservation Agency (RCHCA)
2. Riverside Conservation Authority (RCA)
3. Disaster Planning Commission

#### B. Council Member Raver

1. Planning Commission
2. Traffic and Parking Commission
3. Riverside Transit Agency (RTA)
4. Riverside County Transportation Commission (RCTC)
5. Watermaster Board

#### C. Council Member Youssef

#### D. Mayor Pro Tem Wright

1. Park Commission
2. Riverside County Habitat Conservation Agency (RCHCA)
3. Ramona Bowl Association
4. League of California Cities
5. Western Riverside Council of Governments (WRCOG)

#### E. Mayor Krupa

1. Riverside Conservation Authority (RCA)
2. Ramona Bowl Association
3. Riverside Transit Agency (RTA)
4. Watermaster Board
5. Library Board
6. League of California Cities
7. Riverside County Transportation Commission (RCTC)
8. Western Riverside Council of Governments (WRCOG)

#### F. Ad-Hoc Committee Reports

1. West Hemet MSHCP Ad-Hoc Committee
2. Regent Development Agreement Ad-Hoc Committee
3. Diamond Valley Lake Recreation Ad-Hoc Committee

#### G. City Manager Hill

1. Manager's Reports
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## **Continued Closed Session**

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### **City Attorney Continued Closed Session Report**

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#### **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.

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#### **Adjournment**

Adjourn to Tuesday, March 10, 2015 at 7:00 p.m. for consideration of items placed on that agenda. The next regular meeting will be held March 24, 2015.

*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.*

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.*



#9

# MINUTES

## REGULAR MEETING OF THE HEMET CITY COUNCIL

February 10, 2015

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6:00 p.m.  
City of Hemet Council Chambers  
450 E. Latham Avenue

[www.cityofhemet.org](http://www.cityofhemet.org)  
*Please silence all cell phones*

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### Call to Order

Mayor Krupa called the meeting to order at 6:00 p.m.

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### Roll Call

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

ABSENT: Council Member Youssef

**Council Member Milne moved and Mayor Pro Tem Wright seconded a motion to excuse Council Member Youssef. Motion carried 4-0.**

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### Work Study

*Discussion regarding this item, with possible direction to staff*

1. Update of Enforcement Activities for Boarded Up Commercial Buildings – Community Development Director Elliano

**Deanna Elliano, Community Development Director**, gave the City Council a powerpoint presentation on the status the boarded up commercial buildings. All of the properties included in the presentation are considered to be long-term boarded structures. All of the properties are active code cases and have had various enforcement actions or citations, some are ongoing. We are finally starting to see changes and indicators of reuse of the structures. A list of the properties, address, property owner, description and current activity was distributed to the City Council. Pictures of the properties were displayed.

Site 1: 125 W. Florida Avenue – old Tri-Buick, owner McCredie Land Hemet, CA. The property is currently in escrow to Shoe City and expected to close soon. Permits are ready to be issued for the tenant improvements.

Site 2: 2020 E. Florida Avenue – old Millie's restaurant, owner Bing Liang Wu, LLC. The building is vacant and secured. The building is no longer boarded-up. However, the landscaping is dead and the water is turned off.

Site 3: 213-215 E. Florida – old Stirdivant's, owner Kim Man Soo. The building is vacant and secured. Broken windows have been replaced but are covered with brown paper. This property is a perfect candidate for new idea. With property owner permission paper could be replaced with filmed graphics that have non-commercial historical pictures.

Site 4: 611 W. Florida Avenue - Nelson Machinery, owner Masood & Tamim Rostai. Long-term boarded up and fenced vacant industrial/commercial building. This property has broken windows and landscaping issues that require ongoing code enforcement activity. This

property will be referred to the City Attorney's office for possible pendency.

Site 5: 869 W. Florida Avenue – old Albertson's, owner R & B Inv. Permit issued in January for tenant improvement to partition building into two tenant spaces. The construction is to be completed by March 2015. The owner is actively securing potential tenants.

Site 6: 2100 E. Florida Avenue – owner Abecus, Inc. This property is considered a long term board up with unfinished construction and expired building permits. The property is not marketable in its current condition. A compliance letter was sent from the City Attorney's Office.

Site 7: 2171 W. Florida Avenue – old Walmart, owner Latham Management & Consulting Services, Inc. The property is boarded up and unkept with dead trees and plants. This property has on-going code issues and transient break-ins. The owner has hired an architect to work on subdividing the building into smaller tenant spaces for new retail users and is actively working on securing new tenants. The owner expects to submit plans in the next few months. If the permits are for retail no CUP will be required.

Site 8: 115 S. Juanita Street – owner Samir S. Riad. This is an active code enforcement case for long-term board up and will be referred to the City Attorney for compliance letter.

Site 9: 1707 W. Latham Avenue – old DMV building, owner SE California Associations of 7<sup>th</sup> Day Adventist. A CUP for a church was granted by the Planning Commission in July, 2014. Tenant improvements are underway, and expected to occupy the church this month.

Site 10: 140 N. San Jacinto Street – owner Authority Real Estate Inc. This is a boarded up vacant building north of Florida Avenue with ongoing graffiti issues. The property is actively being marketed for sale. Various potential tenants have looked into the building, but no plans have been submitted.

Site 11: 360 N. San Jacinto Street - old Duke's Restaurant, owner Kim Seung. The property has been sold and permits have been issued and construction is underway for a Hungry Bear Restaurant.

Site 12: 370/372 N. San Jacinto Street – owner Amir Dawud. This is a boarded up commercial building next to the old Duke's with a number of code issues. This property will be referred to the City Attorney for compliance letter.

Site 13: 1224 S. State Street – owner Leo & Julie Finaldi. This is a long term boarded up fenced commercial/residential building with landscape issues. There has been no recent activity other than an abandoned sign. This property will be referred to the City Attorney for compliance letter. The property owner is responsive when requested.

Site 14 & 15: 700/703 N. State Street – old Red Dog Hall, owner Brad Jacob Donnell. The intent was to sell the property to the County. It is a long term board up that is fenced with graffiti. The property will be referred to the City Attorney for compliance letter.

The City Council and staff discussed the County's previous and current plans for the property owned by them.

The City Council and staff discussed the trailer park located on Menlo and State Street. The property is independently owned. The City tried to revoke their license, however the State did not agree. The property has continued code and police activities.

Site 16: 220 E. Stetson Avenue – old K-Mart, owner Cloverlaine Associates. The front entrance is boarded up. The property is fenced and secured. The property is in escrow and the potential buyer is expected to submit plans for reuse and remodel.

The following are compliance options: obtain a building permit for the rehabilitation and reuse of the structure; ensure that the building is maintained, does not constitute a public nuisance and is actively marketed for sale or lease; demolish the structure; and replace boarded

windows with attractive graphics/murals with a city or historic theme. City enforcement actions: citations; abatement actions; liens; chronic nuisance fines; and court action for compliance or receivership.

**Mayor Pro Tem Wright**, asked how long the City will allow the property owner to be out of compliance.

**Ms. Elliano**, prior to the recently adopted Hemet ROCS ordinances the City staff did not have the tools to require compliance. It is our goal not to allow properties to be boarded up longer than six months. If the property owner does not willingly comply, then it becomes a code compliance case. There are some properties that we need to take additional legal action.

**Mayor Pro Tem Wright**, thanked Ms. Elliano for the update. The community needs to know that we are doing something about the boarded up buildings.

**Council Member Raver**, requested a list of citations and law enforcement activities at these buildings discussed.

The City Council and staff discussed the property and potential options.

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## Closed Session

### Notice of Opportunity for Public Comment

There were no public comments at this time.

The City Council recessed to Closed Session at 6:29 p.m.

2. Conference with Labor Negotiators

Pursuant to Government Code section 54957.6

Agency designated representatives: City Manager Hill

Employee organization:

*Service Employees International Union General Employees*

*Hemet Fire Fighters Association*

3. Conference with Legal Counsel - Existing Litigation

Pursuant to Government Code section 54956.9(d)(1)

Name of cases: *Erin Adams, et al v. County of Riverside, et al*

*USDC Case No. 14-CV-00830 SVW*

4. Conference with Legal Counsel - Anticipated Litigation

One (1) matter of significant exposure to litigation pursuant to Government Code section 54956.9(d)(2) & (3)

## REGULAR SESSION

7:00 p.m.

City of Hemet City Council Chambers  
450 E. Latham Avenue

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### Call to Order

Mayor Krupa called the meeting to order at 7:05 p.m.

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### Roll Call

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

ABSENT: None

OTHERS PRESENT: City Manager Hill, City Attorney Vail and City Clerk McComas

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### Invocation

Invocation was given by Jan DeSpain, Hemet San Jacinto Interfaith Council

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### Pledge of Allegiance

Pledge of Allegiance was led by Council Member Raver

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## City Attorney Closed Session Report

5. Conference with Labor Negotiators

Pursuant to Government Code section 54957.6

Agency designated representatives: City Manager Hill

Employee organization:

*Service Employees International Union General Employees*

*Hemet Fire Fighters Association*

**The City Council received a briefing and gave direction to staff. There was no additional reportable action.**

6. Conference with Legal Counsel - Existing Litigation

Pursuant to Government Code section 54956.9(d)(1)

Name of cases: *Erin Adams, et al v. County of Riverside, et al*

*USDC Case No. 14-CV-00830 SVW*

**The City Council received a briefing from the City Attorney and gave direction. There was no additional reportable action.**

7. Conference with Legal Counsel - Anticipated Litigation

One (1) matter of significant exposure to litigation pursuant to Government Code section 54956.9(d)(2) & (3)

**The City Council received a briefing from the City Attorney. There was no additional reportable action.**

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## Presentation

8. Presentation in memory of Buddy Riley, Emergency Operations Coordinator

**Chief Scott Brown**, recognized Capt. Brian Altizer, Engine Company 1, from Riverside County Office of Emergency Services - Peter Lent, Deputy Director and Kathleen Henderson, Emergency Services Coordinator and former Hemet Interim Fire Chief Peter Bryan and thanked them for being here.

**Mayor Krupa**, Buddy was hired by the Hemet Fire Department in December 2010 as the Emergency Services Coordinator. The Hemet City Council wishes to thank his family for his dedication to the City. Mayor Krupa presented Pat Riley with a street sign saying "Riley's Way". Mayor Krupa presented Pat Riley with a shadow box from the Hemet Fire Department with memorabilia including Buddy's Badge.

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## City Council Business Consent Calendar

9. **Approval of Minutes** – January 27, 2015

10. **Receive and File** – Investment Portfolio as of December 2014

11. **Receive and File** – Warrant Register

- a. Warrant register dated January 22, 2015 in the amount of \$1,837,444.47. Payroll for the period of January 5, 2015 to January 18, 2015 was \$589,413.67.

**Council Member Milne moved and Council Member Youssef seconded a motion to approve the Consent Calendar as presented. Motion carried 5-0.**

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## Communications from the Public

**Kevin Pearson, EMWD**, expressed appreciation for the Hemet Police Department. The district experienced a number of laptop thefts. Once staff suspected the source we reached out to the PD and they agreed to set up a sting operation. A laptop with a GPS tracking device was moved and the officers were dispatched and followed and caught the suspect. Mr. Pearson recognized the team, Det. Klinzing, Cpl. Gomez, Officer Coley and dispatchers Florez and Jagdeo. Mr. Pearson presented a token of their appreciation to Chief Brown.

**Charles Gunn, Hemet**, expressed continued concern with the vehicle speeds on Whittier between Lyon and Palm. Mr. Gunn was contacted by an employee and told the situation would be looked into. Mr. Gunn recommended that stop signs be considered.

This concern was referred to the Engineering Department.

**Dan Goodrich, Hemet**, Sierra Dawn Estates will be hosting a BBQ on May 22<sup>nd</sup>. The proceeds will go toward protective gear for Hemet K9's.

**Jim Welker, Hemet**, suggested that the City Council consider leasing the south portion of Gibbel Park to the adjacent hotel. Mr. Welker also recommended that the City consider skateboard parks be constructed in Gibbel and Weston Parks.

**Joy Ward, Hemet**, recommended that the speed limit in Seven Hills remain at 25.

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## Public Hearing

12. **Zone Change No. 14-001 – A-10 (Heavy Agriculture) to C-1 (Neighborhood Commercial) – 11.5 acre site, southeast corner of Esplanade Avenue and Warren Road** Community Development Director Elliano
- Conduct a public hearing; and
  - Introduce, read by title only and waive second reading of an ordinance approving the zone change for APN: 448-060-001; and
  - Direct staff to file a Notice of Determination with the County Clerk.

### **Ordinance Bill No. 15-005**

**Deanna Elliano, Community Development Director**, gave the City Council a powerpoint presentation regarding Zone Change No. 14-001. The owner of the 11.5 acres located at 5671 West Esplanade Avenue is Hemet Warren, LLC. The request is to change the zoning from A-10 (Heavy Agricultural) to C-1 (Neighborhood Commercial) which is consistent with the Neighborhood Commercial General Plan land use designation. A General Plan Land Use map showing the project site and the Roadway Circulation Master Plan was displayed. An Existing Zoning Map and Aerial map of the project site was also displayed, as well as a number of site photos. This zone change was publically noticed. Staff received 5 phone calls regarding the project, 4 were surrounding property owners requesting information regarding development of the property and 1 call was from EMWD requesting information regarding the EIR that was being utilized as part of this project. Based on the initial study prepare for the project, staff concluded that the proposed project is consistent with the existing Commercial Land Use analyzed in the adopted EIR for the General Plan and no further review is required at this time pursuant to Section 15162 of the CEQA Guidelines. The City Council certified the EIR for the Comprehensive General Plan Update on January 24, 2012. Future development will require additional environmental review based on the merits of the project proposal. Staff is recommending approval.

**Mayor Krupa declared the Public Hearing opened at 7:31 p.m.**

There were no public comments presented at this time.

**Mayor Krupa declared the Public Hearing closed at 7:31 pm**

**Council Member Youssef moved and Council Member Raver seconded a motion to approve this item as presented. Motion carried 5-0.**

Ordinance was read by title only.

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## Discussion/Action Item

13. **Recommendation by Economic Development – Real Property Advisory, Marketing and Sales Services**
- City Council authorize the City Manager to execute a Contract for Professional Services with RSG, Inc. to provide real property advisory and sales services to the City for certain City-owned real property, including APN's: 456-050-013, 456-050-044, and 465-140-032; and
  - Appropriate \$101,155.00 from the General Fund uncommitted fund balance to FY 14-15 Economic Development Department Account #120-8500-2710 to fund the cost of the real estate advisory services.

**Wally Hill, City Manager**, continuing discussion of a proposal to award a consulting contract to RSG, Inc. to provide advisory services and brokerage services for two previously approved

sites. The City Council previously expressed concern with the timeframe and recommended that staff renegotiate with RSG. The revised agreement extends the initial contract period from 18 to 24 months and adds 2 1-year extensions at the City's option.

**Lori VanArsdale, Hemet**, expressed continued concern with the requirement to pay upfront for the brokerage services that will be credited only if they sell the property. Ms. VanArsdale feels that the City Council and a potential buyer can work through the process to determine the highest and best use of the property.

**Mayor Krupa**, during the process of negotiating this contract I have heard that there are other innovative ways to negotiate these properties such as private/public partnerships.

**Council Member Youssef**, I recently met with Ron Bradley and he told me that both Temecula Mall and the Golden Triangle were marketed, sold and develop using this process. In my opinion that is tangible evidence that this would be better than just putting them on the market.

**Council Member Milne**, expressed concern that a representative from RSG is not available to answer questions.

**Mr. Hill**, the firm offered to have a representative here and was told that it would not be necessary.

**Council Member Raver**, expressed opposition to approving the contract and to even selling the property at this time. We don't need the money and should take our time to determine the best direction.

**The City Council tabled this item for 60 days to look at alternatives.**

14. **Municipal Code Amendment No. 15-001: Automatic Extension of Time for Development Projects** – Community Development Director Elliano

- a. Adopt an urgency ordinance extending the life of existing conditional use permits and site development review approvals set to expire between February 1, 2015 and December 31, 2015. **Urgency Ordinance No. 1895**

**Deanna Elliano, Community Development Director**, proposed urgency ordinance that would take effect immediately. This ordinance would extend the life of City's approvals, CUP's and Site Development Plan Reviews beyond their approval period. Many of the projects included in this window were hit in the economic downturn however, expended money and time to obtain approvals. The projects are still consistent with the General Plan and will be required to meet current building and fire safety codes. The property owners feel more optimistic about the market conditions.

**Walter Wilson, Riverside County Association of Realtors**, spoke in favor and thanked the City Council for this building friendly move.

**Steve Riboli**, previously went through a painful and expensive process in 2006 for a great project. Mr. Riboli strongly urged the City Council to approve the extension.

**Eric Day**, we do not have the money to go through this process again. We have builders that have expressed an interest in the property that will be a great project. Mr. Day recommended approval.

**Ms. Elliano**, the Chamber of Commerce and the BIA were notified. The BIA sent a message expressing support.

**Council Member Raver moved and Council Member Milne seconded a motion to approve this item as presented. Motion carried 5-0.**

Ordinance was read by title only.

15. **Annexation No. 14-001: Resolution of Intention for annexation of 995.63 acres of property located within the City's sphere of influence in unincorporated Riverside County** – Community Development Director Elliano
  - a. Adopt a resolution requesting that the Riverside Local Agency Formation Commission initiate proceedings for annexation of the 995.63 acres of property, generally situated south of Stetson Avenue, north of Domenigoni Parkway, and west of the city limits to California Avenue **Resolution No. 4616**; and
  - b. Direct staff to finalize and submit an Annexation Application, Plan of Services, Fiscal Impact Analysis, and other required materials to LAFCO.

**Deanna Elliano, Community Development Director**, gave the City Council a powerpoint presentation regarding proposed Annexation No. 14-001. The proposed annexation area is 995.63 acres generally located south of Stetson Avenue, north of Domenigoni Parkway, west of the City limits to California Avenue within the City's adopted Sphere of Influence. This is an uninhabited – Land owner based annexation. The property was pre-zoned by the City Council on January 28, 2014. The City Council directed staff to initiate the annexation process on July 8, 2014. A locational & sphere of influence and an aerial map were displayed. Also displayed was a pre-zoning map established by Ordinance No. 1877. Five of the property owners are government agencies. There are seven owners of 740.65 acres of developable land: Pacifica First – 14.81 acres; City of Hemet – 20.88 acres; Chen – 37.13 acres; Dilworth – 125.19 acres; Ho/Chow – 153.73 acres; MWD – 166.55 acres; and Benchmark Pacifica – 222.22 acres. A map showing property ownership was displayed. The City took the lead in the annexation process in partnership with the landowners and prepared the application materials, manage the project, contract with required technical consultants, and provide the General Plan EIR. The City assisted in providing a portion of the "up front" funding (50%) contingent upon some form of property owner participation to ensure fair share payment or reimbursement. To date, the City has received 78% of the application fund due form the property owners. The following materials will be sent to LAFCO by the end of February: City Council Resolution of Application; Fiscal Impact Report; Plans for Service; boundary maps and legal descriptions; infrastructure maps and service review; coordination with Riverside County; coordination with LAFCO and property owners; LAFCO Application & Fees for an Uninhabited Annexation. LAFCO will review the application and materials and may request additional information the City and other agencies. Approximately 4 months after submittal LAFCO will conduct a noticed public hearing regarding the annexation. After which, LAFCO will approve or deny the annexation, and may add conditions or revisions to the proposal. If approved, LAFCO will conduct a protest hearing that can be waived if they receive 100% landowner consent. A Certificate of Completion is recorded by LAFCO and sent to the State Board of Equalization. The Annexation is effective upon recordation. This annexation implements the General Plan vision to increase employment opportunities, encourage light industrial and commercial growth, and expand residential options in the project area while enabling the managed growth of the City. The Fiscal Impact Report indicates a net positive for the City at a revenue-to-cost-ratio of 1.5, and a new positive ration to the County of 1.76, at build-out under City zoning classifications. The City is able to provide an equivalent or enhanced level of Public Services to the area. The Municipal Boundary recommended by LAFCO is roadway centerlines. There is land owner and community support for the annexation. There are property owners present to answer any questions. Staff received one phone call from a resident outside of the City's Sphere of Influence asking to be included in the annexation. Staff is recommending adoption of the resolution and direction to finalize and submit the Application, Fees, Plan of Services,

Boundary Plat and other required materials to LAFCO.

**Mayor Pro Tem Wright moved and Council Member Milne seconded a motion to approve this item as presented. Motion carried 5-0.**

16. **Funding for Police Officer Recruitment Plan** – Police Chief Brown

- a. Approve a supplemental appropriation from general fund unrestricted fund balance in the amount of \$30,000 to support the Police Officer Recruitment Plan.

**Police Chief Brown**, the Department continues to struggle filling vacant positions. It is our belief that there are many officers living nearby that are driving to other agencies to work. The Department's recruiting team has prepared a plan to target those officers. The components of the plan include: professional design and publication of print ads to be placed in high volume law enforcement publications; design and display of billboard ads in strategic locations specifically to capture those police officers who live in our area but commute to outlying areas to work; professional display and materials to enhance our presence in the job fair environment; and the production of a short "spot" to be aired on social media, cable, theaters, etc. to reach an increasingly visual population. It is recommended that the City Council appropriate \$30,000 for the general fund unrestricted fund balance for this one time expenditure. The return on this investment will be significant if we can attract one lateral employee. A local agency increased the visitors to their website by 30% with a billboard. Local vendors will be used for services where available.

**Council Member Raver**, asked about the cost for the entire Police Strategic Plan and expressed concern that this portion is being requested now instead of being included as part of the budget.

**Chief Brown**, the first year of the Department's Strategic Plan Strategy, FY 14/15, will cost \$440,000.00 to implement. Years 2 through 5 have not been developed.

**Council Member Raver**, acknowledged that police services needs to be enhanced but the City is running in a deficit and \$440,000 is a lot of money. Council Member Raver recommended that this be included in the budget process with the other demands to be considered at that time. Council Member Raver expressed concern that a status quo budget will already dip into the City's reserves by \$2 million without additional expenditures like this.

**Wally Hill, City Manager**, the Police Department is trying to fill the vacant positions. This plan is targeted at recruiting lateral police officers which is cheaper and less time consuming than trainees or academy graduates. This is a one-time expenditure that will draw down the reserves.

**Council Member Raver**, if you are not willing to include this request with the budget process, the billboards should at least be removed from the request.

**Council Member Youssef**, \$30,000 is much cheaper than the cost to hire and train an academy graduate. Time is of the essence in this situation the opportunity costs are greater.

**Council Member Milne moved and Mayor Pro Tem Wright seconded a motion to approve this item as presented. Motion carried 5-0.**

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## City Council Reports

17. CITY COUNCIL REPORTS AND COMMENTS

A. Council Member Milne

1. Riverside County Habitat Conservation Agency (RCHCA)

2. Riverside Conservation Authority (RCA)
3. Disaster Planning Commission

B. Council Member Raver

1. Planning Commission
2. Traffic and Parking Commission
3. Riverside Transit Agency (RTA)
4. Riverside County Transportation Commission (RCTC)
5. Watermaster Board

C. Council Member Youssef

D. Mayor Pro Tem Wright

1. Park Commission
2. Riverside County Habitat Conservation Agency (RCHCA)
3. Ramona Bowl Association
4. League of California Cities
5. Western Riverside Council of Governments (WRCOG)

**Mayor Pro Tem Wright**, heard an overview for TUMF funding, the League of California Cities and the Tribal participation.

**Mayor Pro Tem Wright**, Attended a joint meeting with SCAG and the policy committee. It was beneficial to see how the regional committee works and the issues they are dealing with.

**Mayor Pro Tem Wright**, spoke at the afternoon Kiwanis meeting which she was previously a member for 25 years.

**Mayor Pro Tem Wright**, explained a program offered by EMWD as partners with the Riverside County Workforce Investment Board and ResCare Workforce Services. The Youth Ecology Corps is for young adults 18 to 24 who are interested in exploring career opportunities in the water industry and its related fields.

E. Mayor Krupa

1. Riverside Conservation Authority (RCA)
2. Ramona Bowl Association
3. Riverside Transit Agency (RTA)
4. Watermaster Board
5. Library Board
6. League of California Cities

Training session aimed at new Council Members will be held in Banning on Tuesday, February 17, 2015.

7. Riverside County Habitat Conservation Agency (RCHCA)
8. Western Riverside Council of Governments (WRCOG)

**Mayor Krupa**, along with City staff attended the Grand Opening of Gosch Chevrolet.

**Mayor Krupa**, attended an RCTC retreat. An overview of building and funding was looked at and a wish list was created to include Highway 79 and San Jacinto Railway.

F. Ad-Hoc Committee Reports

1. West Hemet MSHCP Ad-Hoc Committee

**Council Member Milne**, felt that the recent meeting with Fish and Wildlife was productive and it was advantageous to have a representative there from Congressman Ruiz's Office.

2. Regent Development Agreement Ad-Hoc Committee
3. Diamond Valley Lake Recreation Ad-Hoc Committee
4. Public Safety Measure Ad-Hoc Committee

G. City Manager Hill

1. Manager's Reports
- 

## **Future Agenda Items**

Disaster Preparedness

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## **Adjournment**

Adjourned at 8:38 p.m. to Tuesday, February 24, 2015 at 7:00 p.m. in honor of Eugene White a former City Council Member and Mayor in the 70's.



## Staff Report

---

TO: Honorable Mayor and Members of the City Council

FROM: Jessica A. Hurst, DCM/Administrative Services Director;  
Wally Hill, City Manager *Wally Hill*

DATE: February 24, 2015

RE: Warrant Register

The City of Hemet's warrant registers dated February 5, 2015 in the amount of \$1,142,878.26 and February 9, 2015 in the amount of \$2,088,389.58 are currently posted on the City's website in the Finance Department section, under *Financial Information*. Payroll for the period of January 19, 2015 to February 1, 2015 was \$590,923.15.

### CLAIMS VOUCHER APPROVAL

"I, Jessica A. Hurst, 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,

Jessica A. Hurst  
Deputy City Manager/Administrative Services Director

JAH: mh

CITY OF HEMET  
VOUCHER/WARRANT REGISTER  
FOR ALL PERIODS

CLAIMS VOUCHER APPROVAL

I, JESSICA A. HURST, 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.

JESSICA A. HURST  
DCM/ADMINISTRATIVE SERVICES DIRECTOR

# 11



**CITY OF HEMET  
Hemet, California**

**CITY COUNCIL  
ORDINANCE BILL NO. 15-005**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA APPROVING ZONE CHANGE NO. 14-001 TO CHANGE THE ZONING CLASSIFICATION FROM A-10 (HEAVY AGRICULTURAL) TO C-1 (NEIGHBORHOOD COMMERCIAL) LOCATED ON THE SOUTHEAST CORNER OF WARREN AND ESPLANADE AVENUES (APN: 448-060-001).**

**WHEREAS**, on September 18, 2014 an application for Zone Change No. 14-001 has been duly filed by:

Owner: Hemet Warren, LLC  
Authorized Agent: Patti Nahill - PGN  
Project Location: 5671 W. Esplanade Avenue  
Lot Area: 11.5; and

**WHEREAS**, on January 8, 2015, the City gave public notice by advertising in the Press Enterprise and by mailing to property owners within 1,000 feet, of the holding of a public hearing at which the project would be considered by the Planning Commission; and

**WHEREAS**, on January 20, 2015, the Planning Commission held the noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to, the proposed Zone Change and at which time the Planning Commission considered all written and oral reports of staff and public testimony on the matter, and adopted Resolution No. 15-001 recommending approval of Zone Change No. 14-001 to the City Council, and

**WHEREAS**, on January 29, 2015, the City gave public notice by advertising in the Press Enterprise and by mailing to property owners within 1,000 feet, of the holding of a public hearing at which the project would be considered by the City Council; and

**WHEREAS**, the City Council has the authority per section 90-41 *et seq.* of the Hemet Municipal Code to review and approve proposed Zone Change 14-001 to allow

1 the zone change from A-10 (Heavy Agricultural) to C-1 (Neighborhood Commercial);  
2 and  
3

4 **WHEREAS**, on February 10, 2015, the City Council held a duly noticed public  
5 hearing at which interested persons had an opportunity to testify in support of, or in  
6 opposition to the proposed Zone Change No. 14-001 and, at which the City Council  
7 considered all written and oral reports of staff and public testimony on the matter, and  
8 such other matters as are reflected in the record; and  
9

10 **WHEREAS**, at this public hearing on February 10, 2015, the City Council  
11 determined that the proposed project is consistent with the Environmental Impact  
12 Report for the Comprehensive General Plan Update adopted by the City Council on  
13 January 24, 2012 and is, therefore, exempt from further review under California  
14 Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15162  
15 (Subsequent EIR's and Negative Declarations) and that the exceptions to the  
16 categorical exemptions contained in the CEQA Guidelines Section 15300.2 are not  
17 applicable to the project.  
18

19 **NOW, THEREFORE**, the City Council of the City of Hemet does Resolve,  
20 Determine, Find and Order as follows:  
21  
22

### 23 **SECTION 1: ENVIRONMENTAL FINDINGS**

24

25 The City Council, in light of the whole record before it, including but not limited to, the  
26 City's Local CEQA Guidelines and Thresholds of Significance, the recommendation of  
27 the Planning Commission as provided in the Staff Report dated February 10, 2015 and  
28 documents incorporated therein by reference, and any other evidence (within the  
29 meaning of Public Resources Code §21080(e) and §21082.2) within the record or  
30 provided at the public hearing of this matter, hereby finds and determines as follows:  
31

- 32 1. **CEQA.** The City Council approved a resolution certifying the Final Program EIR  
33 for the Comprehensive General Plan 2030 update by Resolution No. 4474 on  
34 January 24, 2012, and a Notice of Determination was filed in accordance with  
35 CEQA requirements on January 26, 2012, that the proposed zone change is  
36 consistent with the previously adopted Comprehensive General Plan Update and  
37 Environmental Impact Report and, pursuant to Section 15162 of the CEQA  
38 Guidelines, no further review is required.  
39
- 40 2. **Multi-Species Habitat Conservation Plan (MSHCP).** The project is found to be  
41 consistent with the MSHCP. The property is located with Cell 3291 of the  
42 Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP).  
43

1 A general biological assessment was prepared by Natural Resources  
2 Assessment, Inc. on August 18, 2014. The assessment observed the Smooth  
3 Tarplant and suitable habitat for the Burrowing Owl. However, the Zone Change  
4 does not propose any development and therefore will have no direct impacts to  
5 the resources on site.  
6

## 7 **SECTION 2: REQUIRED ZONE CHANGE FINDINGS**

8  
9 Pursuant to Hemet Municipal Code Section 90-41.5 (b) and in light of the record before  
10 it including the staff report dated February 10, 2015, and all evidence and testimony  
11 heard at the public hearing of this item, the City Council hereby finds as follows:  
12

- 13 **1. That the proposed change of zone is in conformance with the latest**  
14 **adopted general plan for the city.**  
15

16 Changing the zone from A-10 (Heavy Agriculture) to C-1 (Neighborhood  
17 Commercial) is consistent with the current General Plan Land Use. Table 2.2 City  
18 of Hemet General Plan 2030 identifies the relationship between Hemet's Zone  
19 Districts and the General Plan Land Use Designations. The current land use  
20 designation for the subject property is Neighborhood Commercial.  
21

- 22 **2. That the streets in the area are adequate to handle potential traffic**  
23 **generated by the change of zone; and**  
24

25 The project does not propose development and is not anticipated to cause an  
26 increase in traffic in relation to the existing traffic load and capacity of the existing  
27 street system. The proposed project is not anticipated to result in exceeding, either  
28 cumulatively or individually, a level of service standard established by the County  
29 congestion management agency for designated roads or highways.  
30

- 31 **3. That the proposed change of zone is compatible with adjacent zoning.**  
32

33 The proposed Zone Change to C-1 (Neighborhood Commercial) is compatible  
34 with the R-1 (Single Family Residential) zoning to the south and east. The  
35 proposed zone change can provide neighborhood commercial opportunities to  
36 support the existing residential in the area.  
37

## 38 **SECTION 3: CITY COUNCIL ACTIONS**

39 The City Council hereby takes the following action:  
40

- 41 **1. Adopt the proposed City Council Ordinance** approving Zone Change No.  
42 4-001, as shown in Exhibit 1A and described in Exhibit 1B which are attached  
43 hereto and incorporated herein by reference, changing the zoning from A-10 to

1 C-1 on 11.5 acres of property located on the southeast corner of Esplanade and  
2 Warren Avenues (APN: 448-060-001).

3  
4 2. Direct staff to file a Notice of Determination with the Riverside County Clerk  
5 and Recorder.  
6  
7

8 **SECTION 4:** The City Clerk is authorized and directed to cause this Ordinance to be  
9 published within fifteen (15) days after its passage in a newspaper of general circulation  
10 and circulated within the City in accordance with Government Code Section 36933(a)  
11 or, to cause this Ordinance to be published in the manner required by law using the  
12 alternative summary and pasting procedure authorized under Government Code  
13 Section 39633(c).  
14

15  
16 **INTRODUCED** at the regular meeting of Hemet City Council on February 10, 2015

17 **APPROVED, AND ADOPTED** this 24<sup>th</sup> day of February, 2015.  
18  
19  
20

21  
22 \_\_\_\_\_  
Linda Krupa, Mayor  
23

24  
25  
26 ATTEST:

APPROVED AS TO FORM:  
27  
28

29  
30 \_\_\_\_\_  
Sarah McComas, City Clerk  
31

32 \_\_\_\_\_  
Eric S. Vail, City Attorney

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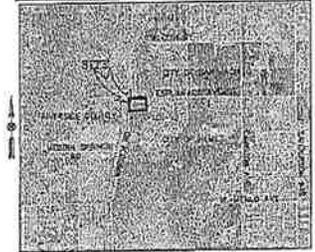
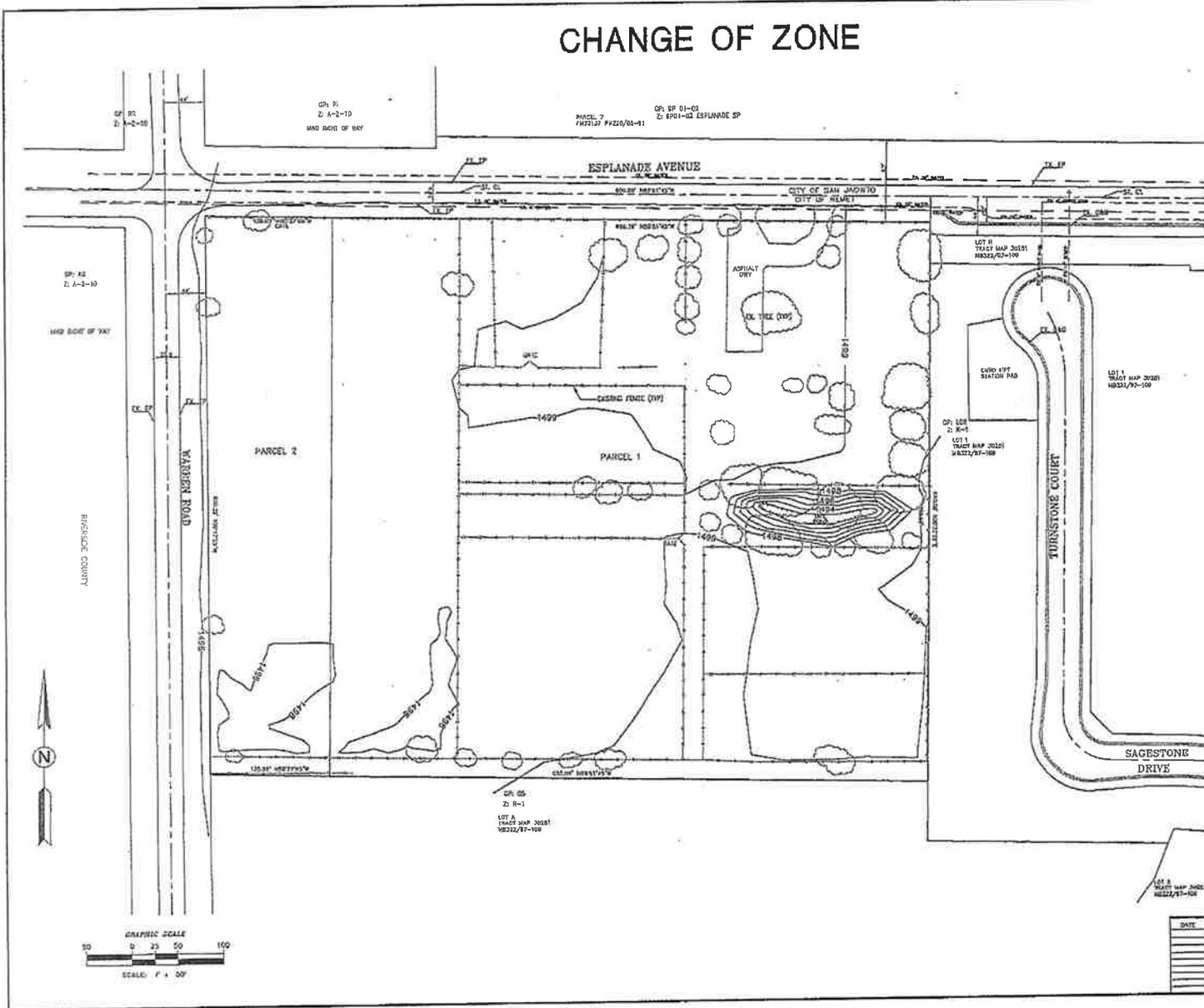
State of California )  
County of Riverside )  
City of Hemet )

I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the foregoing Ordinance was introduced and first read on the 10<sup>th</sup> day of February 2015, and had its second reading at the regular meeting of the Hemet City Council on the 24th day of February, 2015 by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

\_\_\_\_\_  
Sarah McComas, City Clerk

# CHANGE OF ZONE



VICINITY MAP

## LEGAL DESCRIPTION

**PARCEL 1:**  
 THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL RECORD THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SECTION 6, THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION, 10 CHAINS; THENCE SOUTH 80°26' EAST, 10 CHAINS; THENCE NORTH PARALLEL WITH THE WEST BOUNDARY LINE OF SAID SECTION, 10 CHAINS TO THE NORTH BOUNDARY LINE THEREOF; THENCE NORTH 88°26' WEST 10 CHAINS TO BEGINNING.

**PARCEL 2:**  
 THAT PORTION OF THE NORTH 80.00 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 3 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LINGUALLY EAST OF A LINE WHICH IS PARALLEL WITH AND 44.00 FEET EASTWARD MEASURED AT RIGHT ANGLES FROM THE FOLLOWING DESCRIBED LINE:  
 BEGINNING AT A POINT ON THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, SAID POINT BEING DISTANT SOUTH 80°00' WEST 18.00 FEET FROM THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE NORTH 00°00' WEST ALONG A LINE WHICH IS PARALLEL WITH AND 21.00 FEET WESTWARD MEASURED AT RIGHT ANGLES FROM THAT CERTAIN TRAILERS LINE DESCRIBED IN DEED RECORDED IN BOOK 2375, PAGE 208 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, A DISTANCE OF 104.27 FEET TO THE SOUTHWEST CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN; SAID SOUTHWEST CORNER BEING DISTANT NORTH 80°00' WEST 18.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 1, TOWNSHIP 3 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN;  
 EXCEPT THEREFROM ALL OIL, GAS, MINERALS, AND OTHER HYDROCARBON SUBSTANCES LYING BELOW THE SURFACE OF SAID LAND BUT WITHOUT THE RIGHT OF SURFACE ENTRY, AS HERETOBY OR GRANTED IN DOCUMENTS OF RECORD.

## UTILITIES

WATER EXIST  
 SEWER EXIST  
 GAS SOUTHERN CALIFORNIA GAS  
 TELEPHONE VERICOM  
 ELECTRIC SOUTHERN CALIFORNIA EDISON

## GENERAL PLAN DESIGNATION

EXISTING: NEIGHBORHOOD COMMERCIAL  
 PROPOSED: NEIGHBORHOOD COMMERCIAL

## ZONE DESIGNATION

EXISTING ZONE: A-10 HEAVY AGRICULTURAL  
 PROPOSED: C-1 NEIGHBORHOOD COMMERCIAL

## SITE ADDRESS

5674 WEST ESPLANADE AVE. HEMET, CA. 92345

## ASSESSOR'S PARCEL NUMBERS

448-060-001

## PARCEL SIZE

11.5 AC

## OWNER/APPLICANT

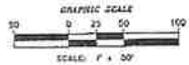
HEMET WARRIOR, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY  
 6323 WINDHURST BLVD., SUITE 200  
 BEVERLY HILLS, CA 90711  
 PHONE: (310) 477-2550 CAL. 114

**HLC Civil Engineering**  
 2001 N. VA. AVENUE  
 SUITE 100  
 (505) 940-4667

DATE	BY	REVISIONS

CITY OF HEMET  
 CHANGE OF ZONE  
 APN 448-060-001

PREPARED DATE: AUGUST 16, 2011



**LEGAL DESCRIPTION**

HEMET WARREN, LLC  
ASSESSORS PARCEL NUMBER 448-060-001

**PARCEL 1:**

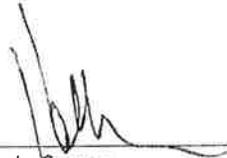
THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL RECORD THEREOF DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 6; THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION, 10,CHAINS; THENCE SOUTH 88°56' EAST 10 CHAINS; THENCE NORTH PARALLEL WITH THE WEST BOUNDARY LINES OF SAID SECTION, 10 CHAINS TO THE NORTH BOUNDARY LINE THEREOF; THENCE NORTH 88°56' WEST 10 CHAINS TO BEGINNING.

**PARCEL 2:**

THAT PORTION OF THE NORTH 660.00 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 5 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LYING EASTERLY OF A LINE WHICH IS PARALLEL WITH AND 44.00 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, SAID POINT BEING DISTANT SOUTH 80 ° 45'56" WEST 164.81 FEET FROM THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER;

THENCE NORTH 0°35' WEST ALONG A LINE WHICH IS PARALLEL WITH AND 219.00 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THAT CERTAIN TRAVERS LINE DESCRIBED IN DEED RECORDED IN BOOK 2339, PAGE 356 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, A DISTANCE OF 1364.27 FEET TO THE SOUTHEAST CORNER OF SECTION 36, TOWNSHIP 4 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, SAID SOUTHEAST CORNER BEING DISTANT NORTH 88°45'25" WEST 184.68 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 1, TOWNSHIP 5 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN.

  
\_\_\_\_\_  
Hector L. Correa  
R.C.E 36306  
Expires 6/30/16

1/28/15  
Date





## *Staff Report*

---

**TO:** Honorable Chairman and Members of the Housing Authority

**FROM:** Edna I. Lebrón, Housing Specialist  
Jessica A. Hurst, Deputy City Manager/Administrative Services

**DATE:** February 24, 2015

**RE:** Senior and Disabled Owner Occupied Home Repair Program - Approval of Extension and Increase in amount of Agreements for Services

### **RECOMMENDATION:**

Staff recommends approval of a one year contract extension in the amount of \$90,000 for the Senior and Disabled Owner Occupied Home Repair Program (Home Repair Program). The approved contractors are as follows:

- Absolute Contractors, Inc.
- Ace & Sons Constructions, Inc.
- Blue Ribbon Plumbing, Heating and Air Conditioning, Inc.
- Dan Marana Construction
- Pacific MH Construction, Inc.
- Vizion's West

### **BACKGROUND:**

The primary objective of the Home Repair Program is to promote the health, safety and welfare of residents; and to preserve the housing stock within the City of Hemet. Senior citizens or disabled individuals with very low to extremely low income typically do not have the resources to repair or replace vital home systems and as a consequence, may experience a lower standard of living with inoperable or substandard vital systems.

The Senior and Disabled Owner Occupied Home Repair Program offers up to \$10,000 in grant funding for approved home repairs from annual Community Development Block Grant (CDBG) allocations for very low to extremely low income senior or disabled homeowners meeting all of the criteria set forth in the City of Hemet guidelines. The guidelines require homeowner application and approval; property inspection for scope of work, cost estimate and cost reasonableness; and three written bids obtained by the homeowner from a City of Hemet list of approved contractors, before approval of the repairs by staff.

With the expansion of the Senior Home Repair program in October 2013, the City issued a Request for Proposal (RFP) for contractors to provide general home repairs. Of the fourteen

responses, six met the established criteria and the City entered into one year contracts beginning January 2014, in the amount of \$50,000.

**ANALYSIS:**

Of the six approved contractors, three have consistently provided bids with one consistently providing the lowest bid. As a result there is a need to increase the contract limit to complete work for the program year. Extending and increasing the original contracts will allow homeowners to continue to obtain competitive bids and choose the most appropriate contractor for their home repair.

**FISCAL IMPACT:**

No impact to the General fund. Existing CDBG allocation to be utilized.

**ATTACHMENTS:**

Agreement for Services for Absolute Contractors, Inc. (the other 5 contracts are identical except for the names of the contractors)

Respectfully submitted,



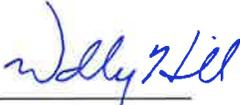
Edna I. Lebrón  
Housing Specialist

Reviewed:



Jessica A. Hurst  
Deputy City Manager/  
Administrative Services

Approved:



Wally Hill  
City Manager

## **HOUSING REHABILITATION AGREEMENT**

### **(CDBG Funded – Senior/Disabled Home Repair Grant Program)**

This Housing Rehabilitation Agreement (the "Agreement") is made and entered into this 26th day of February, 2015, (the "Effective Date") by and between the City of Hemet (the "City"), a California municipal corporation, and Absolute Contractors, Inc. (the "Contractor"), a California corporation. City and Contractor may be referred to individually or collectively as a "party" or the "parties."

### **RECITALS**

A. The City has received grant money from the U.S. Department of Housing and Urban Development for participation in the Community Development Block Grant Program (the "CDBG Program") under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5300 et seq.) as amended.

B. The City has created the Senior/Disabled Minor Home Repair Program, which grants CDBG Program funds to low income homeowners who are age 62 or older or disabled to make qualifying repairs to their residences.

C. Homeowners have applied for and been selected to receive a grant from the City through the Senior/Disabled Minor Home Repair Program to fund the repair work specified in Exhibit "A" to this Agreement to their residence located throughout the City of Hemet, California (the "Residence").

D. The City desires to hire the Contractor to perform several specific trades including general building, electrical, plumbing, roofing, HVAC systems, and other specialty fields.

### **OPERATIVE PROVISIONS**

#### **1. SCOPE OF WORK**

The Contractor shall furnish the labor and materials, including tools and equipment, along with the competent supervision of any laborers, which is necessary to complete the repair work at the Residence. The Contractor shall obtain any permits and inspections from the City required to perform the Repairs.

#### **2. TERM**

The term of this Agreement is for one year commencing on the Effective Date ("Term"). The City shall have the right to renew this Agreement for one (1) additional year under the same terms and conditions of this Agreement.

### **3. EXTRA WORK**

Contractor shall not be compensated for any work or services rendered in connection with its performance of this Agreement, which are in addition to or outside of the Repairs (“Extra Work”), except as expressly provided for herein. It shall be Contractor’s responsibility to ensure that the scope and price of any Extra Work to be performed by Contractor is approved by City in writing in advance of Contractor’s commencement of the Extra Work in accordance with Section 14.10 [Amendments] and Section 14.19 [Administration and Implementation]. City shall not be obligated to pay for or otherwise be liable for unauthorized Extra Work performed by Contractor.

### **4. PERIOD OF PERFORMANCE**

Time is of the essence in the performance of the Repairs. The Repairs are to be completed within the time frame stated on each individual approved Work Order.

### **5. COMPENSATION**

5.1 Compensation. The City agrees to pay, and the Contractor agrees to accept, the amount stated on each Work Order as full compensation for the completion of the Repairs, including all direct and indirect expenses of the Contractor. Total compensation shall not exceed ninety thousand dollars (\$90,000.00), unless additional compensation is approved in writing.

5.2 Time of Payment. Upon the completion of the Repairs, Contractor shall submit to the City an itemized invoice detailing the labor and materials charges incurred in the performance of the Repairs. City will review the statement and pay, with the exception of any charges for labor and materials that are disputed by City, within 30 days of receiving such statement, all approved charges thereon. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defect in work performed by Contractor.

### **6. RECORDS AND AUDITS**

6.1 Accounting/Record Keeping. Contractor must establish and maintain on a current basis an adequate accounting system in accordance with generally accepted accounting principles and standards and 24 CFR Part 85.

6.2 Audits. Contractor must retain and provide the City’s representatives access to any books, documents, papers and records of the Contractor for audit or examination at any time for the duration of this agreement and during a period of five (5) years after final payment is issued to the Contractor.

## **7. RESPONSIBILITIES OF CONTRACTOR**

7.1 Control and Payment of Subordinates; Independent Contractor. Contractor agrees that the Repairs shall be performed by Contractor or under its supervision. The personnel performing the Repairs under this Agreement on behalf of Contractor shall at all times be under the Contractor's exclusive direction and control. Contractor will determine the means, methods and details of performing the Repairs subject to the requirements of this Agreement. Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Contractor shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, healthcare or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

7.2 Standard of Care and Licenses. Contractor agrees that the Repairs shall be performed in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and warrants that it, its employees and subcontractors shall have sufficient skill and experience to perform the Repairs and that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained in good standing throughout the term of this Agreement.

7.3 Required Corrections. Contractor shall perform, at its own expense and without reimbursement from the City, any work necessary to correct errors or omissions that are caused by the Contractor's failure to comply with the standard of care provided for herein.

7.4 Law and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Repairs, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with the Repairs.

7.5 Safety. Contractor shall perform the Repairs, and maintain its work area, so as to avoid injury or damage to any person or property and shall otherwise exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

## **8. WARRANTY**

8.1 General Warranty. Contractor warrants the Repairs under this Agreement (which for purposes of this Section shall be deemed to include unauthorized Extra Work

which has not been removed and any non-conforming materials incorporated into the Services) to be of good quality and free from any defective or faulty material and workmanship. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Repairs, whether express or implied, are deemed to be obtained by Contractor for the benefit of City, regardless of whether or not such warranties and guarantees have been transferred or assigned to City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of City.

8.2 Repair of Defects. Contractor agrees that for a period of one (1) year from and after final acceptance of the Repairs, or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Repairs, whichever is later, Contractor shall within ten (10) days after being notified in writing by City of any defect in the Repairs or non-conformance of the Repairs, commence and prosecute with due diligence all work and services necessary to fulfill the terms of the warranty at its sole cost and expense. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work, facilities, fixtures, or materials damaged by its defective Repairs or which becomes damaged in the course of repairing or replacing defective Repairs. For any Repairs so corrected, Contractor's obligation hereunder to correct defective Repairs shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Repairs. Contractor shall perform such tests as City may require to verify that any corrective actions are adequate to remedy the defective condition. In the event that Contractor fails to perform its obligations under this Section 8.2 to the reasonable satisfaction of City, then City shall have the right to correct and replace any defective, non-conforming, or damaged Repairs at Contractor's sole expense. Contractor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand.

## **9. PREVAILING WAGES**

9.1 Davis-Bacon Act. 42 U.S.C. Section 5310 generally requires all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with CDBG Program funds to be paid prevailing wages in accordance with the Davis-Bacon Act (40 U.S.C. Section 3141 et seq.). This section exempts from compliance with the Davis-Bacon Act "the rehabilitation of residential property only if such property contains not less than 8 units." City and Contractor agree that the Repairs to the Residence constitute a rehabilitation of a single-family residence and therefore Contractor is not required to comply with the Davis-Bacon Act. Contractor agrees to operate within the parameters of the exemption so as to not trigger the requirements of the Davis-Bacon Act.

9.2 Labor Code Section 1771. California Labor Code Sections 1720 et seq. requires all workers engaged in construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds to be paid prevailing wages. However, Section 1720(c)(6)(C) exempts from this requirement the rehabilitation of a privately owned single-family home where assistance is provided to

the homeowner to fund the rehabilitation. City and Contractor agree that the Repairs to the Residence constitute a rehabilitation of a privately-owned single-family home, and that the compensation City will pay to Contractor is solely for the rehabilitation of the Residence. Therefore, Contractor is not required to pay prevailing wages under this Agreement. Contractor agrees to operate within the parameters of the exemption so as to not trigger the requirement to pay prevailing wages.

## **10. FEDERAL REQUIREMENTS**

During the performance of this Agreement, Contractor agrees to comply with the following federal provisions, as applicable to the Repairs:

10.1 Discrimination. Contractor shall comply with all relevant requirements of the following federal laws and regulations dealing with discrimination in federally assisted programs:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 20000d), which provides that no person shall, on the grounds of race, color, or national origin, be excluded from employment or participation in, be denied the benefits of, or be subjected to discrimination under any program activity receiving federal financial assistance.

(b) Section 109 of Title 1 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. Section 5309), which provides that no person shall, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, be denied employment in, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(c) Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. Section 794), which provides that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, be denied employment in, or be discriminated against under any program or activity receiving federal assistance.

(d) Age Discrimination Act of 1975, as amended, (42 U.S.C. Section 6101), which provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.

(e) Executive Order 11246, as amended by Executive Order 12086, and regulations in 41 CFR 60, which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federally-assisted construction contracts and subcontracts. Contractors and subcontractors shall take affirmative action to ensure fair treatment in employment, including recruitment, training, promotion, demotion, transfer, layoff, termination, and pay.

10.2 Lobbying Certification. Contractor certifies, to the best of its knowledge and belief, that:

(a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

(b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, as Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Agreeing to this certification is a prerequisite for making or entering into this Agreement imposed by 31 U.S.C. Section 1352. Contractor acknowledges and agrees that violation of this certification may result in civil penalties imposed pursuant to 31 U.S.C. Section 1352.

10.3 Anti-Kickback Act. Contractor shall comply with the Copeland "Anti-Kickback Act" (18 U.S.C. Section 876), which prohibits Contractor from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he is otherwise entitled.

10.4 Contract Work Hours and Safety Standards Act. If the total compensation paid to Contractor under this Agreement is in excess of two thousand dollars (\$2,000.00), Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 324-330), as supplemented by Department of Labor Regulations contained in 29 CFR Parts 3, 5 and 5a.

(a) Under Section 103 of the Act, Contractor and any of its subcontractors shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty ours. Work in excess of the standard work week is permissible, provided the worker is compensated at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any work week.

(b) Under Section 107 of the Act, Contractor and any of its subcontractors shall ensure that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous or

dangerous to his health and safety, as determined under construction, safety and health standards promulgated by the Secretary of Labor.

10.5 Lead-Based Paint. The use of lead-based paint in federally-assisted construction or rehabilitation of residential structures is prohibited by Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4831(b)), Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. Section 4851), and regulations in 24 CFR 35. The Contractor and its subcontractors shall not use lead-based paint in the Residence and shall eliminate any lead-based paint hazards in the Residence in compliance with the Lead Hazard Reduction Methods in 24 CFR 35.1330 and 1325. All workers involved in the disturbance of lead-based paint bearing surfaces should be trained in lead safe work practices. At the conclusion of the Repairs, the Residence must pass a lead hazard clearance test by a certified technician and lab. Clearance is not required if the Repairs did not disturb painted surfaces of a total are more than that set forth in 24 CFR 35.1350(d).

10.6 Contractor Status. Contractor certifies that neither it, nor any of its subcontractors, are debarred, suspended, or have been designed ineligible under 24 CFR Part 24.

10.7 Conflicts of Interest. No member, officer or employee of Contractor, or any of its subcontractors, shall have any conflict of interest prohibited by 24 CFR 570.611.

## **11. COMPLIANCE WITH THE LAW**

All parties will adhere to applicable Federal, State and local laws, ordinances, regulations, and directives as they pertain to the performance of this Agreement. This Agreement is subject to and incorporates the terms of the Act; 24 Code of Federal Regulations, Part 570, including without limitation, uniform administrative requirements described in 24 CFR Section 570.502, and program income requirements set forth in Section 570.504 (c), Chapter V; 24 CFR Part 85; U.S. OMB Circular A-102 and A-110, as applicable, as they relate to the acceptance and use of Federal funds under this part and Auditor-Controller Contract Accounting and Administrations Handbook.

## **12. INSURANCE**

12.1 Maintenance of Insurance. Prior to the beginning of and throughout the term of this Agreement, Contractor will maintain insurance in conformance with requirements established by City for the type of Repairs being performed. Contractor acknowledges that prior to the execution of this Agreement, City provided to Contractor the applicable insurance requirements, a copy of which are attached hereto as Exhibit "B". Contractor acknowledges that the insurance coverage and policy limits provided by City constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this Agreement and which are applicable to a given loss, will be available to the City.

12.2 Subcontractors Insurance. Contractor agrees to ensure that subcontractors, and any other party involved in the performance of the Repairs by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Repairs will be submitted to City for review.

12.3 Modification of Insurance Provisions. The City Manager may make reasonable amendments to the insurance requirements of this section, with the written concurrence of the Finance Director or Risk Manager, in accordance with Section 14.19 [Administration and Implementation] after considering the scope of the Repairs, potential liabilities, and the required level of insurance to adequately protect the City.

### **13. INDEMNIFICATION**

13.1 Indemnity. Except as to the sole negligence, active negligence, gross negligence or willful misconduct of City, Contractor expressly agrees to, and shall, indemnify, defend, release, and hold City, and its respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, lien, and Costs and Expenses which arises out of, or are in any way related to, any act or omission of Contractor, or its officers, directors, employees, agents, or contractors, connected with the performance or failure to perform under this Agreement, notwithstanding that City may have benefited therefrom, or any challenge to this Agreement. This Section shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor's officers, directors, employees, agents and contractors, including but not limited to acts or omissions in any way related to, the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from the location at which work under this Agreement is performed of any Hazardous Substances by Contractor or its officers, directors, employees, agents, and subcontractors. The Parties expressly agree that any payment, or Costs and Expenses City incurs or makes to, or on behalf of, an injured employee under City's workers' compensation or other insurance, is included as a loss or Costs and Expenses for the purpose of this Section. City shall not be responsible for any acts, errors or omissions of any person or entity except City and its officers, agents, servants, employees or contractors. The Parties expressly agree that the obligations of Contractor under this Section shall survive the expiration or early termination of the Agreement.

13.2 Action. For purposes of this Agreement, "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 which is a prerequisite or prelude to commencement of the Action.

13.3 Costs and Expenses. For purposes of this Agreement, "Costs and Expenses" shall mean all costs and expenses, to the extent reasonable in amount, actually and necessarily incurred by a Party in good faith in the investigation, prosecution or defense of an 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 costs or expenses, the award of which a court of competent jurisdiction may determine to be just and reasonable.

13.4 Hazardous Substances. For purposes of this Agreement, "Hazardous Substances" shall mean any and all of the following:

(a) 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; and

(b) 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.

#### **14. TERMINATION**

City may, by written notice to Contractor, terminate with or without cause, and without any prior notice of default or right to cure by Contractor, the whole or any part of this Agreement at any time and by giving written notice to Contractor of such

termination, and specifying the effective date thereof, at least five (5) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those non-disputed Repairs that have been adequately rendered to City, and Contractor shall be entitled to no further compensation.

## **15. GENERAL PROVISIONS**

15.1 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

15.2 Loss and Damage. Contractor shall be responsible for all loss and damage which may arise out of the nature of the Repairs agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by City.

15.3 Liquidated Damages. The Parties agree that City has a legitimate interest in ensuring that Contractor provides the Repairs (including performance of all duties and responsibilities) required under this Agreement in a consistent and reliable manner, and that Contractor's failure to timely provide such Repairs or to provide them in an inadequate manner will cause City to suffer damages and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages or to calculate actual damages. Therefore, in addition to City's right to terminate this Agreement, the Parties agree that liquidated damages, as provided herein, represent a reasonable estimate of the monetary damages that reasonably could be anticipated and that proof of actual damages would be costly or impractical. The Parties specifically confirm the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made. Therefore, in lieu of actual damages, Contractor is subject to payment of two (2) percent of total Repair costs per day for failure to perform. City may, at its election, deduct any assessed liquidated damages from payment due, or that will become due, to Contractor from City.

15.4 Excusable Delays. Contractor shall not be liable for damages, including liquidated damages, if any, caused by delay in performance of failure to perform due to causes beyond the control of Contractor. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

15.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of the Agreement.

15.6 Governing Law. This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Riverside. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Eastern Division of the Central District of California, located in Riverside, California.

15.7 Integration. This Agreement, including the attached Exhibits "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Contractor and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party that is not embodied herein shall be valid and binding.

15.8 Severability. If a term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

15.9 Prohibited Interests. Contractor represents and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

15.10 Amendments. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contractor and City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City Manager's contracting authority under the Hemet Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for amendments or modifications to be in writing cannot be waived and that any attempted waiver shall be void.

15.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15.12 Delivery Of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be given to the respective parties at the addresses listed in Exhibit "C", or at such other address as the respective parties may

provide in writing for this purpose. Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

15.13 Binding Effect. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

15.14 Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party or any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any Services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

15.15 Attorneys Fees, Costs and Expenses. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees and Costs and Expenses, in addition to any other relief to which it may be entitled.

15.16 Subcontracting. Contractor shall not subcontract any portion of the Repairs without prior written approval of City. Contractor shall have a written contract with each of its subcontractors that shall contain a provision making them subject to all of the provisions of this Agreement.

15.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

15.18 Authority To Execute. The person or persons executing this Agreement on behalf of Contractor represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Contractor to the performance of its obligations hereunder.

15.19 Administration and Implementation. This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 14.10 [Amendment] and the City Manager's contracting authority under the Hemet Municipal Code.

15.20 Customer Satisfaction Surveys. Where the Contractor provides services directly to the public for the City, the Contractor shall actively request and solicit Customer Satisfaction Surveys regarding his/her own performance as a requirement of this contract. These surveys shall be completed by directing the customer to the web link: <http://cityofhemet.info>.

[SIGNATURES ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF HEMET**

**ABSOLUTE CONTRACTORS, INC.**

\_\_\_\_\_  
Wally Hill, City Manager

\_\_\_\_\_  
(Authorized Officer)

Title \_\_\_\_\_

**ATTEST:**

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Sarah McComas, City Clerk

**ABSOLUTE CONTRACTORS, INC.**

\_\_\_\_\_  
(Authorized Officer)

**APPROVED AS TO FORM:**

Title \_\_\_\_\_

\_\_\_\_\_  
Eric S. Vail, City Attorney

Print Name: \_\_\_\_\_

## **EXHIBIT "A"**

### **REPAIRS**

Contractor may be requested to complete several specific trades including general, electrical, plumbing, roofing, HVAC systems, and other specialty fields. Contractor will be offered various opportunities to bid contracts to perform rehabilitation repairs to owner-occupied single-family homes, including mobile homes, which qualify for assistance under the City's Senior/Disabled Home Repair Grant Program (the "Program"). The Program is designed to assist low-income Hemet homeowners by providing grants for rehabilitation to the structural, mechanical, plumbing, electrical or other approved components of their home.

As requests arise, and as Program applications are approved, the City will notify Contractor of the opportunity to submit a written bid for the cost to perform the requested rehabilitation work. Approval will be made within thirty (30) days and the selected qualified contractor will be required to meet for a pre-construction meeting at Hemet City Hall prior to receiving written authorization to proceed with the rehabilitation work as bid. Ongoing inspections of the work will be performed by the City and/or Building or City's consultant inspector and shall conform with all standard acceptable health and safety codes as well as to quality workmanship and performance.

While contractors may apply for, be qualified, and subsequently placed on the pre-approved list for the Program in more than one category, the City cannot guarantee that a contractor will be selected to submit bids in any particular category. Some categories may have a higher frequency of contracts awarded than other categories. The City has no control over the frequency of demand requested by category by homeowners participating in the Program or over the contractor's ability to be the lowest qualified bidder if a bid is submitted.

## EXHIBIT "B"

### INSURANCE

**The City requires a certificate of insurance, including an underwriter's endorsement, prior to commencement of the Repairs.**

**The insurance policies are to include additional endorsements that contain the following provisions:**

1. That the City of Hemet and its respective officers and employees are additional insureds under the policy, as is the Homeowner;
2. The policies are primary and non-contributory to any insurance that may be carried by City;
3. The City is entitled to thirty (30) days' prior written notice (10 days for cancellation due to non-payment of premium) of cancellation, material reduction, or non-renewal of the policy or policies.
4. The insurance shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are licensed to do business in the State of California. City will accept insurance provided by non-admitted "surplus lines" carriers only if the carrier is authorized to do business in the State of California.

**Only the following "marked" requirements are applicable:**

**XX Commercial General Liability (CGL):** Insurance written on an occurrence basis to protect Contractor and City against liability or claims of liability which may arise out of this order in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of one million dollars (\$1,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. additional insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**XX Vehicle Liability Insurance:** Contractor shall also procure and shall maintain during the term of this order vehicle liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars (\$1,000,000).

**XX Workers' Compensation Insurance:** For all of Contractor's employees who are subject to this order and to the extent required by applicable state or federal law, Contractor shall keep in full force and effect a Workers' Compensation policy. That

policy shall provide a minimum of one million dollars (\$1,000,000) of employers' liability coverage, and Contractor shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against City by a bona fide employee of Contractor participating under this Agreement, Contractor is to defend and indemnify the City from such claim.

**EXHIBIT "C"**  
**REPRESENTATIVES**

**CITY'S REPRESENTATIVE**

City of Hemet  
Housing Department  
Attn: Edna Lebrón, Housing Specialists  
445 East Florida Avenue  
Hemet, California 92543  
Facsimile: (951) 765-3736

**CONTRACTOR'S REPRESENTATIVE**

Absolute Contractors, Inc.  
Attn: Grant Haugen, Owner  
P.O. 1330  
Yucaipa, Ca 92399  
909-844-6383  
[absolutecon@aol.com](mailto:absolutecon@aol.com)



## Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Scott Brown, Interim Fire Chief  
Wally Hill, City Manager *Wally Hill*

DATE: February 24, 2015

RE: Acceptance of the 2014 State Homeland Security Program (SHSP) Grant for Community Emergency Response Team (CERT) Grant Program Expenditure

### **RECOMMENDED ACTION:**

1. Accept the grant California Office of Emergency Services (CalOES) for the Riverside County FY14 Homeland Security Grant Program (HSGP) awarded to the City of Hemet for the CERT Program in the amount of \$13,620.00 for the period of October 10, 2014 through February 28, 2016.
2. Amend the budget in the Public Safety Grant Fund #232 to reflect the award amount of \$13,620.00 to cover the cost of training and the purchase of materials.

### **BACKGROUND:**

The Hemet City Council has previously approved participation in the California Office of Homeland Security Grant Programs (SHSP) for the Community Emergency Response Team (CERT) training. Participation includes applying for available grant funds for training exercise and equipment to expand and increase the readiness of Community Emergency Response Teams throughout the San Jacinto Valley.

This is an annual appropriations grant through the California Office of Emergency Services (CalOES) appropriated through Riverside County's Office of Homeland Security Grant Program. The grant includes reimbursement of costs for a contract trainer to conduct four (4) classes of 30 students within a one-year time frame for a total of \$6,152 and an additional \$7,468.00 for training gear and equipment for each student at no cost to the participants.

### **ANALYSIS:**

This grant project will allow for the continuation of capable, trained CERT Team members to see to the immediate needs of citizens within their respective neighborhoods in the event of a major catastrophic event until City of Hemet first responders become available.

**CONSISTENCY WITH ADOPTED GOALS, PLANS, AND PROGRAMS:**

- The City of Hemet's Community Emergency Response Team (CERT) program provides training of citizens allowing them to meet immediate needs within their neighborhoods in the event of emergencies.

**FISCAL IMPACT:**

None, no additional matching funds are required.

Respectfully submitted,

*S. Brown*  
*by A. Krotz*  
Scott Brown  
Interim Fire Chief

Fiscal Review:

*Jorena Rocha for Jessica Hurst*  
Jessica A. Hurst  
Deputy City Manager/Administrative Services



RIVERSIDE COUNTY FIRE DEPARTMENT
IN COOPERATION WITH
THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

John R. Hawkins ~ Fire Chief
210 West San Jacinto Avenue ~ Perris, CA 92570
(951) 940-6900 ~ www.rvcfire.org

PROUDLY SERVING THE
UNINCORPORATED AREAS
OF RIVERSIDE COUNTY
AND THE CITIES OF:

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LA QUINTA
MENIFEE
MORENO VALLEY
PALM DESERT
PERRIS
RANCHO MIRAGE
RUBIDOUX CSD
SAN JACINTO
TEMECULA
WILDOMAR
BOARD OF SUPERVISORS:
BOB BUSTER DISTRICT 1
JOHN TAVAGLIONE DISTRICT 2
JEFF STONE DISTRICT 3
JOHN BENOIT DISTRICT 4
MARION ASHLEY DISTRICT 5

October 10, 2014

Buddy Riley
City of Hemet

RE: FY14 State Homeland Security Program (SHSP) Award - CERT- \$13,620
Grant #: 2014-SS-00093 CFDA#: 97.067

The California Office of Emergency Services (CalOES) has approved Riverside County's
FY14 Homeland Security Grant Program (HSGP) application and has authorized the
commencement of expenditures and reimbursement requests. The overall performance
period of this grant is October 10, 2014 - February 28, 2016. The following milestones
have been set by the state for your projects:

Table with 3 columns: Project, Amount, Completion Date. Row: CERT, \$6,810, 8/01/2015

Subject to pending paperwork this letter serves as authorization to begin spending and
requesting reimbursement of your Anti-Terrorism Approval Authority (ATAA) approved
projects. Riverside County OES does require you to provide a signed FY14 Grant
Assurance and completed and signed Workbook Face-Sheet within 15 days of date of this
letter. Please remember that changes to your grant will require the approval of the OA prior
to incurring any costs. All modifications, EHP's, sole source procurement, EOC and
construction requests require additional approvals from CalOES through the OA prior to
incurring any costs. Your Agency's Financial Workbook outlining your approved spending is
included on the CD provided to you at the Post Award Workshop.

By accepting this award it will be understood that you are agreeing to conform to the
requirements of the grant as put forth in the FY14 Grant Assurances, the Federal Single
Audit Act of 1984 and amendment of 1996. Performance Bonds are required for any
equipment item over \$250,000 or any vehicle aviation, or watercraft regardless of cost that
is being paid for with any portion of grant funds. Any funds found owed as a result of a final
review or audit must be refunded to the County within 15 days upon receipt of an invoice
from Riverside County Fire/OES.

As always, please feel free to contact us with any questions you may have. I look forward
to working with you and appreciate your cooperation and support.

Regards,

Kim Dana

Kim Dana and Laronte Groom
Administrative Services Analyst II
Riverside County Fire/OES
951-955-0419, 951-955-8517



*Staff Report*

TO: Honorable Mayor and Members of the City Council

FROM: Wally Hill, City Manager *Wally Hill*  
Kris Jensen, Public Works Director  
Eric S. Vail, City Attorney

DATE: February 24, 2015

RE: Amend Chapter 34, Article IV of the Hemet Municipal Code Pertaining to Smoking in Public Areas and Places of Employment

**RECOMMENDATION:**

It is respectfully recommended that the City Council introduce, read by title only, and waive further reading of:

**ORDINANCE BILL NO. 15-008**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA, AMENDING CHAPTER 34, ARTICLE IV (SMOKING IN PUBLIC AREAS AND PLACES OF EMPLOYMENT) OF THE HEMET MUNICIPAL CODE .**

**BACKGROUND:**

In August of 2014, the Hemet Community Action Network (CAN) approached City staff with the idea of conducting a park clean-up project, led by local high school students, which focused on the impacts of smoking in public parks. The clean-up was scheduled for Oltman Park where the students collected multiple bags of cigarette and tobacco product waste throughout the park. The students also conducted surveys with park users and area residents to gain insight on the thoughts of the community regarding among other things, banning smoking in public parks. All results of the clean-up and survey were presented at the City Council meeting on October 28, 2014. Upon seeing the results of the "Youth on Smoke Free Parks" effort, Council directed staff to review current ordinances to ensure the language adequately addressed the prohibition of smoking in public parks and other unenclosed public areas.

Staff, along with the City Attorney's office, reviewed Hemet Municipal Code, Chapter 34, Article IV, Smoking in Public Areas and Places of Employment. Staff found the existing

ordinance addressing smoking in public areas and places of employment was originally adopted in 1984. Although it currently prohibits smoking on City properties, and places of employment, staff felt it did not adequately address the types of prohibited products or regulations for certain unenclosed areas. Adoption of proposed Ordinance Bill 15-008 will incorporate changes that better define prohibitions and exceptions to smoking in public outdoor areas.

In addition, provisions in the existing ordinance predate the adoption of California Labor Code 6404.5 which prohibits smoking, with certain exceptions, in enclosed places of employment state-wide. The proposed Ordinance Bill 15-008 will update language in Article IV to bring it in line with the labor code provisions.

### **ANALYSIS:**

The intent of HMC, Chapter 34, Article IV, has been, and continues to be, to protect public health, safety and welfare by providing regulations on where smoking is prohibited. Ordinance Bill 15-008 incorporates amendments that continue to serve that purpose by stating public health risks, updating definitions related to smoking prohibition regulations, incorporating California Labor Code, and updating enforcement strategies.

### **Section 34-91 Purpose and Findings**

Ordinance Bill 15-008 updates the purpose of the article and adds a *Findings* subsection acknowledging, and extensively outlining, known health risks related to smoking and secondhand smoke. This section declares the serious role that use of tobacco products play in jeopardizing the health of smokers and non-smokers alike.

### **Section 34-92 Definitions**

The proposed ordinance expands and updates many of the current definitions. Most notably, the proposed ordinance amends the definition of “smoking” from a general “lighted pipe/cigar/cigarette”, and expands the definition to include other types of products, including electronic smoking devices (e-cigarettes). The proposed amendment also serves to better define outdoor recreation areas, outdoor public events, and outdoor service areas.

**Sections 34-93 through 34-95** have been reorganized and retitled to address smoking prohibitions and exceptions by the following areas:

34-93 Smoking Near Enclosed Areas

34-94 Smoking In Unenclosed Areas

34-95 Smoking In Enclosed Common Areas of Multifamily Housing

The proposed ordinance establishes smoking prohibitions based on the type of public area. Smoking is prohibited in all public enclosed areas. In the case of unenclosed areas, the amendment clearly establishes that smoking, in any form, is expressly prohibited. Unenclosed public areas where smoking is banned generally include City property, outdoor recreation areas (such as parks), public events, and outdoor dining and service areas.

**Section 94-96 Signage**

This section was simply moved and restated, reflecting essentially the same requirements as the existing ordinance.

**Section 94-97 Penalties and Enforcement**

Lastly, Section 34-97 updates and consolidates the previous language of existing sections 34-97 through 34-100 into one section. The amendment establishes that the article may be enforced by various City staff members or departments, and that any violation of Article IV is declared to be a nuisance.

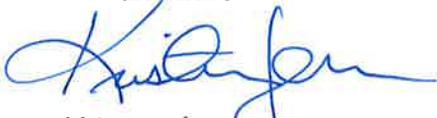
**COORDINATION AND REVIEW**

The proposed ordinance amendment has been developed with input from Public Works, the Police Department, Planning and Community Development and the Hemet Community Action Network (CAN), a local community group. The proposed ordinance was also reviewed by the Park Commission at their regular meeting on January 26, 2015. The Park Commission is in support of adoption of Ordinance Bill 15-0008 as presented.

**FISCAL IMPACT:**

No fiscal impact.

Respectfully submitted,



Kristen Jensen  
Public Works Director

Legal Review,



Eric S. Vail  
City Attorney

Attachments:           Ordinance Bill 15-008  
                                  Exhibit "A" to Ordinance Bill 15-008  
                                  Ordinance Bill 15-008 Draft Red-line Version



**CITY OF HEMET  
Hemet, California  
ORDINANCE BILL NO. 15-008**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
HEMET, CALIFORNIA, AMENDING CHAPTER 34, ARTICLE IV  
(SMOKING IN PUBLIC AREAS AND PLACES OF  
EMPLOYMENT) OF THE HEMET MUNICIPAL CODE .**

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**WHEREAS**, Chapter 34, Article IV of the Hemet Municipal Code prohibits smoking in places of employment and in enclosed public places; and,

**WHEREAS**, the provisions of Chapter 34, Article IV predate the adoption of California Labor Code section 6404.5, which banned smoking in enclosed places of employment with certain exceptions and expressly preempted local ordinances doing the same; and,

**WHEREAS**, the City Council desires to amend Chapter 34, Article IV of the Hemet Municipal Code to be consistent with Labor Code section 6404.5; and,

**WHEREAS**, due to the extraordinary health risks presented by secondhand smoke, the City Council also desires to amend Chapter 34, Article IV of the Hemet Municipal Code to restrict smoking in public parks and other unenclosed public places.

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

**SECTION 1: Amendment of Chapter 34, Article IV of the Hemet Municipal Code.**  
Chapter 34, Article IV (Smoking in Public Areas and Places of Employment) is amended to read as shown in Exhibit "A" to this Ordinance.

**SECTION 2: SEVERABILITY.**

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of

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any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**SECTION 3: EFFECTIVE DATE.**

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

**SECTION 4: PUBLICATION.**

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

**INTRODUCED** at the regular meeting of Hemet City Council on \_\_\_\_\_ 2015.

**APPROVED AND ADOPTED** this \_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
**Linda Krupa, Mayor**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Sarah McComas, City Clerk**

\_\_\_\_\_  
**Eric S. Vail, City 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 Ordinance was introduced and first read on the \_\_\_ day of \_\_\_\_\_ 2015,  
5 and had its second reading at the regular meeting of the Hemet City Council on the \_\_\_  
6 day of \_\_\_\_\_, 2015, and was passed by the following vote:  
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- 8 **AYES:**
- 9 **NOES:**
- 10 **ABSTAIN:**
- 11 **ABSENT:**

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Sarah McComas, City Clerk

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## EXHIBIT "A"

### ARTICLE IV. SMOKING IN PUBLIC PLACES

- 34-91. Purpose and Findings
- 34-92. Definitions
- 34-93. Smoking Near Enclosed Areas
- 34-94. Smoking in Unenclosed Areas
- 34-95. Smoking in Enclosed Common Areas of Multifamily Housing
- 34-96. Signage
- 34-97. Penalties and Enforcement

#### 34-91. Purpose and Findings

A. Purpose: The purposes of this article are to:

1. Protect the public health, safety, and general welfare by prohibiting smoking in public places and in the interior common areas of multi-family residential housing under circumstances where one or more persons will be exposed to secondhand smoke;
2. Ensure a cleaner and more hygienic environment for the city, its residents, its guests, and its natural resources;
3. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children, to breathe smoke free air, by recognizing the threat to public health and the environment that smoking causes, and by acknowledging that, when these needs conflict, the need to breathe smoke free air must prevail; and
4. Recognize the right of city residents, workers, and visitors to be free from unwelcome secondhand smoke.
5. Impose restrictions on smoking that supplement and are consistent with the prohibition on smoking in enclosed places of employment in California Labor Code section 6404.5.

B. Findings: The city council hereby finds, determines, and declares that:

1. It is estimated that only fifteen percent (15%) of a cigarette's smoke is inhaled by the smoker, while eighty five percent (85%) is released into the air for others to breathe;
2. Extensive medical and scientific research confirms that tobacco smoke is harmful to smokers and nonsmokers alike, triggering eye, nose, throat, and sinus irritation; hastening lung disease, including emphysema; and causing heart disease and lung cancer;
3. In 1992, the United States surgeon general reported that involuntary smoking by inhaling secondhand smoke (also called "environmental tobacco smoke") can cause lung cancer in healthy nonsmokers and poses a significant public health hazard;
4. In 2006, the United States surgeon general concluded that a risk free level of exposure to secondhand smoke does not exist, and neither separating smokers from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke;

5. The United States environmental protection agency ("U.S. EPA") has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;
6. The United States centers for disease control and prevention ("CDC") has concluded that secondhand smoke contains approximately seventy (70) cancer causing chemicals;
7. The CDC has concluded that secondhand smoke causes approximately three thousand (3,000) lung cancer deaths per year among adult nonsmokers in the United States, and that even brief exposure can damage cells in ways that set the cancer process in motion;
8. The CDC has found that secondhand smoke causes children to suffer from lower respiratory tract illness, such as bronchitis and pneumonia; exacerbates childhood asthma; and increases the risk of acute chronic middle ear infections in children;
9. The California environmental protection agency has concluded that secondhand smoke causes coronary heart disease in nonsmokers;
10. The California air resources board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which no safe level of exposure exists;
11. Secondhand smoke is especially hazardous to particular groups, including those with chronic health problems, the elderly, and children;
12. Inside buildings, tobacco smoke contributes significantly to indoor air pollution;
13. The aesthetic impacts and odors of secondhand smoke pose a nuisance and annoyance to nonsmokers when in close proximity to people who are smoking;
14. Smoking in parks or recreational facilities endangers children and other users by exposing them to secondhand smoke;
15. In outdoor dining areas; outdoor service areas; outdoor gathering and event areas; enclosed common areas of multi-unit residential housing complexes; in proximity to entrances/exits, windows, and vents of buildings open to the public, smoking endangers the health of nonsmokers who are in the same area;
16. Neither the United States constitution nor the California constitution gives a person a constitutional right to smoke;
17. The consumption of controlled substances in certain enclosed and unenclosed areas of the city poses a risk to the health, safety, and welfare of the public, including, but not limited to, in many of the same manners as the consumption of tobacco products.

### **34-92. Definitions**

A. "*Business*" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes.

B. "*City property*" means, for the purposes of this chapter, property owned or controlled by the City, including those areas that a business has the use of, with or without the benefit of an encroachment permit.

C. "*Common areas*" means any area of a multifamily housing complex accessible to and usable by the residents of one or more unit, including but not limited to, hallways, enclosed stairwells, lobby areas, elevators, laundry rooms, enclosed common cooking areas, playrooms, fitness rooms, swimming pools, and parking areas.

D. *“Electronic smoking device”* means an electronic or battery-operated device that delivers vapors for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed or sold as an electronic pipe, an electronic hookah, or any other product name or descriptor.

E. *“Enclosed area”* means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

1. Any type of overhead cover whether or not that cover includes vents or other openings and at least three walls or other vertical constraint to airflow including, but not limited to, vegetation of any height whether or not those boundaries include vents or other openings; or

2. Four walls or other vertical constraints to airflow including, but not limited to, vegetation that exceeds six feet in height whether or not those boundaries include vents or other openings.

F. *“Marijuana”* shall have the same definition as set forth in the “California Uniform Controlled Substances Act” (contained within California Health & Safety Code Sections 11000 et seq.).

G. *“Multifamily Housing Complex”* means a residential premises that contains two (2) or more dwelling units, including but not limited to apartments, condominiums, duplexes, and mobile home parks.

H. *“Outdoor dining area”* means any unenclosed area located on private property, public property, or a combination of both private and public property, which is available to or customarily used by the general public or employees, and which is designed, established, or regularly used for consuming food or drink.

I. *“Outdoor public event”* means any publicly or privately owned unenclosed area, including, but not limited to streets, highways, alleys, rights-of-way, parkways, sidewalks, parking lots or pathways, open to the general public for a public event, regardless of any fee or age requirement. The term “outdoor public place” also includes, but is not limited to, a farmers’ market, parade, craft fair, festival, concert, play, or any other event open to the general public.

J. *“Outdoor recreational area”* means any publicly or privately owned unenclosed area that is open to the general public for recreational purposes, regardless of any fee or age requirement. The term “outdoor recreational area” also includes, but is not limited to, parks, picnic areas, playgrounds, sports fields, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, and amusement parks.

K. *“Outdoor service area”* means any publicly or privately owned unenclosed area, including, but not limited to, streets, highways, alleys, rights-of-way, parkways, sidewalks, parking lots or pathways, designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service or to make a transaction, whether or not such service or transaction includes the exchange of money. The term “outdoor service area” also includes, but is not limited to, areas at and adjacent to information kiosks, automated teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines or cab stands.

L. *“Smoking”* means possessing a lighted tobacco product, lighted tobacco paraphernalia, lighted marijuana, or any other lighted weed or plant (including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, lighted cigarette of any kind), an electronic smoking device of any kind, or the lighting or emitting or exhaling the smoke or vapor of a tobacco product, tobacco paraphernalia, marijuana product, or

any other weed or plant (including but not limited to, a pipe, a hookah pipe, cigar, marijuana product, electronic cigarette or cigarette of any kind).

M. "*Unenclosed area*" means an area in which outside air can circulate freely to all parts of the area, and includes an area that has:

1. Any type of overhead cover, and no more than two walls or other vertical constraint to airflow including, but not limited to, vegetation of any height; or
2. No more than three walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, and which has no overhead cover of any type.

### **34-93. Smoking Near Enclosed Areas**

A. Prohibition. Smoking is prohibited within twenty five (25) feet of any doorway, window, opening, crack or vent of an enclosed area where smoking is prohibited by this code or by provisions of state or federal law, including but not limited to California Labor Code section 6404.5.

B. Exceptions. Notwithstanding the foregoing, this section does not prohibit the following:

1. Smoking in enclosed or unenclosed areas of private residential property.
2. Smoking while passing by an enclosed area where smoking is prohibited on the way to another destination.

### **34-94. Smoking In Unenclosed Areas**

A. Prohibition. Smoking is prohibited in the following unenclosed areas:

1. City property;
2. Outdoor public events;
3. Outdoor recreational areas;
4. Outdoor service areas;
5. Outdoor dining areas.

B. Exceptions. Notwithstanding the foregoing, this section does not prohibit the following:

1. Smoking in enclosed or unenclosed areas of private residential property.
2. Smoking while passing by an unenclosed area where smoking is prohibited on the way to another destination.

### **34-95. Smoking in Enclosed Common Areas of Multifamily Housing**

Smoking is prohibited in enclosed common areas of multifamily housing complexes.

### **34-96. Signage**

"No Smoking" or "Smoke Free" signs, with letters of not less than one (1) inch in height, or the international "No Smoking" symbol (a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), or any alternative signage

approved by the city manager, shall be conspicuously posted by the person, employer, business, or nonprofit entity who or which has legal or de facto control of any area in which smoking is prohibited by this article. The city manager or his or her designee shall post signs at each entrance to City property in which smoking is prohibited by this article. The absence of signage as required by this section shall not be a defense to a charge of smoking in violation of any provision of this article.

### **34-97. Penalties and Enforcement**

- A. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.
- B. Each violation of this article is punishable in accordance with Section 1-8 of this code.
- C. The city prosecutor, city attorney, any peace officer, any city code enforcement officer, or any other city official designated by the city manager may enforce this article.
- C. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this article shall also constitute a violation of this article.
- D. Any violation of this article is hereby declared to be a nuisance.
- E. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City. Nothing in this chapter shall create a right of action in any person against the City or its agents to compel public enforcement of this chapter against private parties.

## EXHIBIT “A”

### ARTICLE IV. SMOKING IN PUBLIC PLACES

34-91. Purpose and Findings

34-92. Definitions

34-93. Smoking Near Enclosed Areas

34-94. Smoking in Unenclosed Areas

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34-96. Signage

34-97. Penalties and Enforcement

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2. Ensure a cleaner and more hygienic environment for the city, its residents, its guests, and its natural resources;
3. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children, to breathe smoke free air, by recognizing the threat to public health and the environment that smoking causes, and by acknowledging that, when these needs conflict, the need to breathe smoke free air must prevail; and
4. Recognize the right of city residents, workers, and visitors to be free from unwelcome secondhand smoke.
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##### B. Findings: The city council hereby finds, determines, and declares that:

1. It is estimated that only fifteen percent (15%) of a cigarette's smoke is inhaled by the smoker, while eighty five percent (85%) is released into the air for others to breathe;
2. Extensive medical and scientific research confirms that tobacco smoke is harmful to smokers and nonsmokers alike, triggering eye, nose, throat, and sinus irritation; hastening lung disease, including emphysema; and causing heart disease and lung cancer;
3. In 1992, the United States surgeon general reported that involuntary smoking by inhaling secondhand smoke (also called "environmental tobacco smoke") can cause lung cancer in healthy nonsmokers and poses a significant public health hazard;
4. In 2006, the United States surgeon general concluded that a risk free level of exposure to secondhand smoke does not exist, and neither separating smokers from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke;

5. The United States environmental protection agency ("U.S. EPA") has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;
6. The United States centers for disease control and prevention ("CDC") has concluded that secondhand smoke contains approximately seventy (70) cancer causing chemicals;
7. The CDC has concluded that secondhand smoke causes approximately three thousand (3,000) lung cancer deaths per year among adult nonsmokers in the United States, and that even brief exposure can damage cells in ways that set the cancer process in motion;
8. The CDC has found that secondhand smoke causes children to suffer from lower respiratory tract illness, such as bronchitis and pneumonia; exacerbates childhood asthma; and increases the risk of acute chronic middle ear infections in children;
9. The California environmental protection agency has concluded that secondhand smoke causes coronary heart disease in nonsmokers;
10. The California air resources board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which no safe level of exposure exists;
11. Secondhand smoke is especially hazardous to particular groups, including those with chronic health problems, the elderly, and children;
12. Inside buildings, tobacco smoke contributes significantly to indoor air pollution;
13. The aesthetic impacts and odors of secondhand smoke pose a nuisance and annoyance to nonsmokers when in close proximity to people who are smoking;
14. Smoking in parks or recreational facilities endangers children and other users by exposing them to secondhand smoke;
15. In outdoor dining areas; outdoor service areas; outdoor gathering and event areas; enclosed common areas of multi-unit residential housing complexes; in proximity to entrances/exits, windows, and vents of buildings open to the public, smoking endangers the health of nonsmokers who are in the same area;
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C. "Common areas" means any area of a multifamily housing complex accessible to and usable by the residents of one or more unit, including but not limited to, hallways, enclosed stairwells, lobby areas, elevators, laundry rooms, enclosed common cooking areas, playrooms, fitness rooms, swimming pools, and parking areas.

D. “Electronic smoking device” means an electronic or battery-operated device that delivers vapors for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed or sold as an electronic pipe, an electronic hookah, or any other product name or descriptor.

E. “Enclosed area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

1. Any type of overhead cover whether or not that cover includes vents or other openings and at least three walls or other vertical constraint to airflow including, but not limited to, vegetation of any height whether or not those boundaries include vents or other openings; or

2. Four walls or other vertical constraints to airflow including, but not limited to, vegetation that exceeds six feet in height whether or not those boundaries include vents or other openings.

F. “Marijuana” shall have the same definition as set forth in the “California Uniform Controlled Substances Act” (contained within California Health & Safety Code Sections 11000 et seq.).

G. “Multifamily Housing Complex” means a residential premises that contains two (2) or more dwelling units, including but not limited to apartments, condominiums, duplexes, and mobile home parks.

H. “Outdoor dining area” means any unenclosed area located on private property, public property, or a combination of both private and public property, which is available to or customarily used by the general public or employees, and which is designed, established, or regularly used for consuming food or drink.

I. “Outdoor public event” means any publicly or privately owned unenclosed area, including, but not limited to streets, highways, alleys, rights-of-way, parkways, sidewalks, parking lots or pathways, open to the general public for a public event, regardless of any fee or age requirement. The term “outdoor public place” also includes, but is not limited to, a farmers’ market, parade, craft fair, festival, concert, play, or any other event open to the general public.

J. “Outdoor recreational area” means any publicly or privately owned unenclosed area, including but not limited to streets, highways, alleys, rights-of-way, parkways, sidewalks, parking lots or pathways, that is open to the general public for recreational purposes, regardless of any fee or age requirement. The term “outdoor recreational area” also includes, but is not limited to, parks, picnic areas, playgrounds, sports fields, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, and amusement parks.

K. “Outdoor service area” means any publicly or privately owned unenclosed area, including, but not limited to, streets, highways, alleys, rights-of-way, parkways, sidewalks, parking lots or pathways, designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service or to make a transaction, whether or not such service or transaction includes the exchange of money. The term “outdoor service area” also includes, but is not limited to, areas at and adjacent to information kiosks, automated teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines or cab stands.

**FOOTNOTE(S):**

~~---(4)---~~

~~**Cross reference — Businesses, ch. 18. (Back)  
Sec. 34-91. — Purpose of article.**~~

~~Because smoking of tobacco, or any other weed or plant, is a positive danger to health and a material annoyance, inconvenience, discomfort and health hazard to those who are present in confined spaces, and, in order to serve public health, safety and welfare, the declared purpose of this article is to prohibit the smoking of tobacco, or any other weed or plant, in public places and places of employment except in designated smoking areas.~~

~~(Ord. No. 1101; Code 1984, § 9500)~~

~~Sec. 34-92.— Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Place of employment* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to:~~

- ~~(1) — Work areas.~~
- ~~(2) — Employee lounges.~~
- ~~(3) — Restrooms.~~
- ~~(4) — Conference rooms.~~
- ~~(5) — Employee cafeterias and dining rooms.~~
- ~~(6) — Hallways, classrooms and elevators.~~

~~A private residence is not a place of employment except when in use as a child care center.~~

~~*Public place* means all enclosed areas to which the public is invited or in which the general public is permitted, including but not limited to:~~

- ~~(1) — Retail stores, including supermarkets, where the principal business is the sale of food items.~~
- ~~(2) — Retail service establishments.~~
- ~~(3) — Waiting lines, reception lines or indoor service lines where two or more persons are giving or receiving service.~~
- ~~(4) — Cafes, restaurants, cafeterias or other eating establishments.~~
- ~~(5) — Theaters.~~
- ~~(6) — Waiting rooms.~~
- ~~(7) — Reception areas.~~
- ~~(8) — Educational facilities.~~
- ~~(9) — Health facilities.~~
- ~~(10) — Public transportation facilities.~~

~~The provisions of this article shall apply to facilities owned by the city, including but not limited to the neighborhood center, the library, etc., except when such facility is used entirely for a private use or the consent of other responsible party users is first obtained. A private residence or a private office is not a public place; provided that a residence, while used as a child care center, shall not be deemed a private residence.~~

~~*Smoke and smoking* mean the carrying of a lighted pipe or~~ L. “Smoking” means possessing a lighted tobacco product, lighted tobacco paraphernalia, lighted marijuana, or any other lighted weed or plant (including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, or lighted cigarette of any kind), an electronic smoking device of any kind, or the lighting of a or emitting or exhaling the smoke or vapor of a tobacco product, tobacco paraphernalia, marijuana product, or any other weed or plant (including but not limited to, a pipe, a hookah pipe, cigar, marijuana product, electronic cigarette or cigarette of any kind).

M. “Unenclosed area” means an area in which outside air can circulate freely to all parts of the area, and includes an area that has:

~~(Ord. No. 1101; Code 1984, § 9501)~~

~~**Cross reference**— Definitions and rules of construction generally, § 1-2.~~

~~Sec. 34-93.— Smoking prohibited except in designated areas.~~

~~(a) — No person shall smoke in a public place or place of employment which is subject to the jurisdiction of the city, except in designated smoking areas.~~

~~(b) — The owner or manager of any public place or place of employment regulated by this article may designate the entire establishment as a no-smoking area.—~~

~~1. Any type of overhead cover, and no more than two walls or other vertical constraint to airflow including, but not limited to, vegetation of any height; or~~

~~2. No more than three walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, and which has no overhead cover of any type.~~

### **34-93. Smoking Near Enclosed Areas**

**A. Prohibition. Smoking is prohibited within twenty five (25) feet of any doorway, window, opening, crack or vent of an enclosed area where smoking is prohibited by this code or by provisions of state or federal law, including but not limited to California Labor Code section 6404.5.**

~~(c) — All employers must provide a smoke-free work area to any employee who requests one in writing, to the extent the existing facilities permit. Existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke on nonsmokers.—~~

~~(Ord. No. 1101; Ord. No. 1209; Code 1984, § 9502)–~~

#### **Sec. 34-94. — Designation of smoking areas.—**

~~Notwithstanding any other provision of this article, owners or managers of any establishment regulated by this article may designate smoking areas, provided that:–~~

~~(1) — Premises established after the effective date of the ordinance from which this article derives shall be required to keep no smoking areas clear of smoke. Premises established prior to the effective date of the ordinance from which this article derives shall be required to keep no smoking areas clear of smoke to the extent the existing facilities permit. Existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke on nonsmokers in premises established both before and after the effective date of the ordinance from which this article derives.—~~

~~(2) — In premises established after the effective date of the ordinance from which this article derives, nonsmoking areas shall be situated so as not to require nonsmokers to pass through areas wherein smoking is permitted. In premises in existence on the effective date of the ordinance from which this article derives, access to nonsmoking areas through areas in which smoking is allowed shall be limited to the extent existing facilities permit. In all cases, existing physical barriers and ventilation systems shall be used to minimize the toxic effects of smoke on nonsmokers.—~~

~~(3) — The no smoking areas shall be of sufficient size so as to accommodate nonsmokers at least to the same extent to which smokers are accommodated. It is the intent of this subsection that premises designating smoking and nonsmoking areas shall be reasonably designed and operated so as to provide nonsmokers with at least equal levels of service as smokers. Nothing contained in this subsection shall be deemed to require the owner or manager of an establishment to establish specific percentage accommodations.—~~

~~(4) — Notwithstanding any other provision contained in this section, no person shall smoke any tobacco product in any retail food production and marketing establishment, as defined in Health and Safety Code §28802, during such hours as the establishment is open to the public.—~~

~~(Ord. No. 1101; Ord. No. 1209; Code 1984, § 9503)–~~

#### **Sec. 34-95. — Posting of no smoking areas.—**

~~(a) — Unless exempted by section 34-96, all places of employment and public places regulated by this article shall designate and post no smoking areas clearly, sufficiently and conspicuously.—~~

~~(b) — No smoking signs posted pursuant to this section shall meet the following minimum standards:–~~

~~(1) — Signs shall be of the international symbol type, depicting a smoking cigarette inside a circle with a slash running diagonally through the circle.—~~

~~(2) — The circle shall not be less than four inches in diameter, and shall be red on a white background.—~~

~~(3) — The words "NO SMOKING" shall be printed in red with letters not less than three-fourths inch in height. There shall also be printed language in substantially the following form:–~~

~~Hemet Municipal Code, Section 34-91 et seq.~~

~~Complaints may be made to the Code Enforcement Officer.~~

~~(4) — Handwritten or hand-printed signs may not be used without the prior consent of the fire chief.~~

~~(5) — All signs shall be posted where required by this section at a distance of not less than 60 inches and not more than 72 inches from the finished floor. Where signs are required for public places, a sign will be posted on each entrance door and will meet the requirements of this section.~~

~~(Ord. No. 1209; Ord. No. 1218; Code 1984, § 9504)~~

~~Sec. 34-96. — Exceptions to article.~~

This article does not apply to B. Exceptions. Notwithstanding the foregoing, this section does not prohibit the following:

~~(1) — Private offices.~~

~~(2) — Hotel and motel meeting assembly rooms rented to guests.~~

~~(3) — Areas in rooms while in use for private functions.~~

~~(4) — Private hospital rooms occupied exclusively by smokers.~~

~~(5) — Psychiatric facilities.~~

~~(6) — Jails.~~

~~(7) — Bars.~~

~~(8) — Stores that deal exclusively in tobacco products and accessories.~~

~~(9) — Restaurants or eating establishments with a seating capacity of less than 50 persons.~~

~~(Ord. No. 1101; Code 1984, § 9505)~~

1. Smoking in enclosed or unenclosed areas of private residential property.

2. Smoking while passing by an enclosed area where smoking is prohibited on the way to another destination.

### **34-94. Smoking In Unenclosed Areas**

A. Prohibition. Smoking is prohibited in the following unenclosed areas:

1. City property;

2. Outdoor public events;

3. Outdoor recreational areas;

4. Outdoor service areas;

5. Outdoor dining areas.

B. Exceptions. Notwithstanding the foregoing, this section does not prohibit the following:

1. Smoking in enclosed or unenclosed areas of private residential property.

2. Smoking while passing by an unenclosed area where smoking is prohibited on the way to another destination.

### **34-95. Smoking in Enclosed Common Areas of Multifamily Housing**

Smoking is prohibited in enclosed common areas of multifamily housing complexes.

### **34-96. Signage**

“No Smoking” or “Smoke Free” signs, with letters of not less than one (1) inch in height, or the international “No Smoking” symbol (a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), or any alternative signage approved by the city manager, shall be conspicuously posted by the person, employer, business, or nonprofit entity who or which has legal or de facto control of any area in which smoking is prohibited by this article. The city manager or his or her designee shall post signs at each entrance to City property in which smoking is prohibited by this article. The absence of signage as required by this section shall not be a defense to a charge of smoking in violation of any provision of this article.

~~Sec. 34-97. –Duties of owner or manager.~~ **Penalties and Enforcement**

A. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.

~~The owner, operator or manager of any facility, business or agency within the purview of this article shall comply with this article. Such owner, operator or manager shall post or cause to be posted all no smoking signs required by this article. Such owner, operator or manager shall not allow service to any person who violates this article by smoking in a posted no smoking area.–~~

~~(Ord. No. 1101; Code 1984, § 9506)~~

~~Sec. 34-98. –Violation of article; penalty.–~~

~~Any person who shall violate the provisions of this article shall be guilty of an infraction, and on conviction shall be punished in accordance with section 1-8.–~~

~~(Ord. No. 1101; Code 1984, § 9507)~~

~~Sec. 34-99. –Applicability of other restrictions.–~~

~~This article shall not be interpreted to permit smoking where it is otherwise restricted by law.–~~

~~(Ord. No. 1101; Code 1984, § 9508)~~

~~Sec. 34-100. –Retaliation against employees.–~~

~~It shall be unlawful for an employer to discharge or in any manner discriminate against an employee who exercises his rights under this article if the dominant intent of the employer is retaliation against the employee for exercising those rights.–~~

~~(Ord. No. 1101; Code 1984, § 9510)~~

~~Secs. 34-101—34-115. –Reserved.–~~

B. Each violation of this article is punishable in accordance with Section 1-8 of this code.

C. The city prosecutor, city attorney, any peace officer, any city code enforcement officer, or any other city official designated by the city manager may enforce this article.

C. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this article shall also constitute a violation of this article.

D. Any violation of this article is hereby declared to be a nuisance.

E. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City. Nothing in this chapter shall create a right of action in any person against the City or its agents to compel public enforcement of this chapter against private parties.



## *Staff Report*

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Eric S. Vail, City Attorney

DATE: February 24, 2015

RE: **ADOPTION OF URGENCY ORDINANCE BILL NO. 15-009 TO ENACT A MORATORIUM ON MASSAGE ESTABLISHMENTS**

### **RECOMMENDATION:**

The City Council is requested to adopt Urgency Ordinance Bill No. 15-009 (Attachment "A") to enact a moratorium on massage establishments.

### **BACKGROUND:**

In 2008, Senate Bill 731 (SB 731) was adopted by the Legislature and signed into law by the Governor. It became effective on January 1, 2009, and sunsetted on January 1, 2015. SB 731 amended the Business and Professions Code and preempted many local controls relating to massage therapy. Significantly, the law shifted local regulation of massage therapists and practitioners to a newly created entity known as the California Massage Therapy Council (CAMTC, formerly the Massage Therapy Organization). Certificates issued by the CAMTC to qualified applicants entitled the holder to practice massage therapy anywhere in the State, without the necessity of complying with certain local rules.

Due to the adoption of SB 731, the City suspended enforcement of its massage ordinance, codified in Chapter 18, Article VII of the Hemet Municipal Code ("HMC"). Chapter 18, Article VII of the HMC contains broad regulations on both massage establishments and massage technicians, requiring all massage technicians to obtain a permit prior to performing massages within the City and requiring most massage establishments to obtain a license from the City prior to operating. The only exception to the massage establishment license requirement is for massage establishments that hire only massage technicians that have been certified by the State.

In September 2014, the Governor signed Assembly Bill 1147 (AB 1147), which returns to local governments the authority to more strictly regulate massage establishments. The new law, which became effective on January 1, 2015, authorizes cities and counties to regulate massage establishments through the adoption of zoning

and/or business license requirements. The regulation of massage technicians, however, remains with the State.

**ANALYSIS:**

With the adoption of AB 1147, the State has granted to the City, again, the ability to adopt regulations on massage establishments and regulate them differently from medical offices or other types of medical/professional businesses. Staff is undertaking a review of the City's current massage regulations to determine what revisions may be necessary to provide consistency with State law while still providing comprehensive regulations for the establishment, use and operation of massage. While this review occurs, staff is proposing a moratorium on the creation of new massage establishments.

California Government Code Section 65858 allows a city to adopt an urgency ordinance to establish a moratorium on uses that may be inconsistent with zoning regulations being contemplated by the city as follows:

Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

To ensure that no new massage establishments are approved that may be inconsistent with the new regulations, staff recommends that the City Council adopt an urgency ordinance pursuant to this provision. As noted above, such an ordinance would be effective for 45 days, after which the City Council would be required to hold a public hearing to further extend the moratorium for up to an additional 10 months and 15 days, for a total period of one year. The City Council would have the option to further extend the ordinance, however one year should be adequate for staff to prepare massage establishment regulations for Planning Commission and City Council consideration. As noted in the attached urgency ordinance, staff believes that the proposed moratorium is necessary to protect the public health, safety, and welfare.

A massage establishment for purposes of this ordinance includes establishments where massage is a primary use or an accessory use. The recommended ordinance does not preclude the continued operation of lawfully existing massage establishments.

**CONCLUSION:**

Given changes in State law, the Hemet Municipal Code needs to be updated to provide adequate regulations for massage establishments. While new regulations are being contemplated, it is necessary and appropriate to adopt a moratorium on new massage establishments to protect the public health, safety, and welfare. A moratorium will ensure that new massage establishments will comply with new regulations.

**FISCAL IMPACT:**

Adopting the proposed urgency ordinance would not in and of itself have any impact on the Fiscal Year 2014-15 City Budget. Staff will work with the City Attorney's Office to prepare regulations for massage establishments, which will incur costs for the City Attorney's time and indirect costs in the form of staff time and resources. However, these costs would be incurred even without the moratorium.

Respectfully submitted,



Eric S. Vail  
City Attorney

**ATTACHMENT:**

- A. Urgency Ordinance Bill No. 15-009**



**CITY OF HEMET  
Hemet, California  
URGENCY ORDINANCE BILL NO. 15-009**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF HEMET, CALIFORNIA, ADOPTING A  
CITYWIDE 45-DAY MORATORIUM ON THE ISSUANCE  
OF ANY NEW PERMIT, LICENSE, APPROVAL, OR  
ENTITLEMENT PERTAINING TO NEW MASSAGE  
ESTABLISHMENTS**

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

**SECTION 1. Findings.**

- A. The City of Hemet ("City") has adopted a General Plan to ensure a well-planned and safe community; and
- B. Protection of public health, safety and welfare is fully articulated in the General Plan; and
- C. In 2008, Senate Bill 731 ("SB 731 ") was adopted by the Legislature and signed into law by the Governor; it became effective on January 1, 2009 and sunset on January 1, 2015. SB 731, which enacted Section 4600 *et seq.* of the Business and Professions Code, preempted many local controls relating to massage therapy. Significantly, the law shifted local regulation of massage therapists and practitioners to a newly created entity known as the California Massage Therapy Council ("CAMTC," formerly the Massage Therapy Organization). Certificates issued by the CAMTC to qualified applicants entitle the holder to practice massage therapy anywhere in the State, without the necessity of complying with certain local rules; and

- 1 D. The state laws had the unintended consequence of resulting in a proliferation  
2 of massage establishments throughout California, many of which were or are  
3 believed to be fronts for prostitution and/or sex or human trafficking; and
- 4 E. In September 2014, the Governor signed Assembly Bill 1147, which returns to  
5 local governments the authority to more strictly regulate massage  
6 establishments. The new law, which became effective on January 1, 2015  
7 authorizes cities and counties to regulate massage establishments, including  
8 through the adoption of zoning requirements; and
- 9 F. The City Council finds that the prior state law, with its significant limits on local  
10 land use control of massage, has resulted in an increase in the number of  
11 massage establishments in the City; and
- 12 G. The City Council finds that nineteen (19) massage establishments currently  
13 operate within the City; and
- 14 H. The City Council finds that a number of local massage establishments are  
15 advertised or reviewed online in the adult entertainment section of  
16 backpage.com, rubmaps.com and mpreviews.com, strongly suggesting illicit  
17 activity. Massage establishments therefore require a higher level of scrutiny  
18 and enforcement than other businesses in order to ensure compliance with  
19 local and state laws; and
- 20 I. Though state law requires cities to treat massage the same as other  
21 professional services, such as medical, dental, and law offices, massage  
22 businesses do not conduct themselves like other professional service  
23 businesses, despite certification by the CAMTC of their employees; and
- 24 J. The City Council finds that the oversaturation of massage establishments, a  
25 number of which have been found in violation of the law, changes the  
26 character of a neighborhood, causes blight and impacts quality of life and the  
27 local economy by compromising public trust; and

1 K. The City Council further finds that with the passage of AB 1147, certain  
2 provisions of the City's ordinances governing massage may conflict with the  
3 new state law. As a result of the January 1, 2015 effective date of AB 1147, it  
4 is urgent that the City undertake a review of its current massage regulations in  
5 order to determine how such regulations may need to be revised in order to  
6 be consistent with state law while still providing comprehensive regulations for  
7 the establishment, use and operation of businesses offering massage  
8 services in the City, so that the public health, safety and welfare remain  
9 protected; and

10 **SECTION 2. Moratorium on New Massage Establishments.** The City Council  
11 orders as follows:

- 12 A. The findings and determinations in Section 1 are true and correct.
- 13 B. Based on the foregoing, the City Council finds and declares there is a current  
14 and immediate threat to the public health, safety or welfare and upon that  
15 basis has determined that an urgency ordinance pursuant to Government  
16 Code Section 65858 is warranted and shall take effect immediately upon  
17 adoption of this ordinance by a four-fifths (4/5ths) vote of the City Council.
- 18 C. For a period of 45 days from the date of February 3, 2015, no permits,  
19 licenses, approvals, or entitlements may be issued for new massage  
20 establishments. In addition, no existing massage establishment may be  
21 relocated or expanded, whether by means of additional space, construction of  
22 a new facility, or by conversion or reconfiguration of existing space.
- 23 D. For purposes of this ordinance, the following definitions apply:
- 24 1. "Massage business or establishment" shall mean any establishment,  
25 with a fixed place of business within the City where any person  
26 engages in, conducts, carries on or permits to be engaged in,  
27 conducted or carried on, for money or any other consideration, the

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administration to another person of a massage, and also includes all businesses or establishments where massage therapy is provided as an ancillary service such as clubs, gyms, day spas and professional offices.

2. "Massage" or "massage therapy" shall mean any method of treating the external parts of the body for remedial, hygienic, relaxation or any other similar purpose, whether by means of pressure on, friction against or stroking, kneading, tapping, pounding, vibrating, rubbing or other manner of touching external parts of the body with the hands, or with the aid of any mechanical or electrical apparatus or appliance with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, ointment or other similar preparations commonly used in this practice and shall include herbal body wraps. For the purposes of this chapter, "massage" or "massage therapy" includes the techniques of acupressure and reflexology.

E. City staff is directed to study appropriate modifications to the City's ordinances applicable to massage establishments to reduce and/or mitigate negative secondary effects created by the number, location and illicit uses of massage establishments. Pending the completion of such studies and the adoption of an ordinance to establish appropriate operational and zoning regulations, it is necessary for the immediate preservation of the public health, safety and welfare that this ordinance takes effect immediately. In the absence of immediate effectiveness, massage establishment uses in the City may be in conflict with regulations or requirements established with respect thereto.

1 F. For the pendency of this moratorium, the portions of Section 18-218 of the  
2 HMC relating to the operating requirements for massage establishments shall  
3 remain in full force and effect with respect to existing massage businesses.

4 G. This ordinance shall not preclude the continued operation of any lawfully  
5 existing massage establishment uses which are not seeking to expand,  
6 convert, relocate or otherwise change their use, or the opening or  
7 commencement of any massage establishment uses as a new business for  
8 which all discretionary and nondiscretionary approvals have been made prior  
9 to the effective date of this ordinance.

10 **SECTION 3. Environmental Review.** The City Council finds that this ordinance  
11 is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections  
12 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect  
13 physical change in the environment) and 15060(c)(3) (the activity is not a project as  
14 defined in Section 15378) of the CEQA Guidelines, California Code of Regulations,  
15 Title 14, Chapter 3, because it has no potential for resulting in physical change to the  
16 environment, directly or indirectly; rather it prevents changes in the environment  
17 pending the completion of the contemplated municipal code review.

18 **SECTION 4. Severability.** If any section, subsection, sentence, clause, or  
19 phrase of this ordinance is for any reason held to be invalid or unconstitutional by a  
20 decision of any court of competent jurisdiction, such decision will not affect the validity  
21 of the remaining portions of this ordinance. The City Council hereby declares that it  
22 would have passed this ordinance and each and every section, subsection, sentence,  
23 clause, or phrase not declared invalid or unconstitutional without regard to whether  
24 any portion of the ordinance would be subsequently declared invalid or  
25 unconstitutional.

26 **SECTION 5. Effective Date and Duration.** This ordinance is an urgency  
27 ordinance enacted under California Government Code section 65858(a). This  
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urgency ordinance is effective February 3, 2015 and will extend for a period of 45 days at which time it will automatically expire unless extended by the City Council in accordance with California Government Code section 65858.

**SECTION 6. Publication.** The City Clerk is directed to cause this ordinance to be published in the manner required by law.

**PASSED, APPROVED AND ADOPTED** this \_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
**Linda Krupa, Mayor**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Sarah McComas, City Clerk**

\_\_\_\_\_  
**Eric S. Vail, City Attorney**

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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 Urgency Ordinance was passed, approved and adopted the 24<sup>th</sup> day of February, 2015, 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: Wally Hill, City Manager *Wally Hill*  
DATE: February 24, 2015  
RE: Award of contract for consultant to assist in water/sewer system concession agreement Request for Proposals, evaluation, and negotiations

**RECOMMENDED ACTION:**

- a) That the City Council award a consultant contract to PERC Water Corporation in the amount of \$86,000 plus other reimbursable costs to assist in developing a Request for Proposals for a water/sewer system concession agreement, evaluating the proposals, and assistance in drafting and negotiating a concession agreement.
- b) Appropriate \$68,800 from water enterprise fund 571 reserves and \$26,756 from sewer special revenue fund 254 reserves, to establish a project budget of \$95,556.

**BACKGROUND:**

In the City Council's strategic planning sessions on July 27, 2014 and January 17, 2015, the Council approved a series of structural deficit reduction strategies. One of those strategies is to research the feasibility of entering into a franchise or concession agreement with another entity to manage, operate, maintain, and repair the City's water/sewer utility system, and pay to the City a concession fee that recognizes the full value of being granted that concession. This agenda item provides for the assistance of a consultant in determining the feasibility of a utility concession agreement.

The City of Hemet began providing water and sewer utilities in the City of Hemet in 1954, when the City purchased water/sewer system infrastructure from the then Lake Hemet Water Company. The City's service area is about 5.25 square miles, roughly approximating the city limits in 1954. The City's service area represents about 19% of the City's current 28.3 square miles, or about 29% of the City's residents. The Eastern Municipal Water District (EMWD) service area surrounds the City's service area on the north, west, and south. The Lake Hemet Municipal Water District (LHMWD) service area serves the City's east side.

The City of Hemet's water system relies mostly on groundwater pumped from a number of wells, with that water also stored in four reservoirs. When water quality issues or equipment failures require, the City supplements its water supply from water that the City purchased from the Metropolitan Water District of Southern California (MWD) as part of the groundwater management plan. That purchased MWD water is banked in underground recharge areas in the Hemet-San Jacinto valley. The City does not treat its sewage; it is conveyed to the EMWD, which treats it.

## **PROJECT DESCRIPTION:**

The consultant would assist the City in the following activities related to the solicitation, evaluation, and negotiation of a possible water/sewer system concession agreement:

- Develop deal points that will form the basis for the concession agreement
- Draft a Request for Proposal document that defines: the scope of services; the legal, regulatory, and financial requirements; performance criteria and guarantees; operations protocols; financial assurances; capital improvement requirements and plans; energy management; customer service; risk management; proposal evaluation criteria; and other terms and conditions
- Evaluation of the proposals, including compliance with the RFP requirements; financial benefits and impacts; and risk assessment
- Develop and negotiate concession agreement documents that specify City/concessionaire roles; concession fee requirements; and all the terms and conditions from the Request for Proposal and response to the RFP.

The proposed contract allows for an early termination if the feasibility of a successful concession agreement becomes doubtful, with the consultant being paid only for the services rendered by the point of termination.

## **ANALYSIS:**

The City's objectives in assessing the feasibility of a possible water/sewer system concession agreement with another entity are to:

- 1) Structure an agreement in a way that fully realizes the value of the enterprise, with concession fees available to the General Fund
- 2) Ensure quality utility services are provided to the City's customers
- 3) Ensure system assets are properly operated, maintained, and repaired or replaced as needed
- 4) Structure agreement in a way that reduces the uncertainties and extended time frames resulting from a private entity needing to obtain a certificate of public convenience and necessity from the California Public Utilities Commission
- 5) Ensure a seamless transfer of any utility responsibilities to avoid service disruptions or degradations

Staff reviewed a variety of public-private partnership models relating to the delivery of utility services, including a conventional contracting for services, a franchise or concession agreement, and privatization or sale of the system. The model that best achieved the City's objective is a concession agreement. In that approach, the City would retain ownership of the water/sewer system physical assets and water production rights, and enter into a long-term concession agreement with another entity to manage, operate, maintain, repair, and replace the water/sewer system assets. The entity serving as the concessionaire would pay a concession fee to the City, recognizing the full value of being granted the concession. The City could either retain rate-setting authority, or provide the concessionaire discretion in rate-setting, within any parameters set by the City.

Staff believes there will be interest from other private or public entities in a concession agreement. There are currently nine large "Class A" State-regulated private water/sewer utilities already operating in California that have from 19,233 to 457,530 connections (the City of Hemet has about 9,200 connections).

A Request for Proposals was issued to solicit the desired consulting services. The city received five proposals, summarized on the attachment. The proposal evaluation committee assessed the qualifications, approach, and costs of the proposers, and interviewed the two top finalists. After further negotiations, PERC Water Corporation was selected as the preferred consultant and the attached consultant agreement was negotiated with them. PERC is a California company with experience in advising the cities of Rialto, Adelanto, and Santa Paula in different forms of utility agreements with private entities. And, they have experience in directly operating and maintaining over thirty water and wastewater systems in the Southwest.

**COORDINATION & REVIEW:**

The Blue Ribbon Committee on City Services and Finances supports the City Council's deficit reduction strategies, including researching the feasibility of entering into a concession agreement for water/sewer utilities.

At appropriate times during this feasibility study, the impacted labor organizations will be engaged in discussions per the requirements of the Meyers-Milias-Brown Act. Neither the City Manager nor City Council will make a final decision regarding entering into a concession agreement without consulting with the impacted labor organizations, per the requirements of the Meyers-Milias-Brown Act.

**CONSISTENCY WITH ADOPTED GOALS, PLANS, AND PROGRAMS:**

The consultant engagement is consistent with the City Council's deficit reduction strategy to research the feasibility of entering into a concession agreement for water/sewer utilities.

**FISCAL IMPACT:**

The cost of the contract is \$86,000 plus other reimbursable costs for any additionally requested services. Authorization is sought for the \$86,000 base contract plus a 10% allowance for other possible reimbursable services that may be needed, for a total of \$95,556. 72% (\$68,800) of the funding for this contract would come from the water enterprise fund (Fund 571) and 28% (\$26,756) would come from the sewer special revenue fund (Fund 254). Additional appropriations from those fund reserves are necessary, since this consultant study was not included in the FY2014-15 budget.



Wally Hill  
City Manager



Eric Vail  
City Attorney

Attachment(s):            Summary of proposals  
                                 Proposed contract with PERC Water Corporation



CITY OF HEMET

Purchasing Department

Title	Water/Sewer System Franchisee/Concessionaire Preparation of Request for Proposals Preparation, Evaluation, and Negotiations Assistance				RFQ
Date	1/6/2015	Completed By: P Willis		Time	3:00 P.M.
Vendor	City	Projected Hours	Cost for SOW	Other Reimbursables	Grand Total
1. Stetson Engineers	Covina, Ca	428	\$71,500-\$81,500	\$2000	\$71,500-\$81,500
2. PERC Water	Costa Mesa, Ca	300	\$86,000	0	\$86,000
3. Huron Consulting Group	Chicago, Ill	530	\$157,500	\$21,000	\$178,500
4. West Yost Assoc.	Irvine, Ca	804	\$183,376	\$1833.76	\$185,209.76
5. ARUP	San Francisco, Ca	2542	\$695,000	\$25,000	\$720,000

**AGREEMENT FOR SERVICES**

**By and Between**

**THE CITY OF HEMET,  
a municipal corporation**

**and**

**PERC Water Corporation  
a California corporation**

**for**

**Water/Sewer System Concessionaire RFP Preparation,  
Evaluation, and Negotiations Assistance**

**FEBRUARY 17th, 2015**

**AGREEMENT FOR SERVICES  
BETWEEN  
THE CITY OF HEMET, CALIFORNIA  
AND**

**PERC Water Corporation**

This Agreement for Services ("Agreement") is entered into as of this 25th day of February, 2015 by and between the City of Hemet, a municipal corporation ("City") and PERC Water Corp., a California corporation ("Service Provider"). City and Service Provider are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by Request for Qualifications, the performance of the services defined and described particularly in Section 2 of this Agreement.

B. Service Provider, following submission of a Proposal for the performance of the services defined and described particularly in Section 2 of this Agreement, was selected by the City to perform those services.

C. 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.

D. The Parties desire to formalize the selection of Service Provider for performance of those services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

**SECTION 1. TERM OF AGREEMENT.**

Subject to the provisions of Section 20 "Termination of Agreement" of this Agreement, the Term of this Agreement is for a period Not to Exceed Three Hundred (300) hours commencing on the date first ascribed above and ending not later than June 30<sup>th</sup>, 2015, with hours to be determined by the City on an as-specified basis and to continue until the quantity of hours are expended unless or until the City determines, at its sole discretion, that it is not in the City's best interest to continue with this service.

**SECTION 2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.**

(a) Scope of Services. Service Provider agrees to perform the services set forth in Exhibit "A" "Scope of Services" (hereinafter, the "Services") and made a part of this Agreement by this reference.

(b) Schedule of Performance. The Services shall be completed pursuant to the schedule specified in Exhibit "A." Should the Services not be completed pursuant to that schedule, the Service Provider shall be deemed to be in Default of this Agreement. The City, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Service Provider to continue performing the Services.

**SECTION 3. ADDITIONAL SERVICES.**

Service Provider shall not be compensated for any work rendered in connection with its performance of this Agreement that are in addition to or outside of the Services unless such additional services are authorized in advance and in writing in accordance with Section 26 "Administration and Implementation" or Section 28 "Amendment" of this Agreement. If and when such additional work is authorized, such additional work shall be deemed to be part of the Services.

**SECTION 4. COMPENSATION AND METHOD OF PAYMENT.**

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Service Provider the amounts specified in Exhibit "B" "Compensation" and made a part of this Agreement by this reference. The total compensation, including reimbursement for actual expenses, shall be for hours worked to the date of termination and shall not exceed Eighty-Six Thousand dollars (\$86,000.00), unless additional compensation is approved in writing in accordance with Section 26 "Administration and Implementation" or Section 28 "Amendment" of this Agreement.

(b) Each month Service Provider shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-Service Provider contracts. Sub-Service Provider charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. If the compensation set forth in subsection (a) and Exhibit "B" include payment of labor on an hourly basis (as opposed to labor and materials being paid as a lump sum), the labor category in each invoice shall include detailed descriptions of task performed and the amount of time incurred for or allocated to that task. City shall independently review each invoice submitted by the Service Provider to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Service Provider for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by Service Provider which are disputed by City, City will use its best efforts to cause Service Provider to be paid within forty-five (45) days of receipt of Service Provider's correct and undisputed invoice.

(d) Payment to Service Provider for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Service Provider.

#### **SECTION 5. INSPECTION AND FINAL ACCEPTANCE.**

City may inspect and accept or reject any of Service Provider's work under this Agreement, either during performance or when completed. City shall reject or finally accept Service Provider's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Service Provider's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Service Provider's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 16 "Indemnification" and Section 17 "Insurance."

#### **SECTION 6. OWNERSHIP OF DOCUMENTS.**

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Service Provider in the course of providing the Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Service Provider. Upon completion, expiration or termination of this Agreement, Service Provider shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Service Provider in the course of providing the Services pursuant to this Agreement, Service Provider's guarantees and warranties in Section 9 "Standard of Performance" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

#### **SECTION 7. SERVICE PROVIDER'S BOOKS AND RECORDS.**

(a) Service Provider shall maintain any and all documents and records demonstrating or relating to Service Provider's performance of the Services. Service Provider shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Service Provider pursuant to this Agreement. Any and all such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Service Provider's address indicated for receipt of notices in this Agreement.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Service Provider's business, City may, by written request, require that custody of such documents or records be given to the City. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

## **SECTION 8. INDEPENDENT CONTRACTOR.**

(a) Service Provider is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Service Provider shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

(b) The personnel performing the Services under this Agreement on behalf of Service Provider shall at all times be under Service Provider's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Service Provider or any of Service Provider's officers, employees, or agents except as set forth in this Agreement. Service Provider shall not at any time or in any manner represent that Service Provider or any of Service Provider's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

(c) Neither Service Provider, nor any of Service Provider'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. Service Provider expressly waives any claim Service Provider may have to any such rights.

## **SECTION 9. STANDARD OF PERFORMANCE.**

Service Provider represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Service Provider shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services. In meeting its obligations under this Agreement, Service Provider shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Service Provider under this Agreement. In addition to the general standards of performance set forth this section, additional specific standards of performance and performance criteria may be set forth in Exhibit "A" "Scope of Work" that shall also be applicable to Service Provider's work under this Agreement. Where there is a conflict between a

general and a specific standard of performance or performance criteria, the specific standard or criteria shall prevail over the general.

**SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

Service Provider shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Service Provider shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Service Provider to comply with this section.

**SECTION 11. PREVAILING WAGE LAWS**

It is the understanding of City and Service Provider that California prevailing wage laws do not apply to this Agreement because the Agreement does not involve any of the following services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder: Construction, alteration, demolition, installation, or repair work performed on public buildings, facilities, streets or sewers done under contract and paid for in whole or in part out of public funds. In this context, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

**SECTION 12. NONDISCRIMINATION.**

Service Provider shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

**SECTION 13. UNAUTHORIZED ALIENS.**

Service Provider hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Service Provider so employ such unauthorized aliens for the performance of the Services, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Service Provider hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

**SECTION 14. CONFLICTS OF INTEREST.**

(a) Service Provider covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Service Provider's performance of the Services. Service Provider further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Service Provider agrees

to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

(b) City understands and acknowledges that Service Provider is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Service Provider is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

(c) City understands and acknowledges that Service Provider will perform non-related services for other governmental agencies and private Parties following the completion of the Services under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

#### **SECTION 15. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

(a) All information gained or work product produced by Service Provider in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Service Provider. Service Provider shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

(b) Service Provider, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Service Provider gives City notice of such court order or subpoena.

(c) If Service Provider, or any officer, employee, agent or subcontractor of Service Provider, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Service Provider for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Service Provider's conduct.

(d) Service Provider shall promptly notify City should Service Provider, its officers, employees, agents or subcontractors, be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Service Provider or be present at any deposition, hearing or similar proceeding. Service Provider agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Service Provider. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

#### **SECTION 16. INDEMNIFICATION.**

(a) Indemnification for Professional Liability. Where the law establishes a professional standard of care for Service Provider's services, to the fullest extent permitted by law, Service Provider shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees) arise out of, are a consequence of, or are in any way attributable to, in whole or in part, any negligent or wrongful act, error or omission of Service Provider, or by any individual or entity for which Service Provider is legally liable, including but not limited to officers, agents, employees or sub-contractors of Service Provider, in the performance of professional services under this Agreement.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Service Provider shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Service Provider, or by any individual or entity for which Service Provider is legally liable, including but not limited to officers, agents, employees or sub-contractors of Service Provider.

(c) Indemnification from Sub-Service Providers. Service Provider agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every sub-Service Provider or any other person or entity involved by, for, with or on behalf of Service Provider in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Service Provider fails to obtain such indemnity obligations from others as required herein, Service Provider agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Service Provider and shall survive the termination of this Agreement or this section.

(d) Limitation of Indemnification. Notwithstanding any provision of this section to the contrary, design professionals are required to defend and indemnify the City only to the extent permitted by Civil Code Section 2782.8, which limits the liability of a design professional to claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," as defined in Section 2782.8, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

(e) City's Negligence. The provisions of this section do not apply to claims occurring as a result of City's sole negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.

#### **SECTION 17. INSURANCE.**

Service Provider agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "C" "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. Service Provider agrees to provide City with copies of required policies upon request.

#### **SECTION 18. ASSIGNMENT.**

The expertise and experience of Service Provider are material considerations for this Agreement. City has an interest in the qualifications and capability of the persons and entities who will fulfill the duties and obligations imposed upon Service Provider under this Agreement. In recognition of that interest, Service Provider shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Service Provider's duties or obligations under this Agreement without the prior written consent of the City. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement pursuant to Section 20 "Termination of Agreement." City acknowledges, however, that Service Provider, in the performance of its duties pursuant to this Agreement, may utilize sub-contractors.

#### **SECTION 19. CONTINUITY OF PERSONNEL.**

Service Provider shall make every reasonable effort to maintain the stability and continuity of Service Provider's staff and sub-contractors, if any, assigned to perform the Services. Service Provider shall notify City of any changes in Service Provider's staff and sub-contractors, if any, assigned to perform the Services prior to and during any such performance.

#### **SECTION 20. TERMINATION OF AGREEMENT.**

(a) City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Service Provider. In the event such notice is given, Service Provider shall cease immediately all work in progress. Consultant agrees to be compensated only for hours worked up to the time of termination.

(b) Service Provider may terminate this Agreement for cause at any time upon thirty (30) days written notice of termination to City.

(c) If either Service Provider or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Service Provider, or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Service Provider or City, all property belonging exclusively to City which is in Service Provider's possession shall be returned to City. Service Provider shall furnish to City a final invoice for work performed and expenses incurred by Service Provider, prepared as set forth in Section 4 "Compensation and Method of Payment" of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 "Compensation and Method of Payment" of this Agreement.

**SECTION 21. DEFAULT.**

In the event that Service Provider is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Service Provider for any work performed after the date of default. Instead, the City may give notice to Service Provider of the default and the reasons for the default. The notice shall include the timeframe in which Service Provider may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Service Provider is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Service Provider does not cure the default, the City may take necessary steps to terminate this Agreement under Section 20 "Termination of Agreement." Any failure on the part of the City to give notice of the Service Provider's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

**SECTION 22. EXCUSABLE DELAYS.**

Service Provider shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Service Provider. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

**SECTION 23. COOPERATION BY CITY.**

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Services shall be furnished to Service Provider in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

**SECTION 24. NOTICES.**

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: City of Hemet  
Attn: City Manager  
445 E. Florida Avenue  
Hemet, CA 92543

To Service Provider: PERC Water Corp.  
Attn: Bob Nespeca  
959 South Coast Drive, Ste.315  
Costa Mesa, CA 92626  
bnespeca@percwater.com

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

**SECTION 25. AUTHORITY TO EXECUTE.**

The person or persons executing this Agreement on behalf of Service Provider represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Service Provider to the performance of its obligations hereunder.

**SECTION 26. ADMINISTRATION AND IMPLEMENTATION.**

This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 28 "Amendment" and the City Manager's contracting authority under the Hemet Municipal Code.

**SECTION 27. BINDING EFFECT.**

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**SECTION 28. AMENDMENT.**

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Service Provider and by the City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City Manager's contracting authority under the Hemet Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**SECTION 29. WAIVER.**

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by

any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Service Provider shall not constitute a waiver of any of the provisions of this Agreement.

**SECTION 30. LAW TO GOVERN; VENUE.**

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

**SECTION 31. ATTORNEYS FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

**SECTION 32. ENTIRE AGREEMENT.**

This Agreement, including the attached Exhibits "A" through "C", is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Service Provider and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding.

**SECTION 33. SEVERABILITY.**

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

**SECTION 34. CONFLICTING TERMS.**

Except as otherwise stated herein, if the terms of this Agreement conflict with the terms of any Exhibit hereto, or with the terms of any document incorporated by reference into this Agreement, the terms of this Agreement shall control.

**SECTION 35. CUSTOMER SATISFACTION SURVEYS.**

Where the Service Provider provides services directly to the public for the City, the Service Provider shall actively request and solicit Customer Satisfaction Surveys regarding his/her own performance as a requirement of this contract. These surveys shall be completed by directing the customer to the web link: <http://cityofhemet.info>.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year first-above written.

**CITY OF HEMET**

\_\_\_\_\_  
Wally Hill  
City Manager

**ATTEST:**

\_\_\_\_\_  
Sarah McComas  
City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
Eric S. Vail  
City Attorney

**PERC Water Corp**

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**NOTE: SERVICE PROVIDER'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 SERVICE PROVIDER'S BUSINESS ENTITY.**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_ before me, \_\_\_\_\_ a Notary Public, 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

<b>CAPACITY CLAIMED BY SIGNER</b>		<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
	_____	
	TITLE(S)	
<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
	_____	
<b>SIGNER IS REPRESENTING:</b>		
(NAME OF PERSON(S) OR ENTITY(IES))		SIGNER(S) OTHER THAN NAMED ABOVE
_____		
_____		



**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**I. Service Provider will perform the following Services:**

- A. Develop deal points for transaction – Approximately 30 hours
  - a. Current Rate Review
  - b. Target Concession Value
  - c. Legal & Financial Requirements
  - d. Assess the Feasibility of the Concessionaire Concept – is it right for the City
  
- B. Draft the Scope of Services for the RFP- Approximately 60 hours
  - a. Legal/Financial Requirements
  - b. Scope of Service
  - c. Terms & Conditions
  - d. Risk Management
  - e. Performance Criteria
  - f. Operating Protocol
  - g. Regulatory Requirements
  - h. Financial Assurance
  - i. Capital Improvement Plan
  - j. Energy Management
  - k. Customer Service
  - l. Transition Plan
  - m. Assess the Feasibility of the Concessionaire Concept – is it right for the City
  
- C. Assist the City in the evaluation of the proposals – Approximately 60 hours
  - a. RFP Compliance
  - b. Risk Matrix
  - c. Financial Benefits & Impacts
  - d. Presentation to the City
  - e. Assess the Concessionaire Arrangement
  - f. Recommended Approaches
  - g. Assess the Feasibility of the Concessionaire Concept – is it right for the City
  
- D. Assist the City in the negotiation of the agreement with the selected Concessionaire –  
Approximately 50 hours
  - a. Terms & Conditions
  - b. Financing Approach
  - c. Risk Allocation & Management
  - d. Performance Criteria & Guarantees
  - e. Operational Protocol
  - f. Regulatory Requirements
  - g. Financial Assurances
  - h. Clearly Defined Scope of Service

- i. Support City Legal on Contracts
- E. Assist and Support the City with Negotiation of the Final Contract Documents – Approximately 100 hours
  - a. Define Contract Terms
  - b. Financing Plan Evaluation
  - c. Capital Improvement Plan
  - d. Risk allocation Management
  - e. Recommended Approaches
  - f. Presentation to City
  - g. Execute Definitive Agreements

**II. As part of the Services, Service Provider will prepare and deliver the following tangible work products to the City:**

- A. Five copies of the draft Deal Points Term Sheet
- B. Five Copies of the draft Scope of Work
- C. Final version of the Scope of Work and Evaluation Criteria
- D. Five copies of the written evaluation of each response to the RFP
- E. Written evaluation of the impact of any Franchisee's request for exception from the RFP requirements
- F. Five copies of the Final Deal Points Term Sheet with explanation and justification for each negotiated Deal Point

**III. During performance of the Services, Service Provider will keep the City apprised of the status of performance by delivering the following status reports:**

- A. Schedule a Project Kick Off Meeting immediately after contract approval
- B. Biweekly progress reports to track progress based on a schedule to be developed with City Staff during the project Kick Off Meeting
- C. Meeting minutes of all meetings and discussions with City Staff
- D. Biweekly Meetings with City Staff to discuss open issues in person or via Conference call

**IV. The tangible work products and status reports will be delivered to the City pursuant to the following schedule:**

- A. Project Kick Off Meeting scheduled immediately after contract approval
- B. Biweekly Status Reports commencing 14 days after the Project Kick Off Meeting

**V. Service Provider will utilize the following personnel to accomplish the Services:**

- A. Bob Nespeca
- B. Brian Cullen
- C. Floyd Wicks
- D. Larry Johnson

**VI. Service Provider will utilize the following subcontractors to accomplish the Services:**

- A. Robert Deloach
- B. Arthur J Gallagher and Company

**EXHIBIT "B"  
COMPENSATION**

**I. Service Provider shall use the following rates of pay in the performance of the Services:**

- A. Principal                      \$268
- B. Senior Eng                      \$182
- C. Project Manager              \$182
- D. Consultant                      \$300

**II. Service Provider may utilize sub-contractors as indicated in this Agreement. The hourly rate for any subcontractor is not to exceed \$307 per hour without written authorization from the City Manager or his designee.**

**IV. The total compensation for the Services shall not exceed \$86,000, as provided in Section 4 "Compensation and Method of Payment" of this Agreement.**

**V. The City may choose to stop all work and end this contract at any point in the project where the City determines the concessionaire approach is not in the City's best interest. City agrees to notify Service Provider immediately and meet the financial obligations due up to that juncture. Service Provider shall meet with the City at the completion of each task, as detailed in the Scope of Services (A-E), to assess the feasibility of the Concessionaire Concept and determine if going on the next task is in the City's best interest.**

	Projected Hours	Subtotal
Water/Sewer System Franchisee/Concessionaire Request for Proposal Preparation, Evaluation, and Negotiations Assistance	300	\$86,000
Other Reimbursable Costs		Per Standard Rate Schedule Attached
Total (no sales tax included)		\$86,000



## EXHIBIT "C" INSURANCE

A. Insurance Requirements. Service Provider shall provide and maintain insurance, acceptable to the City, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Service Provider, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Service Provider shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Commercial General Liability. Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Automobile. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation. Workers' Compensation insurance as required by the Labor Code of State of California covering all persons providing Services on behalf of the Service Provider and all risks to such persons under this Agreement.

(4) Professional Liability. Professional liability insurance appropriate to the Service Provider's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to Services performed under this Agreement. The insurance must be maintained for at least three (3) consecutive years following the completion of Service Provider's services or the termination of this Agreement. During this additional three (3) year period, Service Provider shall annually and upon request of the City submit written evidence of this continuous coverage.

2. Minimum Limits of Insurance. Service Provider shall maintain limits of insurance no less than:

(1) Commercial General Liability. \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile. \$1,000,000 per accident for bodily injury and property damage. A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits set forth above.

(3) Workers' Compensation. Workers' Compensation as required by the Labor Code of the State of California of not less than \$1,000,000 per occurrence.

(4) Professional Liability. \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Policies. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to City.

2. Commercial General Liability and Automobile Liability Coverages.

(1) City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Service Provider performs; products and completed operations of Service Provider; premises owned, occupied or used by Service Provider; or automobiles owned, leased, hired or borrowed by Service Provider. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, or employees.

(2) Service Provider's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Service Provider's insurance.

(3) Service Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the insurance policies, including breaches of warranties, shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Service Provider.

C. Other Requirements. Service Provider agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the

insurance provisions of this contract have been complied with. The City may require that Service Provider furnish City with copies of original endorsements effecting coverage required by this Exhibit "C". The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Service Provider shall furnish certificates and endorsements from each sub-contractor identical to those Service Provider provides.

2. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers, or the Service Provider shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Service Provider's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.