AGENDA

REGULAR MEETING OF THE HEMET CITY COUNCIL

November 15, 2016

6:00 p.m.
City of Hemet Council Chambers **www.cityofhemet.org**
450 E. Latham Avenue *Please silence all cell phones*

**Notice: Members of the Public attending shall comply with the Council's adopted Rules of Decorum in Resolution No. 4545. A copy of the Rules of Decorum are available from the City Clerk.*

Call to Order

Roll Call

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

Work Study

Discussion regarding this item, with possible direction to staff

1. Draft Hemet-Ryan Airport Land Use Plan – Community Development Director Elliano

Closed Session

Notice of Opportunity for Public Comment

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

2. Conference with Legal Counsel - Existing Litigation
   Pursuant to Government Code section 54956.9(d)(1)
   Names of case: People v. Amir Najeeb Dawud, Case No. BAM1603602

3. Conference with Legal Counsel - Anticipated Litigation
   One (1) matter of significant exposure to litigation pursuant to Government Code section 54956.9(a) & (d)(2) & (4)

REGULAR SESSION

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

Call to Order

Roll Call

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

Invocation

Pledge of Allegiance

City Attorney Closed Session Report

4. Conference with Legal Counsel - Existing Litigation
   Pursuant to Government Code section 54956.9(d)(1)
   Names of case: People v. Amir Najeeb Dawud, Case No. BAM1603602

5. Conference with Legal Counsel - Anticipated Litigation
   One (1) matter of significant exposure to litigation pursuant to Government Code section 54956.9(a) & (d)(2) & (4)

Presentations

6. Cool Planet Award

7. Recognition of City of Hemet Park Department Employees

8. Proclamation proclaiming November 17th at World Pancreatic Cancer Day

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** – October 25, 2016

10. **Approval of Minutes** – November 3, 2016

11. **Receive and File** – Investment Portfolio as of September 2016

12. **Receive and File** – Warrant Register
    a. Warrant register dated October 27, 2016 in the amount of $881,992.78. Payroll for the period of September 26, 2016 to October 9, 2016 was $626,180.70.

13. **Recommendation by Information Technology** – Renewal of Annual Support and Maintenance for Microsoft Enterprise Software Licensing
    a. Approve year two of the three-year Microsoft Enterprise Software License Agreement by and between the City of Hemet and SoftwareONE in the amount of $92,229.64; and
    b. Authorize the City Manager to approve purchase orders in support of this purchase.

14. **Recommendation by Information Technology** – Renewal of Annual Support and Maintenance for Tyler Technologies Eden ERP Financial Software
    a. Approve the annual support and maintenance for continued use of the Tyler Technologies Eden ERP Financial Software in the amount of $57,860.09; and
    b. Authorize the City Manager to approve purchase orders in support of this purchase.

15. **Recommendation by Information Technology** – Renewal of Annual Support and Maintenance for ESRI Small Government Enterprise Licensing
    a. Approve year two of the three year ESRI Small Government Enterprise Licensing Agreement (SGELA) by and between the City of Hemet and Environmental Systems Research Institute (ESRI) in the amount of $50,000; and
    b. Authorize the City Manager to approve purchase orders in support of this purchase.

16. **Recommendation by Finance** – Destruction of Certain Records
    a. Adopt a resolution authorizing the destruction of certain records.
       Resolution Bill No. 16-089

17. **Recommendation by Community Development** – Fourth Amendment to the Consultant Services Agreement between the City of Hemet and BMLA, Inc.
    a. Approve the Fourth Amendment to the Consultant Services Agreement between the City of Hemet and BMLA, Inc., maintaining the original contract pricing and extending the term of the Agreement to June 30, 2017; and
    b. Authorize the City Manager to execute the Fourth Amendment to the Consultant Services Agreement with BMLA, Inc.

18. **Recommendation by Library** – EnvisionWare 24/7 Book Kiosk
    a. Approve the purchase of $300,000 for EnvisionWare's 24/7 Book Kiosk as approved in the 2016-17 Capital Improvement Plan using Development Impact Fees.

19. **Recommendation by Community Development** - Peppertree Project Tract 29843 - Amendment to Takeover Agreement
    a. Approve the Amendment to the Takeover Agreement and Authorize the City Manager to execute the Agreement on behalf of the City.

20. **Recommendation by Public Works** – Second Amendment to Agreement for Hazardous Waste Disposal Contract for Hazardous Waste Hauling, Disposal and Recycling Services
    a. Approve the Second Amendment to Agreement for Hazardous Waste Disposal Contract with Hunter Consulting, Inc. dba HCI Environmental & Engineering Service (HCI) provide hazardous waste hauling, disposal and recycling services; and
    b. Authorize the City Manager to execute Second Amendment to Agreement for Hazardous Waste Disposal with HCI; and
    c. Authorize the City Manager to execute a purchase change order in support of the extended agreement.

21. **Recommendation by Public Works** – Radio Read Water Meters
    a. Approve the purchase of radio read meters from HD Supply Water Works of Santa Ana in the amount of $581,580; and
    b. Authorize the City Manager to execute purchase orders in support of the purchase; and
    c. Authorize the hiring of seven part-time temporary employees to assist with the installation of meter equipment and input of billing data; and
    d. Authorize the Deputy City Manager to record a supplemental appropriation in Water Fund 571 in an amount of $644,580 to support the costs of the meters ($581,580) and the costs of temporary help ($63,000)

22. **Recommendation by Public Works** – Vehicle Purchase to Fritts Ford of Riverside, CA
    a. Approve the purchase of one Ford F750 with Dakota service bed option from Fritts Ford of Riverside, CA, in the amount of $108,351.06; and
    b. Authorize the City Manager to execute purchase orders in support of the purchase; and
    c. Declare vehicle #9011 as surplus and to be sold at auction.

23. **Recommendation by Public Works** – Vehicle Purchases to Gosch Ford of Hemet
    a. Approve the purchase of two (2) Ford F-150 XL Pickup Trucks from Gosch Ford Group of Hemet, CA in the amount of $53,026.46 for the Water Department; and
    b. Approve the purchase of one (1) Ford Explorer XLT from Gosch Ford Group of Hemet, CA in the amount of $36,594.55 for the Facilities Maintenance Division; and
    c. Authorize the Deputy City Manager/Administrative Services Director to re-allocate current savings realized in Water Equipment Placement Fund No. 380-9000 to fund the Water vehicle purchases; and
    d. Authorize the City Manager to execute purchase orders in support of the purchases; and
    e. Declare Unit No. 9025 as surplus to be sold at auction.

24. **Recommendation by Public Works** – Vehicle Purchase to Reynold's Buick of Covina
    a. Approve the purchase of One 2017 GMC Sierra 3500HD 4WD Double Cab with Dump Body to Reynold's Buick of Covina, CA in the amount of $46,737.02; and
    b. Authorize the City Manager to execute purchase orders in support of the purchase; and
    c. Declare Unit No. 4208 as surplus to be sold at auction.

25. **Recommendation by Engineering** – Construction Contract for the Gilbert Street Sewer Main Replacement Project – CIP No. 5623
    a. Approve the plans and specifications for CIP 5623; and
    b. Adopt a resolution to award the construction contract in the amount of $185,830.00 to the lowest responsive and responsible bidder, TBU, Inc. and determining the cost estimate of the city and construction contract amount of $185,830.00 are reasonable pursuant to Hemet Municipal Code Sec. 2-358(3) **Resolution Bill No. 16-094**; and
    c. Authorize the City Manager to execute contracts and related documents and file the Notice of Completion upon satisfactory completion of the project; and
    d. Authorize the City Manager to execute change order(s) up to $25,000 for a total authorized expenditure of $210,830.00.

26. **Recommendation by Engineering** – CIP 5641 CUP 14-006 Takeover – Webb and Associates Professional Services Contract for Engineering Construction Management and Inspection Services
    a. Approve a Professional Services Agreement with Albert A Webb Associates, of Riverside, California to provide Engineering, Construction Management and Inspection Services for CIP 5641 in the amount of $138,450.00.

27. **Recommendation by Engineering** – CIP 5635 Well 10A – Professional Services Contract for Construction Management and Inspection Services
    a. Approve the Professional Services Agreement with Albert A Webb Associates, of Riverside, California to provide Construction Management and Inspection Services for the construction of Well 10A, CIP 5635 in the amount of $126,267.00.

Communications from the Public

Anyone who wishes to address the Council regarding items not on the agenda may do so at this time. As a courtesy, please complete a Request to Speak Form found at the City Clerk's desk. Submit your completed form to the City Clerk prior to the beginning of the meeting. Presentations are limited to three minutes in consideration of others who are here for agenda items. Please come forward to the lectern when the Mayor calls upon you. When you are recognized, you may proceed with your comments.
Notice: Members of the Public attending shall comply with the adopted Rules of Decorum in Resolution No. 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.

Public Hearing

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

28. **Municipal Code Amendment to Chapter 14 (Buildings and Building Regulations)** – Community Development Director Elliano
    a. Conduct a public hearing; and
    b. Adopt an ordinance approving amendments to Chapter 14 of the Hemet Municipal Code (MCA 16-001), incorporating by reference the 2016 California Building Standards Code and various other uniform Building and Fire Codes, and local amendments thereto. **Ordinance Bill No. 16-086**

Discussion/Action Item

29. **Measure U Implementation** – Police Chief Brown and Fire Chief Brown
Discussion regarding this item, with possible direction to staff

30. **Temporary Restrictions and Regulations on Non-Medical Marijuana Facilities and Private Marijuana Cultivation in light of the Passage of Proposition 64** – Stephen McEwen, Assistant City Attorney
    a. Adopt an interim urgency ordinance under Government Code section 65858(a), establishing a 45-day moratorium on non-medical marijuana facilities and private cultivation, except for private indoor cultivation of six marijuana plants or less, which shall be subject to reasonable regulations. The interim urgency ordinance requires a four-fifths vote for adoption.
    Interim Urgency Ordinance Bill No. 16-098

31. **Review of CalPERS Unfunded Liability and Cost Reduction Options** – Deputy City Manager/Administrative Services Director Hurst
    a. Conduct a review of CalPERS unfunded liability cost reduction options; and
    b. Provide direction to staff regarding next steps.

32. **Water Capital Improvement Project Funding Options** – Public Works Director Jensen
    a. Review options for funding Water Department Capital Improvement Projects; and
    b. Provide direction to staff regarding next steps

City Council Reports

33. CITY COUNCIL REPORTS AND COMMENTS
    A. Council Member 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)
        9. Southern California Association of Governments (SCAG)

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

C. Council Member Youssef
   1. Planning Commission

D. Mayor Pro Tem Raver
   1. Traffic and Parking Commission
   2. Riverside Transit Agency (RTA)
   3. Riverside County Transportation Commission (RCTC)
   4. Watermaster Board

E. Mayor 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)
   6. Southern California Association of Governments (SCAG)
   7. Homeless Task Force
   8. Skate Plaza Task Force

F. Ad-Hoc Committee Reports
   1. Diamond Valley Lake Recreation Ad-Hoc Committee (January 27, 2015)

G. City Manager Meyerhoff
   1. Manager's Reports
   2. Staff Spotlight
   3. Business/Industry Task Force

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.

Continued Closed Session

City Attorney Continued Closed Session Report

Adjournment

Adjourn to Tuesday, December 13, 2016 at 7:00 p.m. for consideration of items placed on that agenda. The next regular meeting will be held January 10, 2017.

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

October 25, 2016

REGULAR SESSION

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

Call to Order

Mayor Wright called the meeting to order at 7:00 p.m.

Roll Call

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

ABSENT: None

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

Invocation

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

Pledge of Allegiance

Pledge of Allegiance was led by City Manager Meyerhoff.

Presentation

1. Certificate of Recognition to William Hayes

Fire Chief Brown, Mr. Hayes is a licensed security guard since 2005, certified in first aid and CPR. Mr. Hayes volunteers as a part of the Riverside County Chapter of the Disaster Action Team. Mr. Hayes is being presented with a Certificate of Recognition for his assistance. Chief Brown explained the incident. While driving eastbound on Hwy 74, west of Warren, Mr. Hayes almost collided with another vehicle that was stopped, blocking traffic in the road. When checking on the passengers, he noticed major vehicle damage and a female driver, who was injured and unresponsive. At the same time he was alerted by a passerby that the vehicle was on fire. He grabbed the tire iron from his gar and broke both passenger windows to unlock the doors and access the driver. Two Hemet Police Officers arrived to assist with their fire extinguishers from their patrol cars.

City Council Business
Consent Calendar

2. **Recommendation by Mayor Pro Tem Raver** – Park Commission Appointment
   a. Appoint Rick Jackson to Seat 5 on the Park Commission in order to fill an unscheduled vacancy. The two year term will expire April 1, 2017.

3. **Approval of Minutes** – October 11, 2016

4. **Receive and File** – Warrant Registers
   a. Warrant registers dated October 4, 2016 in the amount of $2,029,139.40 and October 13, 2016 in the amount of $664,277.92. Payroll for the period of September 12, 2016 to September 26, 2016 was $630,180.94.

5. **Receive and File** – Investment Portfolio as of August 2016

6. **Recommendation by Administrative Services -** Amendment to the Contract Between the Board of Administration California Public Employees' Retirement System and the City Council of the City of Hemet for Cost Sharing
   a. Adopt an ordinance to allow cost sharing of the Employer Contribution to CalPERS with the "Classic" CalPERS members of the Hemet City Fire Fighters Local No. 2342 (HFFA). **Ordinance No. 1920**

7. **Recommendation by Administrative Services** – Initiating Proceedings for the Formation of Hemet Landscape Maintenance District No. 104, Tractor Supply Company
   a. Adopt a resolution initiating proceedings and ordering the Report of the Engineer in connection with the annual levy of assessments for the Hemet Landscape Maintenance District No. 104, Tractor Supply Company and the levy and collection of assessments within such district for the Fiscal Year 2017-2018, and designate PSOMAS as the Engineer for the purpose of these proceedings. This is not a general tax. **Resolution No. 4712**

8. **Recommendation by Administrative Services** – Intention for the Levy and Collection of Assessments, Preliminarily approving the Engineer's Report for Landscape Maintenance District No. 104, Tractor Supply Company
   a. Adopt a resolution declaring its intention to order the annual levy of assessments for the formation of Landscape Maintenance District No. 104, Tractor Supply Company and to levy and collect assessments within the district for Fiscal Year 2017-2018, preliminarily approving the Engineer's Report and appointing December 13, 2016 for hearing protests. This is not a general tax.
   b. **Resolution No. 4713**

9. **Recommendation by Administrative Services** – Initiating Proceedings for the Formation of Hemet Streetlight Maintenance District No. 104, Tractor Supply Company
   a. Adopt a resolution initiating proceedings and ordering the Report of the Engineer in connection with the annual levy of assessments for the Hemet Streetlight Maintenance District No. 104, Tractor Supply Company and the levy and

collection of assessments within such district for the Fiscal Year 2017-2018, and designate PSOMAS as the Engineer for the purpose of these proceedings. This is not a general tax. **Resolution No. 4714**

10. **Recommendation by Administrative Services** – Intention for the Levy and Collection of Assessments, Preliminarily approving the Engineer's Report for Streetlight Maintenance District No. 104, Tractor Supply Company
    a. Adopt a resolution declaring its intention to order the annual levy of assessments for the formation of Streetlight Maintenance District No. 104, Tractor Supply Company and to levy and collect assessments within the district for Fiscal Year 2017-2018, preliminarily approving the Engineer's Report and appointing December 13, 2016 for hearing protests. This is not a general tax.
    Resolution No. 4715

11. **Recommendation by Administrative Services** – Initiating Proceedings for the Formation of Hemet Landscape Maintenance District No. 105, Les Schwab Tires
    a. Adopt a resolution initiating proceedings and ordering the Report of the Engineer in connection with the annual levy of assessments for the Hemet Landscape Maintenance District No. 105, Les Schwab Tires and the levy and collection of assessments within such district for the Fiscal Year 2017-2018, and designate PSOMAS as the Engineer for the purpose of these proceedings. This is not a general tax. **Resolution No. 4716**

12. **Recommendation by Administrative Services** – Intention for the Levy and Collection of Assessments, Preliminarily approving the Engineer's Report for Landscape Maintenance District No. 105, Les Schwab Tires
    a. Adopt a resolution declaring its intention to order the annual levy of assessments for the formation of Landscape Maintenance District No. 105, Les Schwab Tires and to levy and collect assessments within the district for Fiscal Year 2017-2018, preliminarily approving the Engineer's Report and appointing December 13, 2016 for hearing protests. This is not a general tax.
    Resolution No. 4717

13. **Recommendation by Administrative Services** – Initiating Proceedings for the Formation of Hemet Streetlight Maintenance District No. 105, Les Schwab Tires
    a. Adopt a resolution initiating proceedings and ordering the Report of the Engineer in connection with the annual levy of assessments for the Hemet Streetlight Maintenance District No. 105, Les Schwab Tires and the levy and collection of assessments within such district for the Fiscal Year 2017-2018, and designate PSOMAS as the Engineer for the purpose of these proceedings. This is not a general tax. **Resolution No. 4718**

14. **Recommendation by Administrative Services** – Intention for the Levy and Collection of Assessments, Preliminarily approving the Engineer's Report for Streetlight Maintenance District No. 105, Les Schwab Tires
    a. Adopt a resolution declaring its intention to order the annual levy of assessments for the formation of Streetlight Maintenance District No. 105, Les Schwab Tires

and to levy and collect assessments within the district for Fiscal Year 2017-2018, preliminarily approving the Engineer's Report and appointing December 13, 2016 for hearing protests. This is not a general tax. **Resolution No. 4719**

15. **Recommendation by Engineering** – Tract Map 36759 – Finance Map within the Tres Cerritos East Specific Plan Area
    a. Adopt a resolution approving Tract Map No. 36759 for finance purposes only within the Tres Cerritos East Specific Plan area, located at the northeast corner of Cawston Avenue and Devonshire Avenue. **Resolution No. 4720**

Item Nos. 2 and 15 were removed from the Consent Calendar. **Council Member Youssef moved and Council Member Milne seconded a motion to approve the remaining Consent Calendar items as presented. Motion carried 5-0.**

Item No. 2
Mayor Pro Tem Raver pulled the item to introduce Mr. Rick Jackson. Mr. Jackson was not in attendance.
Council Member Krupa moved and Council Member Youssef seconded a motion to approve this item as presented. Motion carried 5-0.

Item No. 15
Council Member Krupa, confirmed that this map is to establish the boundaries for financing and does not change any densities.
Steve Latino, Engineering Director/City Engineer, confirmed that there are no density changes.
Council Member Krupa moved and Council Member Milne seconded a motion to approve this item as presented. Motion carried 5-0.

Communications from the Public

Keith Broaders, Hemet, recommended that the City Council consider making a "Community Pantry Day" or "Week" to recognize their 51 years serving the community. Mr. Broaders recommended that the Chamber of Commerce and the local businesses consider asking their customers to donate to the Community Pantry.
Scott Miller, San Jacinto, expressed concern with public safety and the constitutional right to demonstrate. Earlier in the day, 20 Trump supporters gathered on Florida Avenue north of Kirby Street. As the supporters approached the corner a vehicle going east on Florida turning north on Kirby Street ran his car into the curb where the crowd was standing. Mr. Miller expressed concern that immediate action was not taken against the driver and requested a full investigation. Mr. Miller requested that the video be requested from Bank of American and the case be sent to the District Attorney.
Arvid Anderson, Hemet, thanked the current City Council for their efforts in balancing the budget, with professionalism and integrity. Free press is a wonderful thing but there is a lack of civility. Mr. Anderson prays the next City Council works together as well as the current one does. You don't always agree but you work together toward common goals. Mr. Anderson, referenced the LA Times October 23rd Article, expressed disappointment that despite the City's effort to get the true information to the public the lies and rumors are still out there. Mr.

Anderson requested a white paper on Section 8 so he can help dispel those rumors.
Brenda Scott, NAMI Mt. San Jacinto Chapter, invited the City Council to participate in the NAMI walk on Saturday, October 29th at the Diamond Valley Lake. Ms. Scott thanked the Mayor and City Council for forming the Homeless Task Force. A recent poll showed that 85% of the homeless in Hemet are from Hemet, not bussed in.

Discussion/Action Item

16. **Establishment of an Other Post-Employment Benefits (OPEB) Trust and Establishing a Funding Policy** - Deputy City Manager/Administrative Services Director Hurst
    a. Adopt a resolution authorizing the establishment of an OPEB Trust to be administered by Public Agency Retirement Services (PARS) and U.S. Bank, and establishing a funding policy for the trust; and
    b. Appoint the City Manager as the City's Plan Administrator; and
    c. Authorize the City Manager to execute the documents necessary to implement the OPEB trust; and
    d. Select an investment strategy for contributions to the OPEB trust.
    Resolution No. 4721

Jessica Hurst, Deputy City Manager/Administrative Services Director, on October 11, after prior discussions regarding the OPEB Trust the City Council directed staff to bring back additional information and the documents necessary to establish an OPEB Trust with PARS. Staff is recommending adoption of the resolution authorizing participation in the PARS OPTEB Trust. The City Council will need to select an investment strategy for contributions and recommend initial and annual funding of the Trust. Staff is recommending that the City Council authorize the City Manager as the Plan Administrator and authorize the City Manager to execute documents to implement the Trust.
Mayor Pro Tem Raver, asked Judy Oltman, City Treasurer for her insight.
Judy Oltman, City Treasurer, recommended that the City Council start out moderate, not to conservative, for at least the active part. The City Council can move the money to more aggressive investments in the future.
The City Council and staff discussed the recommended investment amount of $750,000 and recommended an annual amount of $250,000 per year. The City Council can decide annually to increase or decrease the investment. Staff is waiting for the end of year-end audit to determine the Refuse Fund balance.
Council Member Youssef, asked about investment strategies for other Cities.
Dennis Yu, PARS, OPEB liabilities are viewed as long term liabilities. Most entities do not take a conservative approach. The Moderate Strategy is the most common followed by the Balanced Strategy which is a little more aggressive.
Council Member Youssef, asked if cities moved strategies, does this happen often during election years.
Mr. Yu, the common change in investment strategies is to move to a more aggressive strategy historically this happens once maybe a couple years after the initial investment. There were no deliberate changes in investment strategies during the 2014 or this year so far.
Council Member Krupa, asked if any cities do diversified portfolios.
Mr. Yu, most cities choose one of the 5 strategies otherwise they have to make a custom portfolio.

Christiane Ysuda, Highmark Capital, there is an Active and Passive version of all 5 investment strategies. In Active versions, mutual funds are predominantly used in the portfolio construction. In Passive versions exchange treated funds are used. Active versions will have higher imbedded fund fees. The benefit of having an actively managed portfolio with mutual funds is that a mutual fund manager is looking to beat the market by selecting investments. A Passive version is only trying to match the market.
Anne Smith, Hemet, asked if the City Council has decided on an Administrator and what the annual cost to the City will be.
Ms. Hurst, PARS will be the Trust Administrator. Staff is recommending that the City Council invest $250,000 annually.
Mayor Wright, confirmed that investment strategies will come back to the City Council periodically.
Ms. Hurst, updates will be done twice a year.
Council Member Youssef, recommended that the City Council consider the Balanced Active Strategy for the initial investment.
Mayor Pro Tem Raver, recommended that the City Council take the City Treasurer's recommendation and start with the Moderate Strategy.
Ms. Tsudo, the money is not invested all in one day, a three or four step approach entering in the market is recommended.
Mayor Pro Tem Raver, expressed concern over international affairs affecting the investments.
Council Member Youssef moved that the City Council approve A, B, C, and select the Balanced Active Strategy for D.
Mayor Pro Tem Raver offered a substitute motion to approve A, B, C and select the Moderate Strategy for D. The motion failed due to lack of a second.
Council Member Youssef's original motion was seconded by Council Member Krupa. Motion carried 4-1. Mayor Pro Tem Raver voted No.

17. **Municipal Code Amendment to Chapter 14 (Buildings and Building Regulations)** – Community Development Director Elliano
    a. Introduce, read by title only and waive further reading on an ordinance approving amendments to Chapter 14 of the Hemet Municipal Code (MCA 16-001), incorporating by reference the 2016 California Building Standards Code and various other uniform Building and Fire Codes, and local amendments thereto; and
    b. Direct staff to set the proposed ordinance for second reading at a noticed public hearing pursuant to Government Code Section 6066, for the November 15, 2016 City Council Meeting. **Ordinance Bill No. 16-086**

Deanna Elliano, Community Development Director, this is a Municipal Code amendment that was last done in 2013. Every three years the State of California updates all of the building, mechanical, plumbing code regulations. This ordinance incorporates those within the City's Municipal Code. California had only minor amendments to the codes this year. In addition to the State's minor changes, a couple of local amendments are being proposed. Municipalities can make findings to include local variations from the State Codes. There are three proposed. The first is Construction hours which were in the City's noise ordinance and then inadvertently dropped out. They will be included in the Building Code. The proposed hours are Monday through Saturday are 6:00 a.m. to 6:00 p.m. June to September and 7:00

a.m. to 6:00 p.m. October to May. Construction is prohibited on Sundays. These are the same hours the City has always had, this just re-establishes it back into the Municipal Code. The second amendment is regarding the Fire Sprinkler requirements. Several years ago, the Fire Chief lowered the threshold for sprinklers with good intentions. These requirements have been onerous for businesses to comply with. The recommendation is to re-adopt the State standard. The last is regarding Building addressing. The addressing requirements were 4 inches on residential or commercial. We have been requiring legible, lighted numbers. This incorporates these requirements in the Building Code. This ordinance requires introduction tonight and will come back as a public hearing item on November 15th for consideration.
The City Council and staff discussed the addresses and the street signs.
The City Council and staff discussed the construction times and variances. Exceptions can be made by Building Official.
Council Member Milne moved and Council Member Krupa seconded a motion to approve this item as presented. Motion carried 5-0.

18. **Licensing for Community Events on City Property** – Deputy City Manager/Administrative Services Director Hurst
    a. Introduce, read by title only and waive further reading of an ordinance adding Article 1 "Community Events on City Property" to Chapter 18 of the Hemet Municipal Code regarding regulatory licenses for community events conducted on City property; and
    b. Adopt a resolution to adopt licensing fees for community events conducted on City property. **Ordinance Bill No. 16-084 and Resolution Bill No. 16-088**

Jessica Hurst, Deputy City Manager/Administrative Service Director, staff is proposing a new license for community events held on city property. The fee would be for the organizer of the event and free for each vendors. The current fee process is labor intensive, this will streamline that process for events on city property only.
The City Council and staff discussed how the proposed fee will affect non-profit agencies. The ordinance as it is presented will charge all event organizers the fee.
Mayor Pro Tem Raver, recommended that this item be removed and exemptions for non-profit organizations be consider.
This Item was removed.

19. **Amendment of Fiscal Year 2015-16 Budget** – Deputy City Manager/Administrative Services Director Hurst
    a. Adopt a resolution amending the Fiscal Year 2015-16 Budget.
    Resolution No. 4722

Jessica Hurst, Deputy City Manager/Administrative Services Director, recommended amendments to the FY 15/16 budget. Since the mid-year budget changes and prior to the end of the fiscal year there were some liability claim settlements that expended the anticipate appropriations. These adjustments are part of the end of year audit. The non-general fund appropriations require City Council approval.
Mayor Pro Tem Raver, requested that City Manager Meyerhoff certify these recommendations.
Alex Meyerhoff, City Manager, the Deputy City Manager is the City's Financial Officer. Ms. Hurst has reviewed the recommendations that are based on the City's end of year audit that is being conducted by the City's Auditor's. Mr. Meyerhoff certified the recommendations.

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

20. **Quarterly Budget Update – As of September 30, 2016** – Deputy City Manager/Administrative Services Director Hurst
    a. Receive and file

Jessica Hurst, Deputy City Manager/Administrative Services Director, gave the City Council a quarterly financial update on FY 16/17 budget. The figures are unaudited as of this time. Additional, generally minor, adjustments necessary to close the accounting period may have been made after posting the report, they are generally minor. It is anticipated that 25% of the budget would be collected/expended through September. Actual figures will vary. To date 12.27% of anticipated General Fund revenue has been collected, sales tax and property tax collection timing varies. To date 24.71% of General Fund expenses have been expended, large purchases do not generally occur within the first quarter. The carry-forward of appropriations for unfinished, multi-year projects will be posted in the second quarter. The different natures of the other funds result in uneven revenue collection or spending dependent on the nature of the particular fund. There are approximately 40 additional funds citywide. Internal Service Funds revenue is $14.9 million and expenditures are $15.8 million. Special Revenue Funds have received $8.8 million and expended $10.7 million. The Water Fund has received $11.1 million (23.07%) and expended $10.2 million. Less than 25% of expenditures have been expended. Large projects and major purchases do not generally occur within the first quarter, including: Ground Water Management Plan, Capital Improvement Projects and Depreciation expense. Appropriations for unfinished, multi-year projects will be carried forward in the next quarter.

Mayor Wright, noted that unfilled vacancies are filled by overtime, 100% savings is not realized.

The City Council and staff discussed in detail the reasons that expenditures don't occur generally in the first quarter.

The City Council and staff diverted from discussion briefly to discuss the progress of the landscaping project at SunEdison's location on Sanderson and Acacia.

Council Member Youssef moved and Council Member Milne seconded a motion to receive and file this report. Motion carried 5-0.

City Council Reports

21. CITY COUNCIL REPORTS AND COMMENTS
    A. Council Member Krupa
        1. Riverside Conservation Authority (RCA)
        2. Ramona Bowl Association

"Boo at the Bowl" in collaboration with Valley Wide will be held on October 29th, 30th and 31st.

        3. Riverside Transit Agency (RTA)

RTA's Annual Roadeo was on Saturday. Competitive obstacle course where elected were invited to participate.

        4. Watermaster Board
        5. Library Board

The Library participated in the HarvestFest on Saturday. Trick or Treating for the Youth will be at 11:00 on October 27th. Family Story Time is October 28th at 3:30. The Friends of the Library will hold their semi-annual Book Sale this Saturday at 9:00 a.m.

6. League of California Cities
7. Riverside County Transportation Commission (RCTC)
8. Western Riverside Council of Governments (WRCOG)
9. Southern California Association of Governments (SCAG)

Visit San Jacinto Valley hosted 12 "Travel Bloggers". They stayed at Golden Village Palms and attended a number of tours and events.

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

Council Member Milne attended the local and the Palm Springs Memorial for the fallen officers.

C. Council Member Youssef
1. Planning Commission

Council Member Youssef collects comic books. The new book "The Flash" references Hemet.

D. Mayor Pro Tem Raver
1. Traffic and Parking Commission
2. Riverside Transit Agency (RTA)
3. Riverside County Transportation Commission (RCTC)
4. Watermaster Board

E. Mayor 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)

Streetlight Tours will be conducted on November 10th, 14th and 29th and December 7th.

6. Southern California Association of Governments (SCAG)
7. Homeless Task Force

Great meeting, more people have been asked to participate.

8. Skate Plaza Task Force

Mayor Wright attended the Harvest Festival which was an incredible event.
Habitat for Humanity announced the recipient for the next home.

The City's Veteran's Day Event will begin at 9:00 a.m. at Gibbel Park.

F. Ad-Hoc Committee Reports

1. Diamond Valley Lake Recreation Ad-Hoc Committee (January 27, 2015)

Council Member Krupa reported that staff is working on the Memorandum of Intent (MOI).

G. City Manager Meyerhoff

1. Manager's Reports
2. Staff Spotlight
3. Business/Industry Task Force
4. Public Safety Update

Fire Chief Brown, attended the Senior Health Safety and Wellness forum at Del Webb. The City participated in the Great ShakeOut on October 24th, followed by a small scale simulation in the EOC.

Police Chief Brown, "Tip a Cop" was a huge success, Hemet was one of the top three producers in the County. Hemet Police Department will participate in the NAMI Walk.

Police Chief Brown, reported on the incident described by Mr. Miller. On the scene was 32 years of experience. Determination on whether it was an accident or an assault with a deadly weapon charge has not been made. The incident is still under investigation and the case will be reviewed by the District Attorney.

5. Update on Future Agenda Items

Council Member Krupa, the memorial service for Don Basket, long time valley resident, former City Council Member, past President of the Hemet Chamber of Commerce will be held on November 5th.

Future Agenda Items

There were no future agenda items requested at this time.

Adjournment

Adjourned at 8:53 p.m. in honor of Don Basket to Tuesday, November 15, 2016 at 7:00 p.m. for consideration of items placed on that agenda.

#10

MINUTES

SPECIAL MEETING OF THE HEMET CITY COUNCIL

November 3, 2016

6:30 p.m.
City Hall Building Conference Room
445 E. Florida Avenue

www.cityofhemet.org
Please silence all cell phones

Call to Order

Mayor Wright called the meeting to order at 6:30 p.m.

Roll Call

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

Council Member Krupa moved and Council Member Milne seconded a motion to excuse Council Member Youssef and Mayor Pro Tem Raver. Motion carried 3-0

OTHERS PRESENT: City Manager Meyerhoff, City Attorney Vail, Fire Chief Brown and City Clerk McComas

Communications from the Public

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

Closed Session

Notice of Opportunity for Public Comment

There were no public comments presented at this time.
The City Council recessed to Closed Session at 6:30 p.m.

1. Conference with Legal Counsel - Anticipated Litigation
   One (1) matter of significant exposure to litigation pursuant to Government Code section 54956.9(d)(2) & (4)

The City Council reconvened at 7:25 p.m.

City Attorney Closed Session Report

2. Conference with Legal Counsel - Anticipated Litigation
   One (1) matter of significant exposure to litigation pursuant to Government Code section 54956.9(d)(2) & (4)

The City Attorney reported that after a briefing from the City Attorney and the Fire Chief. The City Council voted 3-0 to authorized the City Attorney to file an Answer in the following validation action and to otherwise defend the interests of the City in the following matter: The Idyllwild-San Jacinto Regional Fire Authority et. al., v. All persons interested in the matter of the proceeding etc., Case No. RIC 1612042. There was no additional reportable action.

Future Agenda Items

There were no future agenda items requested at this time.

Adjournment

Adjourned at 7:28 p.m. to Tuesday, November 15, 2016 at 7:00 p.m.

AGENDA
11

Staff Report

TO: Honorable Mayor and members of the City Council

FROM: Judith L. Oltman, City Treasurer

DATE: November 15, 2016

RE: Investment Portfolio as of September 2016

RECOMMENDED ACTION:

Receive and file.

ANALYSIS:
The summary statement of activity and balances of the Treasurer's Investment Portfolio for the month of September 2016 is forwarded herewith for your review.

On 9/1/16 our Port of Morrow Oregon and Harper Creek Community School District in the Reserve fund was moved to the General fund under the five year statute.

On 9/1/16 we purchased a 10 year/9 year call Muni #5039 Maryland Comm. Develop. Admin. Revenue Bond for $1,000,000 at a yield of 2.62 for the Reserve Fund. On 9/6/16 our Bank of Hemet CD matured and was rolled over for five years #3192 for $494,000 at .40%.

I hereby certify that this report accurately reflects all City of Hemet pooled investments and is in conformity with the investment policy of the City of Hemet and that a copy hereof is on file in the office of the City Clerk. Our third party custodial bank, Bank of New York Mellon, has provided us with the monthly market values.

It is further certified that there is sufficient liquidity to meet the next six months' estimated day-to-day operational expenses.

Respectfully Submitted,

Judith L. Oltman

Judith L. Oltman
City Treasurer

attachment

CITY OF HEMET, CALIFORNIA
Monthly Report of Investment Activities

SEPTEMBER 2016

INVESTMENT CLASSIFICATIONS	MONTHLY ACTIVITY	CONSOLIDATED BALANCE
PORTFOLIO AS OF AUGUST	60,328,247.76	
CERTIFICATES OF DEPOSIT		
Placed this month	494,000.00	
Matured this month	-494,000.00	
Balance		**6,934,000.00**
LOCAL AGENCY INVESTMENT FUND: City of Hemet		
Deposits		
Withdrawals		
Balance		**20,369,440.58**
BANK OF NEW YORK MELLON Custodial Acct.		
Deposits	42,914.81	
Withdrawals	-1,062,047.09	
Balance		**0.40**
CITIBANK: Money Market Account		
Deposits	42,615.04	
Withdrawals		
Balance		**438,216.54**
CITIBANK: Money Market Account 3		
Deposits	1,167,129.28	
Withdrawals	-1,000,000.00	
Balance		**6,303,618.48**
MUNICIPAL BONDS & NOTES		
Deposits	1,000,000.00	
Withdrawals		
Balance		**21,523,583.80**
GOVERNMENT AGENCIES		
2258 1.0% FNMA 4/30/18		**500,000.00**
2260 1.0% FNMA 5/21/18		**500,000.00**
2288 1.50% FNMA 3/16/16		**1,000,000.00**
2291 1.67% FFCB 6/14/21		**1,000,000.00**
2292 1.50% FFCB 7/6/21		**1,000,000.00**
2293 1.60% FHLMC 8/16/21		**950,000.00**
PORTFOLIO BALANCE AS OF AUGUST 2016	**60,518,859.80**	**60,518,859.80**

INTEREST EARNINGS	16-17 FISCAL YEAR-TO-DATE	
EARNINGS BALANCE AS S OF AUGUST 1, 2016		**-27,875.76**
CERTIFICATES OF DEPOSIT INT.	5,268.45	
OTHER GOVERNMENT SECURITIES	34,560.05	
CITIBANK MONEY MARKET ACCOUNT	51.05	
CITIBANK MONEY MARKET ACCOUNT 3	776.77	
BANK OF NY MONEY MARKET ACCT.	10.20	
ADJUSTMENT	0.40	
LOCAL AGENCY INVESTMENT FUNDS		
CITY OF HEMET INTEREST		
MONTHLY EARNINGS TOTAL	40,666.92	40,666.92
MEMO ONLY:		
SEIZED ASSETS	-15.49	
BANK CHARGES & INVESTMENT PREMIUMS		
16-17 YEAR-TO-DATE INTEREST EARNINGS		**12,791.16**

CITY OF HEMET
Portfolio Management
Portfolio Summary
September 30, 2016

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Certificates of Deposit - Bank	1,239,000.00	1,239,682.69	1,239,000.00	2.04	1,827	1,031	1.275	1.292
Managed Pool Accounts	20,369,440.58	20,369,440.58	20,369,440.58	33.56	1	1	0.542	0.550
Passbook/Checking Accounts	6,741,835.42	6,741,835.42	6,741,835.42	11.11	1	1	0.425	0.431
Local Government Bonds	13,523,583.80	13,998,617.49	13,660,593.57	22.50	2,404	1,839	2.462	2.496
Medium Term Notes	8,000,000.00	8,158,250.00	8,048,435.67	13.26	1,786	1,109	1.900	1.927
Federal Agency Issues - Coupon	4,950,000.00	4,936,139.50	4,950,000.00	8.15	1,826	1,487	1.433	1.453
Negotiable CDs	5,695,000.00	5,818,037.65	5,695,000.00	9.38	1,882	976	1.821	1.846
Investments	**60,518,859.80**	**61,262,003.33**	**60,704,305.24**	**100.00%**	**1,141**	**795**	**1.349**	**1.368**
Cash and Accrued Interest								
Accrued Interest at Purchase		25,690.88	25,690.88					
Subtotal		25,690.88	25,690.88					
Total Cash and Investments	**60,518,859.80**	**61,287,694.21**	**60,729,996.12**		**1,141**	**795**	**1.349**	**1.368**

Total Earnings	September 30 Month Ending	Fiscal Year To Date
Current Year	69,909.05	203,647.64
Average Daily Balance	**60,680,584.43**	
Effective Rate of Return	**1.40%**	

JUDITH L. OLTMAN, TREASURER

Reporting period 09/01/2016-09/30/2016

Run Date: 11/01/2016 - 15:15

Portfolio COFH
AP
PM (PRF_PM1) 7.3.0
Report Ver. 7.3.5

CITY OF HEMET
Portfolio Management
Portfolio Details - Investments
September 30, 2016

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
Certificates of Deposit - Bank												
06740KEX1	3146	BARCLAYS BANK DE		12/07/2011	247,000.00	247,580.65	247,000.00	1.900		1.902	67	12/07/2016
3192	3192	BANK OF HEMET		09/06/2016	494,000.00	494,000.00	494,000.00	0.400		0.400	1,801	09/06/2021
SYS3144	3144	BANK OF THE WEST		10/12/2011	249,000.00	249,102.04	249,000.00	1.750		1.750	11	10/12/2016
SYS2231	3190	CITADEL FEDERAL CREDIT UNION		10/20/2015	249,000.00	249,000.00	249,000.00	2.000		2.000	1,480	10/20/2020
		Subtotal and Average	**1,222,533.33**		**1,239,000.00**	**1,239,682.69**	**1,239,000.00**			**1.292**	**1,031**	
Managed Pool Accounts												
SYS1001	1001	LOCAL AGENCY INVESTMENT FUND			20,369,440.58	20,369,440.58	20,369,440.58	0.550		0.550	1	
		Subtotal and Average	**20,369,440.58**		**20,369,440.58**	**20,369,440.58**	**20,369,440.58**			**0.550**	**1**	
Passbook/Checking Accounts												
SYS5009	5009	BANK OF NEW YORK			0.40	0.40	0.40			0.000	1	
SYS5001	5001	Citibank			438,216.54	438,216.54	438,216.54	0.150		0.150	1	
SYS5004	5004	CITIBANK3			6,303,618.48	6,303,618.48	6,303,618.48	0.450		0.450	1	
		Subtotal and Average	**6,732,509.50**		**6,741,835.42**	**6,741,835.42**	**6,741,835.42**			**0.431**	**1**	
Local Government Bonds												
044555PA2	5025	ASHLAND OREGON		10/23/2014	1,145,000.00	1,174,117.35	1,134,894.77	2.800	AA	2.926	2,861	08/01/2024
048339SE6	5018	ATLANTIC CITY N.J.		06/02/2014	465,000.00	473,853.60	476,314.98	3.953	A	2.075	547	04/01/2018
048339SF3	5019	ATLANTIC CITY N.J		06/02/2014	440,000.00	450,678.80	456,441.17	4.253	A	2.651	912	04/01/2019
04780NHS9	5030	ATLANTA DEVELOPMENT AUTHORITY		07/09/2015	825,000.00	840,906.00	828,418.32	2.518	A	2.400	1,369	07/01/2020
13124MAH8	5026	CALLEGUAS CA MUNI WATER DIST		10/23/2014	745,000.00	762,231.85	755,465.10	2.601	AAA	2.201	1,369	07/01/2020
156792GW7	5027	CERRITOS COMMUNITY COLLEGE DIS		12/01/2014	1,260,000.00	1,334,025.00	1,269,893.74	2.971	AA	2.821	2,130	08/01/2022
404476HH9	5022	HABERSHAM COUNTY HOSPITAL AUTH		08/13/2014	795,000.00	808,729.65	797,994.30	2.250		2.080	853	02/01/2019
413450HY6	5034	HARPER CREEK COMM. SCH. DIST.		10/06/2015	600,000.00	626,292.00	604,912.97	2.743		2.550	1,673	05/01/2021
544587C30	5036	L.A. MUNI IMPROVEMENT CORP		11/30/2015	520,000.00	548,225.60	530,403.51	3.146		2.620	1,492	11/01/2020
57419RD28	5039	MARYLAND COMMUNITY		09/01/2016	1,000,000.00	1,013,560.00	1,019,208.58	2.863		2.641	3,622	09/01/2026
45462TEJ7	5032	INDIANA BOND BANK		09/15/2015	990,000.00	1,031,837.40	1,000,094.46	2.710	AA	2.501	1,932	01/15/2022
650035J66	5015	NEW YORK STATE REVENUE BONDS		03/25/2014	500,000.00	509,095.00	499,417.25	2.000		2.050	895	03/15/2019
64971WMC1	5031	NEW YORK CITY TRANSITIONA; FIN		08/03/2015	1,000,000.00	1,055,380.00	1,014,861.80	2.840		2.560	2,130	08/01/2022
73474TAG5	5033	PORT OF MORROW ORE TRANS FAC		09/14/2015	740,000.00	778,124.80	747,967.39	2.737		2.500	1,796	09/01/2021
767169DY8	5028	RIO RANCHO		02/12/2015	498,583.80	520,890.44	501,158.37	3.200	A	3.122	2,800	06/01/2024
786134VB9	5029	SACRAMENTO CO. SANITATION DIST		03/02/2015	1,000,000.00	1,051,700.00	1,017,030.22	2.810	AA	2.451	1,887	12/01/2021
13063CKL3	5017	STATE OF CALIFORNIA		05/16/2014	1,000,000.00	1,018,970.00	1,006,116.64	2.250		2.000	942	05/01/2019

CITY OF HEMET
Portfolio Management
Portfolio Details - Investments
September 30, 2016

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
		Subtotal and Average	**13,662,078.60**		**13,523,583.80**	**13,998,617.49**	**13,660,593.57**			**2.496**	**1,839**	
Medium Term Notes												
037833AQ3	5016	APPLE		05/15/2014	1,000,000.00	1,021,860.00	1,003,445.56	2.100		1.960	947	05/06/2019
084670BL1	5023	BERKSHIRE HATHAWAY		08/14/2014	1,000,000.00	1,022,370.00	1,002,714.49	2.100		2.000	1,047	08/14/2019
14912L6B2	5020	CATERPILLAR		06/09/2014	1,000,000.00	1,017,500.00	1,002,038.18	2.100	A	2.020	981	06/09/2019
36962G7G3	5014	G.E. CAPITAL CORP.		03/14/2014	500,000.00	512,435.00	504,903.32	2.300		1.932	835	01/14/2019
02665WAZ4	5035	AMERICAN HONDA FINANCE		10/23/2015	1,000,000.00	1,028,210.00	1,011,489.89	2.450		2.144	1,454	09/24/2020
68389XAN5	5010	ORACLE		03/28/2013	500,000.00	500,020.00	500,252.46	1.200		1.150	379	10/15/2017
90261XHE5	5024	UBS AG STAMFORD CT		08/18/2014	500,000.00	510,030.00	501,144.58	2.375		2.290	1,047	08/14/2019
92826CAB8	5037	VISA INC		12/15/2015	1,000,000.00	1,025,570.00	1,001,951.17	2.200		2.151	1,535	12/14/2020
94974BFG0	5013	WELLS FARGO		04/26/2013	500,000.00	500,635.00	500,934.10	1.500		1.350	472	01/16/2018
94974BGR5	5038	WELLS FARGO		04/01/2016	1,000,000.00	1,019,620.00	1,019,561.92	2.550	A	1.776	1,528	12/07/2020
		Subtotal and Average	**8,049,022.42**		**8,000,000.00**	**8,158,250.00**	**8,048,435.67**			**1.927**	**1,109**	
Federal Agency Issues - Coupon												
3133EGEX9	2291	FEDERAL FARM CREDIT BANKS		06/14/2016	1,000,000.00	1,000,010.00	1,000,000.00	1.670	AA	1.670	1,717	06/14/2021
3133EGKA2	2292	FEDERAL FARM CREDIT BANKS		07/06/2016	1,000,000.00	990,710.00	1,000,000.00	1.500	AA	1.500	1,739	07/06/2021
3134G9U70	2293	FEDERAL HOME LOAN MTG ASSOC.		08/16/2016	950,000.00	945,259.50	950,000.00	1.600	AA	1.600	1,780	08/16/2021
3135G0WN9	2258	FEDERAL NTL MORTGAGE ASSOC.		04/30/2013	500,000.00	499,925.00	500,000.00	1.000		1.000	576	04/30/2018
3135G0XG3	2260	FEDERAL NTL MORTGAGE ASSOC.		05/21/2013	500,000.00	500,015.00	500,000.00	1.000		1.000	597	05/21/2018
3136G3AN5	2288	FEDERAL NTL MORTGAGE ASSOC.		03/16/2016	1,000,000.00	1,000,220.00	1,000,000.00	1.500		1.500	1,627	03/16/2021
		Subtotal and Average	**4,950,000.00**		**4,950,000.00**	**4,936,139.50**	**4,950,000.00**			**1.453**	**1,487**	
Negotiable CDs												
02437PAG8	3173	AMERICAN NATIONAL BANK DALLAS		08/12/2013	248,000.00	247,689.65	248,000.00	1.250		1.251	315	08/12/2017
02587DWK0	3184	AMERICAN EXPRESS CENTURIAN		11/28/2014	247,000.00	255,864.21	247,000.00	2.200		2.012	1,154	11/29/2019
02587CAW0	3180	AMERICAN EXPRESS FSB		08/21/2014	247,000.00	254,492.25	247,000.00	2.100		2.101	1,054	08/21/2019
05580ACF9	3187	BMW BANK OF NORTH AMERICA, UT		07/17/2015	247,000.00	257,713.63	247,000.00	2.250		2.253	1,385	07/17/2020
0606247B3	3176	BANK OF BARODA N.Y.		11/12/2013	248,000.00	254,017.25	248,000.00	2.150		2.151	773	11/13/2018
856284-E3-4	3147	BANK OF INDIA NEW YORK		04/27/2012	248,000.00	249,157.19	248,000.00	2.000		2.001	208	04/27/2017
14042E4P2	3186	CAPITAL ONE NA		07/15/2015	247,000.00	258,162.10	247,000.00	2.300		2.303	1,383	07/15/2020
140420SQ4	3185	CAPITAL ONE		06/24/2015	247,000.00	257,120.08	247,000.00	2.200		2.202	1,362	06/24/2020
17037TDV6	3169	CHOICE FINANCIAL GROUP		11/20/2012	248,000.00	246,554.16	248,000.00	1.000		1.001	415	11/20/2017
20033AAG13	3168	COMENITY CAPITAL BANK		10/25/2012	249,000.00	247,647.33	249,000.00	1.050		1.065	389	10/25/2017
20451PEN2	3175	COMPASS BANK		09/25/2013	247,000.00	251,673.36	247,000.00	2.000		2.001	724	09/25/2018

CITY OF HEMET
Portfolio Management
Portfolio Details - Investments
September 30, 2016

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
Negotiable CDs												
20786AAL9	3177	CONNECTONE BANK N.J.		12/13/2013	247,000.00	251,579.85	247,000.00	1.850		1.851	803	12/13/2018
2546714X5	3181	DISCOVER BANK		08/27/2014	247,000.00	254,534.41	247,000.00	2.100		2.101	1,060	08/27/2019
29976DNY2	3166	EVERBANK		10/15/2012	248,000.00	246,557.26	248,000.00	1.000		1.001	380	10/16/2017
373128DS3	3167	GEORGIA BANK AND TRUST		10/17/2012	249,000.00	247,543.87	249,000.00	1.000		1.014	381	10/17/2017
38148JBU4	3183	GOLDMAN SACHS		11/05/2014	247,000.00	255,303.13	247,000.00	2.150		2.151	1,127	11/02/2019
40434AZA0	3189	HSBC BANK USA NA		09/25/2015	248,000.00	257,052.74	248,000.00	2.500		2.502	3,281	09/25/2025
628779FJ4	3178	NBT BANK		06/06/2014	247,000.00	252,038.26	247,000.00	1.800		1.801	978	06/06/2019
700654AV8	3182	PARK NATIONAL BANK		09/26/2014	249,000.00	255,667.27	249,000.00	2.100		2.099	906	03/26/2019
74267GUQ8	3179	PRIVATEBANK & TRUST CO.		07/21/2014	247,000.00	253,625.70	247,000.00	2.000		2.001	1,024	07/22/2019
795450XG5	3191	SALLIE MAE		12/09/2015	247,000.00	258,045.30	247,000.00	2.200		2.202	1,530	12/09/2020
87165FJG0	3188	SYNCHRONY BANK		07/31/2015	247,000.00	258,192.46	247,000.00	2.300		2.303	1,399	07/31/2020
909557CL2	3170	UNITED BANKERS' BANK		11/29/2012	249,000.00	247,806.19	249,000.00	1.100		1.115	424	11/29/2017
		Subtotal and Average	**5,695,000.00**		**5,695,000.00**	**5,818,037.65**	**5,695,000.00**			**1.846**	**976**	
		Total and Average	**60,680,584.43**		**60,518,859.80**	**61,262,003.33**	**60,704,305.24**			**1.368**	**795**	

CITY OF HEMET
Portfolio Management
Portfolio Details - Cash
September 30, 2016

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity
		Average Balance	0.00	Accrued Interest at Purchase		25,690.88	25,690.88				0
				Subtotal		25,690.88	25,690.88				
	Total Cash and Investments		60,680,584.43		60,518,859.80	61,287,694.21	60,729,996.12			1.368	795

CITY OF HEMET
Received Interest
Sorted by Issuer - Grouped by Fund
Received September 1, 2016 - September 30, 2016

Issuer	CUSIP	Investment #	Security Type	Par Value	Current Rate	Interest Date Due	Interest Date Received	Interest Amount Due	Interest Amount Received	Interest Variance
Fund: General Fund										
BANK OF HEMET	SYS3174	3174	BCD	0.00	0.500	09/06/2016	09/13/2016	209.78	209.78	-
							Subtotal	**209.78**	**209.78**	
BANK OF THE WEST	SYS3144	3144	BCD	249,000.00	1.750	09/12/2016	09/13/2016	370.09	370.09	-
							Subtotal	**370.09**	**370.09**	
CITADEL FEDERAL CREDIT UNION	SYS2231	3190	BCD	249,000.00	2.000	08/30/2016	09/13/2016	422.96	422.96	-
							Subtotal	**422.96**	**422.96**	
COMENITY CAPITAL BANK	20033AAG13	3168	NC2	249,000.00	1.050	09/25/2016	09/27/2016	225.14	222.05	-3.09
							Subtotal	**225.14**	**222.05**	
COMPASS BANK	20451PEN2	3175	NC2	247,000.00	2.000	09/25/2016	09/27/2016	2,490.30	2,490.30	-
							Subtotal	**2,490.30**	**2,490.30**	
CONNECTONE BANK N.J.	20786AAL9	3177	NC2	247,000.00	1.850	09/13/2016	09/20/2016	388.09	388.09	-
							Subtotal	**388.09**	**388.09**	
FEDERAL NTL MORTGAGE ASSOC.	3136G3AN5	2288	FAC	1,000,000.00	1.500	09/16/2016	09/20/2016	7,500.00	7,500.00	-
							Subtotal	**7,500.00**	**7,500.00**	
GEORGIA BANK AND TRUST	373128DS3	3167	NC2	249,000.00	1.000	09/17/2016	09/20/2016	214.42	211.48	-2.94
							Subtotal	**214.42**	**211.48**	
AMERICAN HONDA FINANCE	02665WAZ4	5035	MTN	1,000,000.00	2.450	09/24/2016	09/27/2016	12,250.00	12,250.00	-
							Subtotal	**12,250.00**	**12,250.00**	
NEW YORK STATE REVENUE BONDS	650035J66	5015	NCB	500,000.00	2.000	09/15/2016	09/20/2016	5,000.00	5,000.00	-
							Subtotal	**5,000.00**	**5,000.00**	

CITY OF HEMET
Received Interest
Received September 1, 2016 - September 30, 2016

Issuer	CUSIP	Investment #	Security Type	Par Value	Current Rate	Interest Date Due	Interest Date Received	Interest Amount Due	Interest Amount Received	Interest Variance
Fund: General Fund										
PARK NATIONAL BANK	700654AV8	3182	NC2	249,000.00	2.100	09/26/2016	09/27/2016	444.11	444.11	-
							Subtotal	**444.11**	**444.11**	
PORT OF MORROW ORE TRANS FAC	73474TAG5	5033	NCB	740,000.00	2.737	09/01/2016	09/05/2016	10,126.90	10,126.90	-
	73474TAG5	5033	NCB	740,000.00	2.737	09/05/2016	09/13/2016	0.00	-316.85	-316.85
							Subtotal	**10,126.90**	**9,810.05**	
							General Fund Subtotal	**39,641.79**	**39,318.91**	
Fund: hEMET RESERVE FUND										
HSBC BANK USA NA	40434AZA0	3189	NC2	248,000.00	2.500	09/15/2016	09/15/2016	-33.97	-33.97	-
	40434AZA0	3189	NC2	248,000.00	2.500	09/25/2016	09/27/2016	526.58	543.56	16.98
							Subtotal	**492.61**	**509.59**	
							hEMET RESERVE FUND Subtotal	**492.61**	**509.59**	
							Total	**40,134.40**	**39,828.50**	
							Total Cash Overpayment	**16.98**		
							Total Cash Shortfall	**-322.88**		

CITY OF HEMET
Received Interest
Received September 1, 2016 - September 30, 2016

Issuer	CUSIP	Investment #	Security Type	Par Value	Current Rate	Interest Date Received	Interest Amount Received
Cash Accounts							
Fund: General Fund							
BANK OF NEW YORK	SYS5009	5009	PA1	0.40		09/12/2016	10.20
						Subtotal	**10.20**
Citibank	SYS5001	5001	PA1	435,040.49	0.150	09/30/2016	51.05
						Subtotal	**51.05**
CITIBANK3	SYS5004	5004	PA1	6,173,493.84	0.450	09/30/2016	776.77
						Subtotal	**776.77**
						General Fund Subtotal	**838.02**
						Total	**838.02**

Local Agency Investment Fund
P.O. Box 942809
Sacramento, CA 94209-0001
(916) 653-3001

www.treasurer.ca.gov/pmia-laif/laif.asp
November 01, 2016

CITY OF HEMET

CITY TREASURER
445 EAST FLORIDA AVENUE
HEMET, CA 92543-4209

PMIA Average Monthly Yields

Account Number:
98-33-362

Tran Type Definitions

September 2016 Statement

Account Summary

Total Deposit:	0.00	Beginning Balance:	20,369,440.58
Total Withdrawal:	0.00	Ending Balance:	20,369,440.58

HEMET SUCCESSOR AGENCY to
Former Hemet Redevelopment Project Area
Cash W/Fiscal Agent: MUFG Union Bank N.A.
2014 Hemet Refunding Project TAB Series A

		Riverside County Public Financing - Fiscal Agent					City of Hemet as SA to former Hemet RDA							
								496-8005-4100	496-8005-4200	496-1508	496-1506	496-1506	496-1510	
		6712115701	6712115702	6712115703	6712115704	6712115705	6712115800	6712115801	6712115802	6712115803	6712115804	6712115805	6712115806	
Date	Activity	Revenue Fund	Interest Fund	Principal Fund	Bond Purchase Fund	Cost of Issuance Fund	SA to Hemet RDA 2014 TTE	Debt Service Fund	Interest Account	Principal Account	Reserve Account	Redemption Account	Refunding Fund	TOTAL All Accounts
7/31/2016	Interest													0.00
	Interfund transfer													0.00
	Debt Service from SA Hemet Redev													0.00
	Debt Service Pmt													0.00
	Wire from COH													0.00
														0.00
	SA to Redevelopment Agy													0.00
	BALANCE	0.00	0.00	0.00	10,529,999.00	0.00	0.02	0.00	15.45	0.00	0.00	0.00	0.00	15.47
8/31/2016	Interest													0.00
	Interfund transfer							-679,106.43	209,106.43	470,000.00				0.00
	Debt Service from SA Hemet Redev													0.00
	Debt Service Pmt													0.00
	Wire from COH							679,106.43	-209,106.43	-470,000.00				0.00
									-15.45					-15.45
	SA to Redevelopment Agy													0.00
	BALANCE	0.00	0.00	0.00	10,529,999.00	0.00	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.02
9/30/2016	Interest							46.38	16.22	36.47				99.07
	Interfund transfer							-46.38	82.85	-36.47				0.00
	Debt Service from SA Hemet Redev													0.00
	Debt Service Pmt													0.00
	Wire from COH													0.00
														0.00
	SA to Redevelopment Agy													0.00
	BALANCE	0.00	0.00	0.00	10,529,999.00	0.00	0.02	0.00	99.07	0.00	0.00	0.00	0.00	99.09

Morgan Stanley Prime Instl	10,529,999.00	
Municipal Bond Insurance - BAM	1.00	not carried on City books
Held by Fiscal Agent	10,530,000.00	
	0.00	

CITY OF HEMET
Cash W/Fiscal Agent: US BANK
2006 Refunding Bonds Series Heartland Project

Date	Activity	103852000 788-1508 Bond	103852001 788-1508 Prepayment	103852002 Special	103852003 788-1510 Escrow	103852004 788-1502 Cost of	103852005 788-1506 Reserve	TOTAL
7/31/2016	Interest							0.00
	Transfer funds							0.00
	City of Hemet							0.00
	Debt Service							0.00
	Khov prepay (31 lots)							0.00
	Trust fees							0.00
	BALANCE	0.00	0.00	1,109,593.12	0.00	0.00	274,141.25	1,383,734.37
8/31/2016	Interest							0.00
	Transfer funds							0.00
	City of Hemet							0.00
	Debt Service			(550,953.75)				(550,953.75)
	Khov prepay (31 lots)							0.00
	Trust fees							0.00
	BALANCE	0.00	0.00	558,639.37	0.00	0.00	274,141.25	832,780.62
9/30/2016	Interest							0.00
	Transfer funds	(550,953.75)						(550,953.75)
	City of Hemet	550,953.75						550,953.75
	Debt Service							0.00
	Khov prepay (31 lots)							0.00
	Trust fees							0.00
	BALANCE	0.00	0.00	558,639.37	0.00	0.00	274,141.25	832,780.62

First American Treasury Oblig	832,780.62	
US Treasury Notes, various		not carried on COH books
Misc Assets	1.00	
	832,781.62	
Cash held by FA, net of Escrow acct	832,780.62	
	0.00	

AGENDA # 12

Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Jessica A. Hurst, DCM/Administrative Services
Alexander P. Meyerhoff, City Manager

DATE: November 15, 2016

RE: Warrant Register

The City of Hemet's warrant register dated October 27, 2016 in the amount of $881,992.78 is currently posted on the City's website in the Finance Department section, under *Financial Information.* Payroll for the period of September 26, 2016 to October 9, 2016 was $626,180.70.

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

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

AGENDA # 13

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Jessica A. Hurst, Deputy City Manager / Administrative Services
Alexander P. Meyerhoff, City Manager

DATE: November 15, 2016

RE: Renewal of annual support and maintenance for Microsoft Enterprise Software Licensing

RECOMMENDED ACTION:

It is respectfully requested that the City Council:

1. Approve year two of the three-year Microsoft Enterprise Software License Agreement by and between the City of Hemet (City) and SoftwareONE (vendor) in the amount of $92,229.64.
2. Authorize the City Manager to approve purchase orders in support of this purchase.

BACKGROUND:

On November 10, 2015, City Council approved a three-year Microsoft Enterprise Agreement (EA) based upon a competitive bidding process by the County of Riverside. The EA provides the Microsoft licenses for software used by all City staff. The EA also provides volume discounting, software upgrades and simplifies software licensing compliance. Procurement of the three-year Microsoft Enterprise Agreement (EA) is completed through three annual payments.

Over the last four years, the City has taken advantage of the benefits made available through the Microsoft Enterprise Licensing Agreement (EA). Technology projects have been successfully completed without delay through utilization of the EA's licensing flexibility. City staff continue to benefit from the EA's Microsoft Home Use Program (HUP) and certified training hours. These benefits provide training opportunities that increase employee productivity throughout the City.

FISCAL IMPACT:

Funding for the second annual payment of the three year Microsoft EA (Enterprise Agreement) in the amount of $92,229.64 is budgeted in FY 16/17 in fund 680-1930-2265 (Information Technology – Software Maintenance).

Respectfully submitted,

Scott Underwood
I.T. Supervisor

Fiscal Review:

Jessica A. Hurst
Deputy City Manager/
Administrative Services

Attachment(s):

1. SoftwareONE - Microsoft EA – Year 2 quote

softwareONE
The Software Licensing Experts

Quoted by Michael Hawkins, SoftwareONE, Inc.
***Phone*: 858-527-8293 *Email*: Michael.Hawkins@softwareone.com**

Please fax your POs to our Client Assistance Center at 800-366-9994 or email to: statestore@compucom.com - Call 800-400-9852, option 2, to check status on orders.

Quoted to: **City of Hemet**
Scott Underwood
sunderwood@cityofhemet.org
951-765-3765

Date Issued ***10/26/2015***

Microsoft EA Year 2 Annual Payment Quote

Important: Please provide the email address of the recipient designated to receive a CompuCom "order confirmation"

Quantity	*Part #*	*Description*	*Unit Price*	*Ext. Price*
		Enteprise Products		
330	269-12442	Office Professional Plus (SA) - Platform	$ 79.48	$ 26,228.40
330	KV3-00353	Windows Enterprise (SA) - Platform	$ 35.08	$ 11,576.40
317	W06-01072	Core CAL User CAL (SA) - Platform	$ 39.18	$ 12,420.06
		Additional Products		
1	076-01912	Project Standard (SA)	$ 97.57	$ 97.57
11	076-01776	Project Standard (L+SA)	$ 209.75	$ 2,307.25
4	P73-05898	Windows Server Standard (SA) 2-Proc	$ 131.76	$ 527.04
3	P73-05897	Windows Server Standard (L+SA) 2-Proc	$ 307.51	$ 922.53
8	P71-07282	Windows Server Datacenter (SA) 2-Proc	$ 919.64	$ 7,357.12
4	P71-07280	Windows Server Datacenter (L+SA) 2-Proc	$ 2,145.78	$ 8,583.12
1	312-02257	Exchange Server Standard (SA)	$ 105.67	$ 105.67
1	5HU-00216	Skype for Business Server (SA)	$ 544.57	$ 544.57
8	7NQ-00292	SQL Server Standard Core (SA) 2-Core License	$ 535.58	$ 4,284.64
4	7NQ-00302	SQL Server Standard Core (L+SA) 2-Core License	$ 1,249.68	$ 4,998.72
4	D87-01159	Visio Professional (SA)	$ 83.47	$ 333.88
15	D87-01057	Visio Professional (L+SA)	$ 179.41	$ 2,691.15
1	H04-00232	SharePointSvr ALNG LicSAPk MVL	$ 2,369.52	$ 2,369.52
150	6VC-01252	WinRmtDsktpSrvcsCAL ALNG LicSAPk MVL UsrCAL	$ 45.88	$ 6,882.00
		Sold on the Riverside County (CCISDA/MISAC) Microsoft Enterprise Agreement		
		Please type "electronic software delivery" on your PO		
	Product-total			$ 92,229.64
	Sub-Total			$ 92,229.64
0	Tax	ESD - nontaxable (suggest download-only EA term)		
	Shipping			No Charge
	Total	**Year 2 Annual Installment Total**		**$ 92,229.64**

Pass-Through Warranty and Other Rights. As a reseller, end-user warranties and liabilities (with respect to any third party software products provided by SoftwareONE) shall be provided as a pass-through from the manufacturer of such products. All software products are subject to the license agreement of the applicable software supplier, as provided with the software packaging or in the software at time of shipment.

AGENDA # 14

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Jessica A. Hurst, Deputy City Manager / Administrative Services
Alexander P. Meyerhoff, City Manager

DATE: November 15, 2016

RE: Renewal of annual support and maintenance for Tyler Technologies Eden ERP Financial Software.

RECOMMENDED ACTION:

It is respectfully requested that the City Council:

1. Approve the annual support and maintenance for continued use of the Tyler Technologies Eden ERP Financial Software in the amount of $57,860.09 and,
2. Authorize the City Manager to approve purchase orders in support of this purchase.

BACKGROUND:

For over 20 years, the City of Hemet has used Tyler Technologies Eden software as it's enterprise resource planning (ERP) system. Eden is a modular system, providing software specifically tailored to each function or use. The integration of these modules provides a centralized system able to provide accurate, up-to-date data in real-time. Integration between modules also eliminates the need for manual import and export of data between systems.

While Eden is the primary software solution used by the City for financial management, its use is truly city-wide. In addition to general accounting and budgeting, Eden software modules support general ledger, accounts payable, CASS (Coding Accuracy Support System for street address accuracy), accounts receivable, human resources, fixed assets, parcel manager, purchasing/procurement, business Incensing, utility billing and payroll.

Through special interfaces, Eden connects to other City software to automate a variety of tasks An interface for the City's cashiering system (Progressive Solutions) allows of the posting of online and over-the counter payments to Eden accounts. Eden also connects the City's CRW Software, used by Planning, Code Enforcement and Building & Safety Divisions. This connectivity allows the Eden system to check for unpaid fees before allowing permits to be issued.

FISCAL IMPACT:

Funding for annual support and maintenance of Tyler Technologies Eden ERP Financial Software in the amount of $57,860.09 is budgeted in FY 16/17 in Fund 680-1930-2265 (Information Technology – Software Maintenance).

Respectfully submitted,

Scott Underwood
I.T. Supervisor

Fiscal Review:

Jessica A. Hurst
Deputy City Manager,
Administrative Services

Attachment(s): Tyler Technologies Invoice Proforma

Empowering people who serve the public®

Remittance
Tyler Technologies, Inc.
(FEIN 75-2303920)
P.O. Box 203556
Dallas, TX 75320-3556

THIS IS NOT AN INVOICE
PROFORMA

Company	Order No.	Date	Page
045	84595	09/30/2016	1 of 2

Questions
Tyler Technologies - ERP & Schools
Phone: 1-800-772-2260 Press 2, then 1
Fax: 1-866-673-3274
Email: ar@tylertech.com

To: City of Hemet
445 E Florida Avenue
Hemet, CA 92543-4209

Ship To: City of Hemet
445 E Florida Avenue
Hemet, CA 92543-4209

Customer Grp/No.		Customer PO#	Payment Terms	Currency Code	Ship Via	Salesperson Cd
1	5158		Net 30	USD	MISC	

No.	Item/ Description/ Comments	Drop Ship	# Users	Quantity	U/M	Unit Price	Disc %	Total Cost
Contract No.: HEMET, CITY OF								
1	Renewal: EDEGADMN501 Administration Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	4,839.25	.00	4,839.25
2	Renewal: EDEGAREC501 Accounts Receivable Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	1,613.09	.00	1,613.09
3	Renewal: EDEGCASS501 CASS Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	2,603.22	.00	2,603.22
4	Renewal: EDEGCREG501 Cash Register Interface Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	440.34	.00	440.34
5	Renewal: EDEGDICT501 Data Dictionaries Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	393.06	.00	393.06
6	Renewal: EDEGFXAS501 Fixed Assets Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	2,964.89	.00	2,964.89
7	Renewal: EDEGGLAP501 GL/AP Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	8,065.42	.00	8,065.42
8	Renewal: EDEGHHLD501 Handhelds Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	440.34	.00	440.34
9	Renewal: EDEGHRIS501 Human Resources Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	5,284.00	.00	5,284.00

Empowering people who serve the public®

Remittance
Tyler Technologies, Inc.
(FEIN 75-2303920)
P.O. Box 203556
Dallas, TX 75320-3556

THIS IS NOT AN INVOICE PROFORMA

Company	Order No.	Date	Page
045	84595	09/30/2016	2 of 2

Questions
Tyler Technologies - ERP & Schools
Phone: 1-800-772-2260 Press 2, then 1
Fax: 1-866-673-3274
Email: ar@tylertech.com

No.	Item/ Description/ Comments	Drop Ship	# Users	Quantity	U/M	Unit Price	Disc %	Total Cost
10	Renewal: EDEGLICS501 Licensing Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	5,871.11	.00	5,871.11
11	Renewal: EDEGPARC501 Parcel Manager Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	1,467.76	.00	1,467.76
12	Renewal: EDEGPURC501 Purchasing Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	1,613.09	.00	1,613.09
13	Renewal: EDEGPYPC501 Payroll/Position Control Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	10,259.74	.00	10,259.74
14	Renewal: EDEGUTBL501 Utility Billing Support **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	10,274.42	.00	10,274.42
15	Renewal: EDEWHRIS501 Human Resources Support Web **Maintenance Plan: ; Start: 01/01/2017, End: 12/31/2017; Term: 12 months**	No	1	1	EA	1,730.36	.00	1,730.36

Does not include any applicable taxes **Order Total:** 57,860.09

We would like to continue on the current maintenance plan

- ☐ Our Purchase Order is enclosed
- ☐ Our Purchase Order is _____.
- ☐ Purchase Order is not required to be invoiced

AN INVOICE WILL BE SENT AFTER CONFIRMATION OF ORDER

Comments:

AGENDA # 15

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Jessica A. Hurst, Deputy City Manager / Administrative Services
Alexander P. Meyerhoff, City Manager

DATE: November 15, 2016

RE: Renewal of annual support and maintenance for ESRI Small Government Enterprise Licensing.

RECOMMENDED ACTION:

It is respectfully requested that the City Council:

1. Approve year two of the three year ESRI Small Government Enterprise Licensing Agreement (SGELA) by and between the City of Hemet (City) and Environmental Systems Research Institute (ESRI) in the amount of $50,000.
2. Authorize the City Manager to approve purchase orders in support of this purchase.

BACKGROUND:

On October 13, 2015, the City Council approved a three-year ESRI Small Government Enterprise Licensing Agreement (SGELA). The SGELA provides ESRI Geographic Information System (GIS) licensing used to map data for various analytical processes utilized by City departments. The SGELA also provides volume discounting, software upgrades and simplifies software licensing compliance. Procurement of the ESRI Small Government Enterprise Licensing Agreement (SGELA) is completed through three annual payments.

Over the last year, the City has taken advantage of the benefits made available through the ESRI Small Government Enterprise Licensing Agreement (SGELA). Cartegraph Operations Management System (OMS) utilized by the Public Works Department heavily relies on this system. We are currently integrating ESRI GIS connectivity into the City's ERP system and anticipate increased use by the Public Safety Departments.

FISCAL IMPACT:

Funding for the second annual payment of the three-year ESRI SGELA (Small Government Enterprise License Agreement) in the amount of $50,000 is budgeted in FY 16/17 in fund 680-1930-2265 (Information Technology – Software Maintenance).

Respectfully submitted,

Scott Underwood
I.T. Supervisor

Fiscal Review:

Jessica A. Hurst
Deputy City Manager,
Administrative Services

Attachment(s):

1. ESRI Renewal Quotation #25764454 – Year 2 quote

Esri Inc
380 New York Street
Redlands CA 92373

Subject: Renewal Quotation

Date: 11/02/2016
To: Scott Underwood
Organization: City of Hemet
Information Technology Dept
Fax #: **Phone #:** 951-765-3765

From: Shantae Pearson
Fax #: 909-307-3083 **Phone #:** 909-793-2853 Ext. 2830
Email: spearson@esri.com

Number of pages transmitted (including this cover sheet): 3

Quotation #25764454
Document Date: 11/02/2016

Please find the attached quotation for your forthcoming term. Keeping your term current may entitle you to exclusive benefits, and if you choose to discontinue your coverage, you will become ineligible for these valuable benefits and services.

If your quote is regarding software maintenance renewal, visit the following website for details regarding the maintenance program benefits at your licensing level
http://www. esri.com/apps/products/maintenance/qualifying.cfm

All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your coverage at a later date.

Please note: Certain programs and license types may have varying benefits. Complimentary User Conference registrations, software support, and software and data updates are not included in all programs.

Customers who have multiple copies of certain Esri licenses may have the option of supporting some of their licenses with secondary maintenance.

For information about the terms of use for Esri products as well as purchase order terms and conditions, please visit
http://www. esri.com/legal/licensing/software-license.html

If you have any questions or need additional information, please contact Customer Service at 888-

380 New York Street
Redlands, CA 92373
Phone: 909-793-28532830
Fax #: 909-307-3083

Quotation

Date: 11/02/2016 **Quotation Number:** 25764454 **Contract Number:** SMALL GOVT ELA US

Send Purchase Orders To:
Environmental Systems Research Institute, Inc.
380 New York Street
Redlands, CA 92373-8100
Attn: Shantae Pearson

Please include the following remittance address on your Purchase Order:
Environmental Systems Research Institute, Inc.
File #54630
Los Angeles, CA 90074-4630

City of Hemet
Information Technology Dept
445 E Florida Ave
Hemet CA 92543
Attn: Scott Underwood

Customer Number: 106473
For questions regarding this document, please contact Customer Service at 888-377-4575.

Item	Qty	Material#	Unit Price	Extended Price

Per the terms and conditions in your Esri Enterprise License Agreement, your organization is required to provide an annual usage report. This report should detail all deployments made under this agreement for your previous term, and should be provided to Esri as an Excel spreadsheet.

The annual usage report must include actual license counts by product, licensee, and location.

Please return your report via email to ela_usage_reports@esri.com.

Thank you in advance for your prompt attention to this matter.

10	1	110037 Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement Start Date: 10/26/2016 End Date: 10/25/2017	50,000.00	50,000.00

Item Subtotal	50,000.00
Estimated Tax	0.00
Total	**$ 50,000.00**

DUNS/CEC: 06-313-4175 CAGE: 0AMS3

This quotation is good for 90 days.

Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

Issued By: Shantae Pearson **Ext:** 2830

[PEARSONS]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

380 New York Street
Redlands, CA 92373
Phone: 909-793-28532830
Fax #: 909-307-3083

Quotation

Date: 11/02/2016 **Quotation No:** 25764454 **Customer No:** 106473 **Contract No:** SMALL GOVT ELA US

Item	Qty	Material#	Unit Price	Extended Price

IF YOU WOULD LIKE TO RECEIVE AN INVOICE FOR THIS MAINTENANCE QUOTE YOU MAY DO ONE OF THE FOLLOWING:

- RESPOND TO THIS EMAIL WITH YOUR AUTHORIZATION TO INVOICE
- SIGN BELOW AND FAX TO 909-307-3083
- FAX YOUR PURCHASE ORDER TO 909-307-3083
- EMAIL YOUR PURCHASE ORDER TO Service@esri.com

REQUESTS VIA EMAIL OR SIGNED QUOTE INDICATE THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION AND THAT YOUR ORGANIZATION DOES NOT REQUIRE A PURCHASE ORDER.

If there are any changes required to your quotation, please respond to this email and indicate any changes in your invoice authorization.

If you choose to discontinue your support, you will become ineligible for support benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your support coverage at a later date.

This transaction is governed exclusively by the terms of your signed agreement with Esri, if any, or, where applicable, Esri's standard terms and conditions at www.esri.com/legal; such terms are incorporated in this quotation by reference. Acceptance is limited to the terms of this quotation. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. State of California government entities may purchase under the terms of http://www.esri.com/~ /media/Files/Pdfs/ legal/pdfs/addendums/california.pdf, titled Addendum to State of California Purchases. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer or confirmation sent or to be sent by buyer.

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

By signing below, you are authorizing Esri to issue a software support invoice in the amount of $_____ plus sales tax, if applicable.

Please check one of the following:

_____ I agree to pay any applicable sales tax.

_____ I am tax exempt. Please contact me if Esri does not have my current exempt information on file.

_____ _____
Signature of Authorized Representative Date

_____ _____
Name (Please Print) Title

[PEARSONS]

AGENDA # 16

Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Jessica A. Hurst, DCM/Administrative Services
Alexander P. Meyerhoff, City Manager

DATE: November 15, 2016

RE: Destruction of Certain Records

RECOMMENDATION:

Administrative Services Department respectfully requests that the City Council adopt Resolution Bill No. 16-089 authorizing the destruction of certain records.

BACKGROUND:

Government code Section 34090 allows the destruction of records which are no longer needed by the City. The Finance Division and the City Attorney have reviewed records described in "Exhibit A" and approve the destruction.

FISCAL IMPACT:

There is no fiscal impact.

Respectfully submitted,

Jessica A. Hurst
DCM/Administrative Services

Attachments: Resolution Bill No. 16-089
Exhibit A – Records Destruction Form

JAH: mh

CITY OF HEMET
Hemet, California
RESOLUTION BILL NO. 16-089

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA, AUTHORIZING THE DESTRUCTION OF CERTAIN RECORDS"

WHEREAS, Government Code Section 34090 authorizes the destruction of records which are no longer needed by the City; and

WHEREAS, the destruction of such records is from time to time required;

NOW, THEREFORE, be it resolved as follows:

Unless otherwise provided by law, with the written consent of the City Attorney, the Head of a City Department may destroy any city record, document, instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required.

This resolution does not authorize the destruction of:

A) Records affecting the title of real property or liens thereon

B) Court records

C) Records required to be kept by statute

D) Records less than (2) years old

E) The minutes, ordinances, or resolutions of the legislative body or of a City Board or Commission.

A list of the records requested for destruction is attached as "Exhibit A"

This section shall not be construed as limiting or qualifying in any manner the authority provided in Section 34090.5 of the Government Code for the destruction of records, documents, instruments, books and papers in accordance with the procedure therein prescribed.

PASSED, APPROVED, AND ADOPTED this 15th day of November, 2016.

Bonnie Wright, Mayor

ATTEST:

Sarah McComas, City Clerk

APPROVED AS TO FORM:

Eric S. Vail, City Attorney

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

I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the foregoing Resolution is the actual Resolution adopted by the City Council of the City of Hemet and was passed at a regular meeting of the City Council on the 15th day of November, 2016 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Sarah McComas, City Clerk

Date: 2016 Department: Administrative Services Exhibit A

RECORDS DESTRUCTION FORM

The records listed below are scheduled to be destroyed:

File #	Records Description	Start Date	End Date	Retention Period	DEPT
	Accounts Payable Warrant AA Equipment ~ A Misc	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant B & W Pipe ~ B Misc	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant CDPH ~ Demco	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant Desert Safe ~ Gillepsie	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant Goar ~ Hunter	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant H Misc ~ Master K9	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant Mayers Glass ~ Pitney Bowes	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant Plumbers Depot ~ R Misc	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant SEIU~ T Misc	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant USA Blue Book ~ Willdan	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant Wires ~ Z Misc	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant Baker & Taylor & Cintas	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant Nextel & Verizon CA	07/01/2010	06/30/2011	Audit +4	Finance
	Accounts Payable Warrant Staples & SCEdison	07/01/2010	06/30/2011	Audit +4	Finance
4BOXES	AP CANCELLED CHECKS	2001	2004	AU + 5	Finance
2BOXES	ACCOUNTING CASH RECEIPTS	2009	2011	AU + 5	Finance
1 BOX	ACCOUNTS RECEIVABLES	2010	2011	AU + 4	Finance
1 BOX	CLAIMS A – Z	Jan 2009	Dec 2009	CL + 5	Finance
1 BOX	CLAIMS A – Z	Jan 2010	Dec 2010	CL + 5	Finance
1 BOX	CDBG	7/1/2010	6/30/2011	CL+ 4	CDBG
1 BOX	PURCHASE ORDERS	7/1/2010	6/30/2011	AU + 4	Purchasing
13BOXES	UB ACCOUNTS-WATER BILLING	7/1/2012	6/30/2013	CL + 2	UB
18BOXES	ACCOUNTING UB CASH RECEIPTS	7/1/2013	6/30/2014	CL + 2	UB

©2006 Gladwell Governmental Services, Inc.

Date: 2016 Department: Administrative Services

__X__ Shredding is Required (Records contain private information)

DOCUMENTS HAVE BEEN REVIEWED AND APPROVED FOR DESTRUCTION

Jessica A Hurst 11-2-16

Department Head / Division Manager Date

11-2-16

City Attorney Date

(Complete bottom portion after destruction has been performed, if done by City Employees. If destruction is performed by a commercial vendor, have them provide you with a certificate)

I HEREBY CERTIFY that the items listed have been destroyed in accordance with City policies and procedures.

Employee Date

Return this form to the City Clerk's Office after completion.

AGENDA # 17

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Alex Meyerhoff, City Manager
Deanna Elliano, Community Development Director

DATE: November 11, 2016

RE: Approval of Fourth Amendment to the Consultant Services Agreement between the City of Hemet and BMLA, Inc. to extend the term for Contract Planning Services

RECOMMENDED ACTION:

It is respectfully requested that the City Council:

1. *Approve the Fourth Amendment to the Consultant Services Agreement between the City of Hemet and BMLA, Inc., maintaining the original contract pricing and extending the term of the Agreement to June 30, 2017, and;*

2. *Authorize the City Manager to execute the Fourth Amendment to the Consultant Services Agreement with BMLA, Inc.*

BACKGROUND:

The City originally entered into a one-year contract with the consulting firm BMLA, Inc. on November 1, 2014 for contract planning services that have been provided to the City by the assigned planning consultant, Mr. Ron Running. A major portion of the consultant's time and services are associated with assisting the Community Development Director in processing complex development projects that are still on-going, and include the review of the Draft Hemet Ryan Airport Land Use Plan, the MSHCP coordination efforts in West Hemet, and various development projects.

The original contract approved in November, 2014 was for a not to exceed amount of $48,000. On April 28, 2015 the First Amendment to the contract was approved which extended the contract period to the end of the Fiscal Year 2014-2015 (June 30, 2015) and allowed for an additional $20,000 in compensation. A Second Amendment was approved by Council on July 28, 2015 which extended the period to December 31, 2015 and increased the compensation an additional $50,000 for a total contract amount not to exceed $118,000. The funding for this contract has primarily been through developer-paid deposit accounts associated with the specific projects, or budgeted funds in the Planning Division Professional Services account. A Third Amendment to the contract extended the term to June 30, 2016, but did not increase the total contract amount or rate of compensation.

The Planning Division is seeking an amendment to the contract term to June 30, 2017 in order to continue the various ongoing projects, and expend the remaining contract amount of $14,530. No additional compensation or increase to the contract amount is being requested with this Fourth Amendment to the contract.

BMLA's services have consistently provided exceptional and timely professional expertise to the Planning Division, and continue to meet all elements of the contract and the Division's customer service objectives. The contract has provided the City with a high degree of planning expertise, knowledge of the City, and professionalism at a very reasonable cost.

FISCAL IMPACT:

No additional compensation or funding allocation is requested for this amendment to the contract. The Amendment is only an extension of the term, which if approved, will expire on June 30, 2017. The Department's use of contract planning consultants on a limited basis for specialized projects enables us to achieve quality results at the lowest possible cost to the City.

Respectfully submitted,

Deanna Elliano
Community Development Director

Fiscal Review:

Lorena Rocha for Jessica Hurst

Jessica Hurst
Deputy City Manager/Admin Services Director

Attachment:

1) Proposed Third Amendment to Agreement for Consultant Services with BMLA, Inc.

FOURTH AMENDMENT TO CONSULTANT SERVICES AGREEMENT

by and between

the

CITY OF HEMET

and

BMLA, Inc.
A California Corporation

For Contract Planning Services

November 15, 2016

FOURTH AMENDMENT TO CONSULTANT SERVICES AGREEMENT

This Fourth Amendment to Consultant Services Agreement ("Fourth Amendment"), which is dated for reference as indicated on the cover page, is hereby entered into by and between the CITY OF HEMET, a California general law city ("City"), and BMLA, Inc. a California Corporation ("Consultant"), as follows:

RECITALS

A. City and Consultant entered in an agreement for planning consultant services on November 1, 2014 ("Agreement"). The Agreement provides that the Contractor will assist the Planning Division of the Community Development Department with advanced planning projects and other specified projects as set forth in the Scope of Services.

B. Section 1 of the original Agreement set the term of the agreement as ending June 30, 2015 and Section 4 established compensation through the end of the term for a not-to-exceed amount of $48,000.

C. The First Amendment, dated April 28, 2015, amended Section 2 and Exhibit A to add additional tasks to the Scope of Services, and amended Section 4 to add additional compensation of up to $20,000, for a total not-to-exceed contract amount of $ 68,000.

D. The Second Amendment, dated July 28, 2015, amended Section 1 to extend the term of the contract to December 31, 2015, amended Section 2 to update the scope of services, and Section 4 to increase the compensation accordingly by an additional $50,000, for a total contract amount not to exceed of $118,000.

E. The Third Amendment amends Section 1 to extend the term of the contract to June 30, 2016, and amends Section 2 and Exhibit A to further update the scope of services.

F. This Fourth Amendment amends Sections 1 to extend the term of the contract to June 30, 2017 to allow additional time to complete contract planning services under the contract. There is no change in the rate or amount of compensation, or the total contract amount.

OPERATIVE PROVISIONS

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

1. **AMENDMENT.** The Agreement is hereby modified and amended as follows:

   1.1 **Section 1.** Section 1 of the Agreement is hereby amended to read as follows:

"Subject to the provisions of Section 20 "Termination of Agreement" of this Agreement, the Term of this Agreement shall end on June 30, 2017."

2. GENERAL PROVISIONS.

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

2.2 **Integration**. This Fourth Amendment consists of pages 1 through 4 inclusive, which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the transaction discussed in this Second Amendment.

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

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

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

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

CITY OF HEMET

By: _____
Alex Meyerhoff, City Manager

Date: _____

ATTEST:

By: _____
Sarah McComas, City Clerk

Date: _____

APPROVED AS TO FORM:

_____
Eric S. Vail, City Attorney

CONSULTANT:
BMLA, Inc.

By: _____
Baxter Miller,
President

By: _____
Debra L. Dematteis-Miller,
CFO/Treasurer

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

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

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____
TITLE(S)

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER_____

_____

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

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

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

☐ personally known to me - OR - ☐ 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.

WITNESS my hand and official seal.

_____

(SIGNATURE OF NOTARY)

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____
TITLE(S)

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER_____

_____

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

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

AGENDA # 18

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Alex Meyerhoff, City Manager
Kathye Caines Sr. Librarian/Library Manager

DATE: November 15, 2016

RE: Purchase of EnvisionWare 24/7 Book Kiosk

RECOMMENDATION:
It is recommended that the City Council approve the purchase of $300,000 for EnvisionWare's 24/7 Book Kiosk as approved in the 2016-17 Capital Improvement Plan using Development Impact Fees.

BACKGROUND:
The Library has been tasked with identifying alternative methods to extend service to patrons while working within the current budget and staffing. This purchase will enhance the Library's hours by providing requested material and high demand items through an automated kiosk regardless of the day and time. This purchase includes 5 years of maintenance, making the kiosk a trouble free part of the Library. Additionally, it assists the City in meeting the library's goals to provide the community with the materials and services necessary for self-education, informed decision-making, and recreation.

FISCAL IMPACT:
No impact to the General Fund as purchases are paid from Library Facilities Development Impact Fees, fund account 363-6100 as budgeted for FY 2016-17.

Respectfully submitted,

Kathye Caines

Kathye Caines Sr. Librarian/Library Manager

AGENDA # 19

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Alexander Meyerhoff, City Manager
Eric Vail, City Attorney
Steve Latino, City Engineer
Deanna Elliano, Community Dev. Dir.

DATE: November 15, 2016

RE: Peppertree Project Tract 29843 – Amendment to Takeover Agreement

RECOMMENDATION:

That the City Council:

Approve the attached Amendment to the Takeover Agreement and authorize the City Manager to execute the Agreement on behalf of the City.

BACKGROUND:

The Peppertree Project, located at the northwest corner of Menlo and Cawston, was approved by the City on August 26, 2003, and comprises a Specific Plan (SP-01-03) and Tract Map 29843 encompassing the entire 82.5 acre property. It is a gated, senior community of single family homes and multi-family units with several on-site amenities including two swimming pools and a clubhouse. Portions of the project were partially constructed and nine homes were built, sold and are currently occupied. Shortly thereafter, the lender foreclosed on the construction loan, the developer filed for bankruptcy and the property was then taken over by a Court-appointed Receiver.

In 2011 - 2012, after the property emerged from bankruptcy, the City, EMWD, and the Peppertree Homeowners Association called their bonds for both public and private improvements and ultimately negotiated a Takeover Agreement with the Bond Company, ICW. The Takeover Agreement includes a scope of work – known as Exhibit C – which outlines all of the on and off-site improvements ICW agreed to complete according to its obligations under the bonds. The improvements ICW was obligated to complete and repair can be divided into work to be done according to the different bonds as follows:

A. <u>Peppertree Homeowners Association Bond</u>

- **Common Area Facilities:**
  - The main recreation building
  - Two community pools
  - The on-site private street system
  - Dry utilities (such as gas, electrical and communications)
  - Main entry pedestrian gates
  - Guard house and entry gates
  - Landscaping / sidewalks
  - Perimeter walls and fences

B. <u>EMWD Bond</u>

- **Sewer and Water System**

C. <u>City Bond</u>

- **Storm Drain System**
  - On-site underground drainage system
  - Retention basin pump system
- **Menlo and Cawston Streets**
  - Repair and complete City streets, sidewalks, curb, gutter and related landscaping
  - Streetlights

<u>ANALYSIS:</u>

ICW and its construction contractors have been able to repair and complete some significant improvements at the Peppertree Project. Most importantly, the water and sewer system has been completely repaired and has now been accepted by EMWD. Additionally, repair work has been done on some of the on-site improvements such as the on-site streets and some of the existing structures. ICW's contractors have also completed partial public improvements on Menlo and Cawston, including sidewalks and driveway installation.

However, there are several on-going disputes among ICW, the Peppertree HOA and the City with respect to whether some of the remaining work has been satisfactorily completed or whether ICW should be released from additional items included in the scope of work. The parties have been meeting over an extensive period of time in a good-faith attempt to resolve these disputes over the remaining work to be done and which entity has the obligation to complete them.

After lengthy negotiations, the parties have now reached an agreement which sets forth the remaining obligations to resolve the disputes. Under the terms of the attached Amendment to the Takeover Agreement, both the Peppertree HOA and the City agree to release ICW from its obligations under the respective bonds once ICW completes work related to the perimeter walls and fences, the on-site storm drain system (including v-ditches and catch basins), testing of the retention basin pump system and payment to the City in the amount of $160,884.10 to cover work to be done related to the retention basin pump system and Menlo street lights / landscaping. If the testing of the retention basin pump system shows that it functions properly then the amount to be paid to the City by ICW will be reduced by $39,717.18.

The parties also agree that the remaining on-site Common Area work must be completed in order for the City to issue certificates of occupancy for any of the existing facilities and remaining dwelling units. This work will be performed by the developer/property owner of the project. Further, the parties agree that the City will not be responsible for any repair work to the on-site streets, as these streets are private and will not be accepted into the City's street system.

Representatives from the City's Community Development Department, City Attorney's office and the Engineering Department have been involved in the resolution of this dispute and the development of the attached Amendment to the Takeover Agreement, and recommend approval of the same.

Respectfully submitted,

Eric S. Vail

City Attorney

Steve Latino

Director of Engineering

Deanna Elliano

Community Development Director

Attachment(s): Amendment to Takeover Agreement

RIV #4823-3964-2683 v2

AMENDMENT TO TAKEOVER AGREEMENT FOR PEPPERTREE PROJECT
Specific Plan (SP-01-03) and Tract Map 29843

WHEREFORE, the parties hereto previously entered into a certain Takeover Agreement (hereinafter, the "TOA") which provided certain rights and responsibilities allocated among the parties with respect to the development located on Tract 29843 in the City of Hemet, County of Riverside, State of California (hereinafter, the " Project"). In particular, the TOA contained an "Exhibit C" setting forth certain responsibilities for Insurance Company of the West (hereinafter, "ICW") to complete in connection with bonds issued by ICW in favor of certain other parties: the Peppertree Community Association (hereinafter, the "HOA"); the City of Hemet (hereinafter, "City"); and the Eastern Municipal Water District (hereinafter, "EMWD"). While EMWD has released ICW from further work thereunder, the remaining parties (ICW, HOA, and City collectively may be referred to as the "Parties") hereto desire to amend certain portions of Exhibit C to the TOA, in order to finalize ICW's work thereunder, resolve all disputes among the Parties and discharge the Parties' rights and obligations under the TOA and the subject bonds, except as expressly reserved herein.

1. Common Area Work

As full and final performance of ICW's obligations to the HOA relating to the Takeover Agreement and the completion of common facilities bond, bond no. 2209809 issued by ICW naming the HOA as obligee ("HOA Bond"), ICW agrees to complete the scope of work attached as Exhibit "1" to this Agreement and incorporated by reference as though set forth in full at this point ("HOA Closeout Work").

1.1. Vertical Common Area Improvements

Exhibit C to the TOA, Section I, identifies certain work to be performed by ICW for the benefit of the HOA, including work relating to portions of the common area of the Subject Project known as the main recreation building and pool, the La Ronda Cabana and pool, and the guard house. Pertinent subsections required ICW to obtain final inspection and certificate of occupancy as to the particular facility, none of which have been obtained. However, upon completion of the HOA Closeout Work described more fully herein, the HOA releases ICW from any additional work to be performed, including the responsibilities of obtaining inspections or certificates from the City or other governing entities. The HOA acknowledges that certificates of occupancy will not be issued for any of the relevant facilities until the work required under Exhibit C to the TOA, Section I is completed to the satisfaction of the City.

1.2 Private Streets

Exhibit C to the TOA, Section I, subsection H relates to work on the internal streets in the development and required work to be performed by ICW. ICW procured a contractor to perform certain work and repairs on the streets marked with blue and red on the map of the Subject Project attached to this Agreement as Exhibit 3.

Upon completion of the HOA Closeout Work described more fully herein, the HOA releases ICW from any obligation to perform any work on the streets which was not completed prior to the Effective Date.

In conjunction therewith, the City agrees that any previous certifications or other documentation received from or on behalf of ICW and/or the original developer as to the streets marked blue and red on Exhibit 3 hereto are sufficient with respect to grading, subsurface soil compaction, and any other certifications required by the City. The City further agrees that the streets or portions thereof marked as blue on Exhibit 3 hereto are considered complete and may not serve as the basis to delay issuance of certificates of occupancy for any existing common area facility. The Parties understand and acknowledge that the internal streets in the Project are private and are not being dedicated into the City street system for purposes of repair or maintenance obligations. The City makes no representations or warranties, express or implied, as to the existing conditions of the internal streets.

The City's agreement contained herein with respect to the streets marked in blue and red shall not discharge the owner(s) of the same from any repairs necessitated by failures of or damage to said streets in the future, including during construction activities. ICW is not required to perform any future overlay, clean/tack or repair work. Further, this agreement includes no representation as to the work necessary for certificates of occupancy as to standing inventory of private residences, which includes overlay on the red portions of the attached Exhibit 3 along with installation of a ribbon gutter and associated repairs thereafter on certain portions of Poppyseed Way and Corriander Drive currently shaded blue. The extent of work to be performed for issuance of certificates of occupancy of the standing inventory shall be separately agreed between the City and the owner of the Project.

2. Off-site Work

As full and final performance of ICW's obligations to the City relating to the Takeover Agreement and ICW bonds numbered 217 40 51, 217 40 52 and 217 64 24, naming the City as obligee ("City Bonds"), ICW agrees to: (1) complete the scope of work attached as Exhibit "2" to this Agreement and incorporated by reference as though set forth in full at this point ("City Closeout Work"); and (2) within 15 days of approval of this Agreement by the City , ICW will provide payment to the City of $160,884.10 (the "City Credit Sum"), as shown on Exhibit "2" via a single check payable to "The City of Hemet," delivered to the City Manager.

2.1 The City shall appoint the Engineering Director / City Engineer (which is currently Steve Latino) to act as the City's authorized agent and representative for the HOA Closeout Work and the City Closeout Work. The Parties acknowledge and agree that the HOA Closeout Work and City Closeout Work is warranty and/or punchlist work such that ICW is not required to procure any new or additional permits in order to complete the HOA Closeout Work and City Closeout Work.

3. RELEASES

3.1 City Bonds Release. Upon completion of the City Closeout Work and payment of the City Credit Sum, and except as reserved in Section 3.5 below, the City shall fully release and exonerate the City Bonds in the form provided in the bond release letter (notarized and placed on City letterhead) attached as Exhibit "5" to this Agreement and incorporated by reference as though set forth in full at this point, in addition to any other releases and discharges contained in the Agreement. Upon such occurrence, the City acknowledges that ICW has fully and finally completed its obligations to the City under the City Bonds, except as set forth in this Agreement.

3.2 City Release. Upon ICW's completion of the City Closeout Work and payment of the City Credit Sum, and except as reserved in Section 3.5 below, the City releases and discharges all claims of every kind whatsoever (including without limitation claims for breach of contract, negligence, delay, extra work, surety bond claims, liquidated damages, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which the City or any of its agents, shareholders, representatives, employees, predecessors, successors and/or assigns, asserts or could assert against ICW, its contractors, agents, shareholders, representatives, sureties, insurers, employees, predecessor, successors and/or assigns, based upon or arising out of any matter or event occurring on or prior to the Effective Date and relating to the Project, the TOA, the City Closeout Work or the City Bonds ("City Release").

3.3 HOA Release. Upon completion of the HOA Closeout Work, and except as reserved in Section 3.5 below, the HOA releases and discharges all claims of every kind whatsoever (including without limitation claims for breach of contract, negligence, delay, extra work, surety bond claims, liquidated damages, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which the HOA or any of its agents, shareholders, representatives, employees, predecessors, successors and/or assigns, asserts or could assert against ICW or the City, or their contractors, agents, shareholders, representatives, sureties, insurers, employees, predecessor, successors and/or assigns, based upon or arising out of any matter or event occurring on or prior to the Effective Date and relating to the Project, the TOA, the HOA Closeout Work or the HOA Bond ("HOA Release").

3.4 ICW Releases. Concurrent with the City Release and the HOA Release, and except as reserved in Section 3.5 below, ICW releases and discharges all claims of every kind whatsoever (including without limitation claims for breach of contract, negligence, delay, extra work, surety bond claims, liquidated damages, compensatory damages, interest, penalties, punitive damages, specific performance, injunctive or declaratory relief, costs, attorneys' fees and/or expert fees) whether known or unknown, which ICW or any of its agents, shareholders, representatives, employees, predecessors, successors and/or assigns, asserts or could assert against the City, the Association, their contractors, agents, shareholders, representatives, sureties, insurers,

employees, predecessors, successors and/or assigns, based upon or arising out of any matter or event occurring on or prior to the Effective Date and relating to the Project, the TOA, the City Closeout Work, the HOA Closeout Work, the City Bonds or the HOA Bonds ("ICW Release").

3.4.1 Released Matters. The City Release, the HOA Release and the ICW Release are collectively referred to as the "Released Matters."

3.5 Matters Not Included In The Released Matters

3.5.1 The Released Matters do not include and the Parties do not discharge, waive or otherwise negate any contractual warranty, indemnity or insurance obligation which may exist under the TOA and survive completion of the HOA Closeout Work and the City Closeout Work, including latent deficiencies as defined in Code of Civil Procedure section 337.15, defenses, and warranties as set forth in the TOA. Further, the Released Matters do not include ICW's defenses or claims by ICW against its subcontractors, suppliers or manufacturers with respect to work under the TOA or this Agreement. Nothing herein shall be construed as creating or extending any liability on behalf of ICW for latent defects in work performed prior to the TOA or for which the statutes of limitation and/or repose have expired.

3.5.2 ICW confirms that paragraphs 4 and 6 of the TOA remains in full force and effect. Pursuant thereto, any Completion Contractors or Design Professionals (as defined in the TOA) shall be required to obtain insurance as set forth thereunder naming as additional insureds the Notice Parties, as defined in the TOA but replacing "Central Pacific Bank" and the Douglas Williams entities with the current owner of the Project, Golden Harbor Estate, LLC. Further, ICW's duty to indemnify, hold harmless and defend against claims for payment by entities contracted for under the TOA or this Agreement by ICW shall remain in effect, including for any legal and beneficial owners of the Project.

3.5.3 Nothing in this Agreement modifies or releases any of ICW's rights or obligations to any parties other than the City and the HOA under ICW bond numbers 2176415, 2176425, 2176426 ("EMWD Bonds").

3.6 Waiver Of Rights Pursuant To Civil Code Section 1542

With respect to the Released Matters, the Parties expressly waive any and all rights which they may have under the provisions of section 1542 of the California Civil Code, which section reads as follows:

> *A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.*

Thus, with knowledge of the provisions of section 1542, and for the purpose of implementing a full and complete release of the Released Matters, the Parties acknowledge this Agreement is intended to include in its effect, without limitation, all of the claims that were or could have been raised, even those which the Parties did not know of or suspect to exist in its favor at the time of execution of this Agreement and that this Agreement contemplates extinguishment of all such claims that were or could have been raised, even those which would have materially affected the releasing Party's decision to enter into this Agreement.

4. Time is of the Essence

The work contemplated herein must be completed by ICW such that it can be inspected by the City on or before February 1, 2017. The City shall provide all inspections required under this Agreement in a timely and prompt manner upon two (2) business days advance notice, and shall not unreasonably withhold any approval required hereunder. Under no circumstances shall ICW, the City or the HOA be responsible to another Party for any consequential damages arising out of or relating to the failure to complete or inspect the City Closeout Work or the HOA Closeout Work by February 1, 2017, including without limitation claims for lost profits, lost funding, diminution in value, lost sales or any indirect or consequential damages of any kind whatsoever arising out of or relating to the delayed completion of the City Closeout Work or the HOA Closeout Work. In the event of an act of God, force majeure or other unforeseeable event beyond the reasonable control of ICW or its completion contractor, which delays the critical path of the City Closeout Work or the HOA Closeout Work, ICW will be granted a day by day extension of time to complete the City Closeout Work and/or HOA Closeout Work.

5. GENERAL PROVISIONS

5.1 Admissibility Of Release

No evidence of this Agreement or any of its terms, and no evidence of any discussion or communications made or information or materials transmitted in the course of negotiations for this Agreement, shall be admissible or presented in any action or proceeding between the Parties as evidence that a Party breached the TOA or this Agreement other than in an action for the enforcement of this Agreement.

5.2 No Reliance

Each Party acknowledges: (i) this Agreement is the resolution of a fully matured set of facts and each Party individually declares and represents it is executing this Agreement in reliance solely on its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Agreement; (ii) this Agreement is made without reliance upon any statement or representation not contained in this Agreement of any other Party, or any representative, agent or attorney of any other Party; (iii) no promise, inducement or agreement not expressed in this Agreement has been made to

any Party; and (iv) the recitals, terms and conditions contained in this Agreement are contractual and not mere recitals.

5.3 Discovery

Each Party acknowledges it may subsequently discover facts different from, or in addition to, those which it now believes to be true with respect to the Released Matters, and agree this Agreement shall be and remain effective in all respects notwithstanding such different or additional facts.

5.4 Opportunity For Advice Of Attorneys

Each Party further represents, warrants and agrees that in executing this Agreement, it does so with full knowledge of any and all rights which it may have with respect to the other Party and that each Party has received, or had the opportunity to receive, independent legal advice from such Party's attorneys with respect to the facts involved in the controversy compromised by this Agreement and with regard to such Party's rights and asserted rights arising out of such facts.

5.5 Assignment Of Rights

Each Party represents and warrants it has not assigned its rights in any of its claims against the other to any other person or entity and each Party has full authority to bind the Party for which it signs to this Agreement.

5.6 Entire Agreement

The provisions of this Agreement, including its incorporation of the TOA between the Parties, constitute the entire agreement between the Parties and supersede all prior negotiations, proposals, agreements and understandings regarding the subject matter of this Agreement.

5.7 Execution In Counterparts

This Agreement may be signed by the Parties in multiple counterparts, all of which shall be taken together as a single document. A facsimile signature constitutes an original and all evidentiary objections to same other than for authenticity of signature are waived.

5.8 No Promise Or Warranty

No promise or warranty shall be binding on any Party except as expressly contained in this Agreement.

5.9 Attorneys' Fees

Should either Party initiate any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, costs and necessary disbursements against the non-prevailing Party, in addition to any other appropriate relief.

5.10 Modification

No modification of this Agreement shall be valid unless agreed to in writing by the Parties.

5.11 Surety Not A Contractor

The Parties acknowledge ICW is acting as a surety to complete the HOA Closeout Work and the City Closeout Work, and waive any claim they might have that ICW is acting as a contractor as defined under the California Business & Professions Code.

THE PARTIES CERTIFY THAT EACH HAS READ THE ENTIRETY OF THIS AGREEMENT AND FULLY UNDERSTANDS AND AGREES TO EACH AND ALL OF ITS TERMS.

DATED: _____, 2016 **Insurance Company of the West**

By: _____
Its: _____

DATED: _____, 2016 **Peppertree Community Association**

By: _____
Its: _____

DATED: _____, 2016 **City of Hemet**

By: _____
Alexander P. Meyerhoff
City Manager

ATTEST:

_____
Sarah McComas
City Clerk

Exhibit 1

Common Area Improvements

1. Perimeter Wall and Fences

Exhibit C to the TOA, Section I, subsection I.5. required ICW to "complete perimeter walls and fences" including modification of block wall along rear portion of development. In connection with the releases and other terms of this Agreement, ICW agrees to engage a contractor to complete said repairs and modifications, subject to inspection and approval by the City's Building Department. ICW will ensure all work required hereunder will be completed no later than February 1, 2017. Said work shall consist of, as generally depicted on Exhibit 3 hereto:

1.1 Replacing the masonry wall portion of the perimeter fencing along the northwestern and western edges of the Subject Project, as marked in green on Exhibit 3, with fencing panels and masonry columns to match the fencing along Menlo Avenue and Cawston Avenue. Includes removal of wall footings and disposal of masonry wall demolition. Existing masonry columns to remain. The fencing will match the existing vinyl material and color. Spacing and construction of new masonry columns will match existing masonry columns.

1.2 Completing installation of missing but required masonry columns and fencing panels along southwestern edge of Subject Project up to Menlo Avenue, as marked in orange on Exhibit 3. Spacing of masonry columns to match existing up to 100' OC. Fencing and masonry columns to match existing.

1.3 Repairing and/or replacing any damaged or missing portions of fencing around the entire perimeter of the Subject Project to ensure a fully enclosed perimeter fencing system. Take down, roll up and deliver to HOA all temporary chain link fencing along perimeter.

1.4 ICW will engage a licensed surveyor to stake the final locations of the columns and perimeter fencing. The surveyor shall inspect the site with the City's authorized representative and ICW's authorized representative, and stake the locations of the columns and perimeter fence.

1.5 ICW shall install the columns and perimeter fencing in accordance with the surveyor's staking as approved by the City's authorized agent/representative and the HOA's authorized agent/representative. As a result of the Parties inability to identify a final, approved drawing for the fence location, the mutually agreed-upon fence location described in this paragraph shall be the final approved location of the fence. A marked-up site plan will be submitted after construction to serve as an "as-built" plan for the City's records, but is not intended to be and may not be construed as a design document.

2. Storm Drain System

Exhibit C to the TOA, Section II, subsection A required ICW to "[r]epair/complete on and off-site storm drain system, including all structures..." to the satisfaction of, among others, the City. In connection with the releases and other terms of this Agreement, ICW agrees to procure a contractor to complete the "off-site" storm drain system along the northwestern and western portions of the Subject Project, as set forth in Exhibit 4 hereto, subject to inspection and acceptance by the City's Engineering Department. ICW will ensure all work required hereunder will be completed no later than February 1, 2017, subject to the waiver of consequential damages set forth in Paragraph 4 of this Agreement. Said work shall consist of:

2.1 Completion of all necessary v-ditches along the border of the development and connection of v-ditches to the existing catch basins, particularly the v-ditches marked in red on Exhibit 4 hereto along the northern edge of Poppyseed Way and the northwestern and western edges of the Monte Verde and La Ronda portion of the Subject Property.

2.2 The three (3) "off-site" system catch basins marked in red on Exhibit 4 hereto will be connected to the appropriate v-ditches, repaired and/or cleaned subject to the satisfaction and acceptance of the City.

2.3 The underground conduits leading from the "off-site" system catch basins in red on Exhibit 4 hereto will be cleaned to the satisfaction and acceptance of the City.

2.4 The City's authorized agent/representative shall provide ICW with all approved drawings showing the locations of the required v-ditches and catch basins.

2.5 ICW shall use the licensed surveyor described in paragraph 3.4 of this Exhibit 1 to stake the locations of the required v-ditches in cooperation with the City's authorized agent/representative.

Exhibit 2

City Closeout Work

Takeover Agreement, Ex. "C" Item Number	Description Of Closeout Work To Be Performed by ICW by February 1, 2017
(II)(C)	Retention Basin Pump System. The retention basin pump system will be re-tested by ICW's contractor in presence of City staff in order to verify that the system functions properly, including connecting the pump and controls, providing temporary power, any necessary cleaning of the vault, and demonstration of pump operations in the presence of a manufacturer's representative. The operation of the Retention Basin Pump System is subject to the approval of the City, which will not be unreasonably withheld. Upon successful completion of the pump re-testing, the City will take possession of the pump and ICW shall have no further responsibility for its maintenance and preservation. Also upon successful completion of the pump re-testing, the Credit Sum due to the City shall be reduced by $39,717.18. Landscaping in the pump system area will be restored, but such restoration shall be limited to the extent landscaping has been damaged or removed for extension of Edison power to the vault.
IIC(8)	Construct 14' PVC Gate matching existing fencing and masonry columns at fire access road on north side of property.
IIC(9)	Remove existing fence
IV(B)(6)	Install "Pavement Ends" signs at the westerly end of Menlo Ave.

"Credit Sum"

A. Storm Drain System

Item	Cost
Off-site pump system and electrical service on the south side of Menlo Avenue.	
Electrical service fee – Edison	$ 3,742.28
Installation of the electrical service and wiring	$10,000.00
The pump and controls. *(Credit for the pump and controls will be deleted if demonstration shows the pump is functional.)*	$39,717.18
Sub Total	**$53,459.46**

B. Menlo Street Lights

Item	Cost
Electrical service fee – Edison	$3,323.84
Installation of the electrical service and wiring	$10,000.00
Installation of the three (3) street lights	$5,000 each (*including conduits and wiring, for a total of $15,000.00 for 3 street lights*).
Sub Total	**$28,323.84**

C. **Menlo Landscaping**

Item	Quantity	Unit	Unit Cost	Total Cost
Landscape & Irrigation	12,700	S.F.	$3.50/S.F.	$44,500
Electric Meter	1	EA.	$10,000	$10,000
RP Device and Enclosure	1	EA.	$2,000	$2,000
Service Connection	1	EA.	$475	$475
Standard Meter Installation	1	EA.	$7,000	$7,000
Meter Pedestal for Irrigation System	1	EA.	$500	$500
Sub Total				**$64,475**

Sub Totals

A. Storm Drain System	**$53,459.46**
B. Menlo Street Lights	**$28,323.84**
C. Menlo Landscaping	**$ 64,475**
Total	**$146,258.30**
10% Contingency	**$14,625.83**
Total for "Credit Sum"	**$160,884.1**

Exhibit 3

LEGEND
GRAPHIC SCALE
RECREATION CENTER
VENTURA
CHAMPA
SEQUOIA
MONTE VERDE
LA FONDA
WILSON MIKAMI CORPORATION
PEPPERTREE TRACT 29843
COMPOSITE PINAL MAP
PACIFIC CENTURY HOMES

Exhibit 4

Storm Drain Exhibit
showing v-gutters &
catch basins

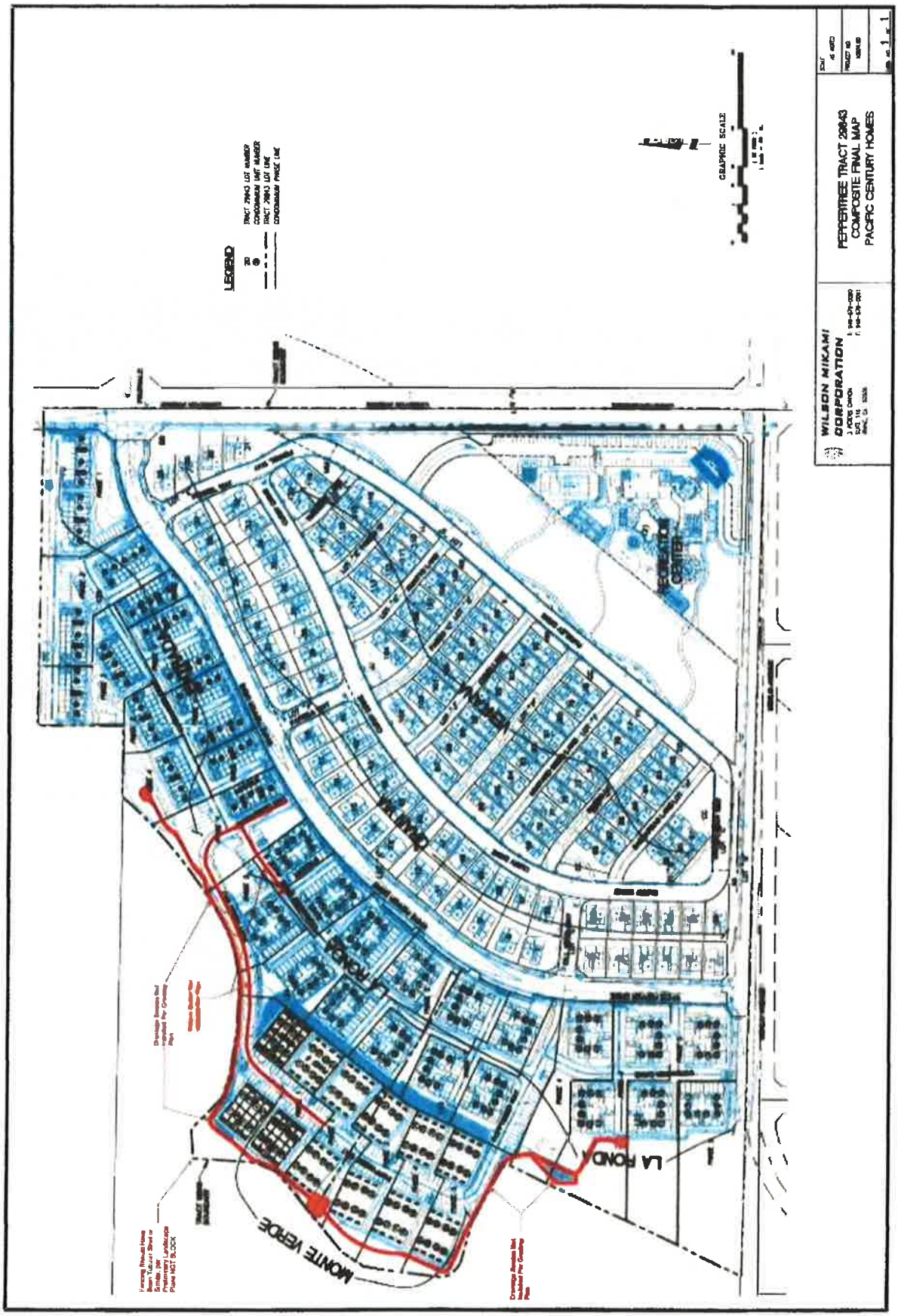


EXHIBIT 5

November 15, 2016

Insurance Company of the West
c/o M. Katy Ross, Esq.
Finch, Thornton & Baird, LLP
4747 Executive Drive, Suite 700
San Diego, California 92121-3107
kross@ftblaw.com

Re: Full Release And Exoneration Of Bond

Development:	Tract 29843
Bond Nos.:	217 40 51
	217 40 52
	217 64 24
Bond Principal:	PCG-Peppertree, L.P.
Surety:	Insurance Company of the West
Bond Obligee:	City of Hemet

Dear Ms. Ross:

This letter confirms that the City of Hemet fully releases and exonerates the above-referenced payment and performance bonds issued by Insurance Company of the West.

Very truly yours,

Alexander P.Meyerhoff
Hemet City Manager

AGENDA # 20

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Alexander P. Meyerhoff, City Manager
Kristen Jensen, Public Works Director

DATE: November 15, 2016

RE: Approve Second Amendment to Agreement for Hazardous Waste Disposal Contract for Hazardous Waste Hauling, Disposal and Recycling Services

RECOMMENDED ACTION:

It is respectfully recommended that the City Council:

- Approve the Second Amendment to Agreement for Hazardous Waste Disposal Contract with Hunter Consulting, Inc. dba HCI Environmental & Engineering Service (HCI) provide hazardous waste hauling, disposal and recycling services; and
- Authorize the City Manager to execute Second Amendment to Agreement for Hazardous Waste Disposal with HCI; and
- Authorize the City Manager to execute a purchase change order in support of the extended agreement.

BACKGROUND:

The City of Hemet is classified as a small quantity hazardous waste generator based on the amount of hazardous waste requiring disposal from its normal operations. All hazardous waste generators are responsible for all hazardous waste and its safe handling from its generation to its disposal, or "cradle to grave." In September of 2012, Council awarded a contract to HCI to provide hazardous waste removal services with an initial contract term of three years through December 31, 2015, with two (2) one-year options to renew. In November of 2015, Council approved the First Amendment to Agreement for Hazardous Waste Disposal with HCI which exercised the first one-year option to renew.

ANALYSIS:

Although the City Corporation Yard no longer accepts hazardous waste drop offs from the public; the need for hazardous waste disposal services cannot be avoided in the day-to-day public works operation. Staff is continually working to minimize hazardous waste hauling, disposal and recycling costs by reviewing service needs with HCI and educating the public on proper locations for hazardous waste disposal.

HCI has been providing consistent and responsive service since the beginning of the contract, and has agreed to honor pricing through an additional extended term. In an effort to control costs and continue to facilitate handling of the City of Hemet's hazardous waste by a professionally trained and licensed hazardous waste hauler, staff is recommending that the current contract be extended for a one year term through December 31, 2017.

POTENTIAL ALTERNATIVE ACTIONS:

As an alternative to extension of this agreement, Council may direct staff to solicit new bids for hazardous waste removal services. This alternative would require additional staff time and is no guarantee of lower bids. Due to the lead time required to administer a bid solicitation, this contract would still require extension of the term to ensure services continue through completion of a new solicitation.

FISCAL IMPACT:

No additional General Fund impact. Funding for the proposed services was previously approved and is available in the total amount of $33,000 in FY16/17 Operating Budgets in Fleet Maintenance Fund 664-4550-2350, Facilities Maintenance Fund 685-4560-2400 and Public Works Administration Fund 686-4150-2400.

Respectfully submitted,	Approved as to form:	Fiscal Review:
for Charles Russell Refuse Superintendent	Eric S. Vail City Attorney	Lorena Rocha for Jessica Hurst Jessica A. Hurst Deputy City Manager/ Administrative Services

Attachment(s): Second Amendment to Hazardous Waste Disposal Maintenance Services Agreement (Attachment A)

ATTACHMENT "A"

SECOND AMENDMENT TO
AGREEMENT FOR HAZARDOUS WASTE DISPOSAL SERVICES

by and between

the

CITY OF HEMET

and

HUNTER CONSULTING, INC. DBA
HCI ENVIRONMENTAL & ENGINEERING SERVICES

Dated November 15, 2016

SECOND AMENDMENT TO AGREEMENT FOR HAZARDOUS WASTE DISPOSAL SERVICES

This Second Amendment to Agreement for Hazardous Waste Disposal Services ("Second Amendment"), which is dated for reference as indicated on the cover page, is hereby entered into by and between the CITY OF HEMET, a California general law city ("City"), and Hunter Consulting, Inc. dba HCI Environmental & Engineering Services (HCI) a California Corporation ("Contractor"), as follows:

RECITALS

A. City and Contractor entered in an agreement for hazardous waste disposal on September 11, 2012 ("Agreement"). The Agreement provides that Contractor will provide hazardous waste disposal maintenance service for the City of Hemet.

B. Section 1.3, Schedule of Performance and Term, of the Agreement defines the Term of Agreement. The initial term of Agreement is from September 26, 2012, through December 31, 2015, with two (2) one-year options to renew.

C. City and Contractor exercised the first one-year option to renew on November 10, 2015.

D. City and Contractor now intend to exercise the second one-year option to renew, extending the term of the Agreement through December 31, 2017.

E. This Second Amendment formally amends and extends this Agreement.

F. The department has been receiving consistent and responsive service from HCI.

OPERATIVE PROVISIONS

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

1. **AMENDMENT.** The Agreement is hereby modified and amended as follows:

1.1 **EXHIBIT "B" SCHEDULE OF PERFORMANCE].** Exhibit "B" of the Agreement is hereby amended as follows:

The period of services shall be January 1, 2017, through December 31, 2017.

2. **GENERAL PROVISIONS.**

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

2.2 **Integration.** This Second Amendment consists of pages 1 through 3 inclusive, which constitute the entire understanding and agreement of the parties and supersedes

all negotiations or previous agreements between the parties with respect to all or any part of the transaction discussed in this First Amendment.

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

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

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

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

CITY:

THE CITY OF HEMET

By:_____
Alexander P. Meyeroff,, City Manager

ATTEST:

_____
Sarah McComas, City Clerk

APPROVED AS TO FORM

_____
Eric S. Vail, City Attorney

CONTRACTOR:

HUNTER CONSULTING, INC. DBA HCI
ENVIRONMENTAL & ENGINEERING
SERVICES __

By:_____
Gregory J. Parker, President

By:_____
Charles R. Guy, Secretary/Treasurer_

AGENDA # 21

Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Alexander P. Meyerhoff, City Manager
Kristen Jensen, Public Works Director

DATE: November 15, 2016

RE: Purchase of Radio Read Water Meters

RECOMMENDATION:

It is respectfully recommended that the City Council:

- Approve the purchase of radio read meters from HD Supply Water Works of Santa Ana in the amount of $581,580; and
- Authorize the City Manager to execute purchase orders in support of the purchase; and
- Authorize the hiring of seven part-time temporary employees to assist with the installation of meter equipment and input of billing data; and
- Authorize the Deputy City Manager to record a supplemental appropriation in Water Fund 571 in an amount of $644,580 to support the costs of the meters ($581,580) and the cost of temporary help ($63,000).

BACKGROUND:

The City of Hemet Water Department provides potable water to over 9,700 residential and commercial water customers. Each service connection represents at least one meter for measurement of water consumed on the property. The Customer Service division within the department electronically reads these meters on a monthly basis and provides utility billing with the necessary data for each billing cycle.

Currently, approximately 3,200 radio read meters have reached the end of their useful and practical life and have exceeded their 10-year warranty period. Many meters are beginning to experience battery failures which impact the accuracy of the consumption reads and can cause discrepancies in customer's bills. When this occurs, it creates the need for staff to return to the meter locations and manually read each meter. Although staff does monitor and request replacement of meters that fail prior to warranty expiration, the majority of the meters that require replacement now are no longer under warranty.

The Radio Read Meter Replacement project was previously approved by Council in the FY16/17 through FY20/21 Capital Improvement Plan (CIP) and is a phased project through that plan. Staff was notified of an expected increase in the cost of meters effective January 1, 2017, and is requesting to make a bulk purchase of meters prior to that increase. Approval of this purchase will result in an estimated savings of $192,000.

This purchase will also include an updated mobile reading system and additional software licensing which will increase productivity and efficiency within the department by eliminating the need to manually reread meters. It will also provide greater accuracy and consistency in the

meter readings, which is an important factor as the City continues to evaluate a transition to water efficiency rates in the near future.

To expedite the installation of the replacement meters, staff is requesting to hire six (6) part-time temporary Maintenance Aides and one (1) part-time temporary Accounting Technician I for a total of 26 weeks. The six Maintenance Aides will be utilized in the process of removing and replacing the 3,200 meters in the field under the supervision of current full-time employees. The Accounting Technician I will assist the Utility Billing Division in populating new meter data into the City's billing system. The installation of these meters is anticipated to be completed by June 30, 2017, with the temporary help.

COORDINATION AND REVIEW:

HD Supply Waterworks in Santa Ana was previously established as the low bidder in FY16/17 for providing meters to the Water Department for normal, operational replacements. The quote for 3,200 radio read meters, and related readers and licensing, in the amount of $581,580 has been reviewed by the Procurement Administrator. Staff coordinated with the Deputy City Manager regarding the additional need for temporary help in the field and Utility Billing Division.

FISCAL IMPACT:

No General Fund Impact. Funding for this purchase was initially approved through the FY 16/17 CIP as a project to be funded with revenue bonds. Fund balance in the amount of $644,580 is available now through Water Fund No. 571. Reimbursement of meter costs and temporary help may be retroactively reimbursed through future bond debt financing with Council approval. Approval of this purchase will result in an estimated savings of $192,000.

Respectfully submitted,

Kristen Jensen
Public Works Director

Fiscal Review:

Olarena Rocha for Jessica Hurst

Jessica A. Hurst
Deputy City Manager/Administrative Services

Attachments: HD Supply Water Works Master Meter Pricing Quote

ATTACHMENT "A"

HD SUPPLY Water Works.
Brian Jensen/Chris Lambros Meter Specialist California
3132 Westminster Ave.
Santa Ana, Ca. 92703
Phone: 714-292-9480
Fax: 559-421-0399

Date **9/7/2016**

City of Hemet
Ron Proze
3777 Industrial Avenue
Hemet, CA 92545
Fax: 951-765-2493 Ph: 951-765-3710

Subject: Master Meter Promo Pricing for Allegro Upsell 5/8 x 3/4 Meters

Quantity	Description	Each	Extended	Current MM Part Number
3200	5/8" Bottom Load Multi-Jet Lead Free Meter with Allegro AMR/AMI CF RF Register with Data Logging	$ 167.00	$ 534,400.00	B12-A31-B18-0101A-1
3	(00-020-010-ALGRO-UG) Allegro Upgrade for Model 53 Mobile Reading System: Includes: Allegro Receiver, Mag Mount Antenna, Allegro Technical Software & Drive-by Case Direct From Master Meter modification plus labor. *Note: Case modification is optional.*	$ -	$ -	*No Cost with the purchase of 1,000 meter at one time. Normal cost $2854.36*
1	*Requires software upgrade and training for Harmony Mobile Direct From Master Meter	$ 3,500.00	$ 3,500.00	Customer must return 1 for 1 3G registers only to receive promo price
2	MMRS Software License per extra Laptops	$ 300.00	$ 600.00	

Sub Total:	$	538,500.00
Tax 8%	$	43,080.00
Grand Total:	$	581,580.00

Quote Good through 12/31/16.
Freight allowed orders over $16,500.

Thank you for your business. These material lists and prices provided therein are governed by and are subject to the standard terms and conditions applicable to sales of materials by HD Supply Waterworks, which will be contained in the invoice and delivery/pick-up documents for these materials, and which are incorporated herein by this reference. To review or to print out a copy of these terms and conditions, please point your web browser to http://waterworks.hdsupply.com/TandC/.

AGENDA # 22

Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Alexander P. Meyerhoff, City Manager
Kristen Jensen, Public Works Director

DATE: November 15, 2016

RE: Award of Vehicle Purchase to Fritts Ford of Riverside, CA

RECOMMENDATION:

It is respectfully recommended that the City Council:

- Approve the purchase of One Ford F750 with Dakota service bed option from Fritts Ford of Riverside, CA, in the amount of $108,351.06; and
- Authorize the City Manager to execute purchase orders in support of the purchase; and
- Declare vehicle #9011 as surplus and to be sold at auction.

BACKGROUND:

The City of Hemet Water Department currently has two construction crews that are responsible for the daily maintenance and repairs to the City's water system. One crew is currently using vehicle #9011, a 2000 Ford F550 with 46,397 miles. Although the mileage is lower that what is expected of a replacement vehicle, its use as a front line vehicle hauling heavy loads for sixteen years has taken its toll on the vehicle. Examples of work this vehicle is used daily to perform include repairs to water leaks in main lines, meter service replacements at residences and business, and assistance with performance of well site maintenance and repairs. This work requires that the service truck transport large tools, parts and meter equipment that push the vehicle to its current maximum gross vehicle weight capacity of 19,000 pounds. Replacement of this vehicle with a larger capacity Ford F750 will allow more efficient use of space and increase payload capability to minimize multiple equipment transfer trips for support of large jobs.

COORDINATION AND REVIEW:

On October 25, 2016, after conducting a bid solicitation for the purchase of this vehicle, the Procurement Administrator received a single responsive bid from Fritts Ford of Riverside. The bidder offered two separate service body options in their response. Staff reviewed the service bed options and identified vehicle option "A" with a Dakota service body , the least costly option, as meeting the needs of the department. A Bid Summary Sheet is attached as Exhibit "A" reflecting the cost of each option submitted in response to the solicitation. Local dealers were included in the bid solicitation, but were unable to provide a quote due to the commercial weight status of this vehicle.

Fritts Ford of Riverside, CA was identified as the only responsive, responsible bidder. Staff recommendation is to approve award of bid for the purchase of one Ford F750 to Fritts Ford of Riverside, CA in the amount of $108,351.06. This purchase is for an amount less than originally budgeted, resulting in a budget savings of $66,288.12 in the Water Equipment Replacement fund. Staff had originally requested budget for the replacement of both crews' service trucks, but ultimately opted to replace only one of the vehicles at this time. Remaining budget may be requested for reallocation via separate staff report to support the purchase of additional vehicles for other functions in the Water Department.

FISCAL IMPACT:

No General Fund Impact. Funding for this purchase was previously approved and is available in the amount of $174,639.18 through Equipment Replacement Fund No 380-9000. Approval of this purchase in the amount of $108,351.06 will result in a budget savings of $66,288.12.

Respectfully submitted,

Kristen Jensen
Public Works Director

Fiscal Review:

Lorena Rocha for Jessica Hurst

Jessica A. Hurst
Deputy City Manager/Administrative Services

Attachments: Bid Summary Sheet, Exhibit "A"

EXHIBIT "A"

City of Hemet

IFB F-750 w/ Service Body

25-Oct-16

		1 Bidder Fritts Ford	
Line No.	**QTY**	**Option "A" w/ Dakota Body**	**Option "B" w/ CTEC Body**
2017 F 750 w/ Svc Body	1	$ 98,982.00	$ 112,939.00
Extended Warranty	1	$ 1,440.00	$ 1,440.00
Sales Tax	1	$ 7,918.56	$ 9,035.12
Tire Fee	1	$ 10.50	$ 10.50
Registration	1	E/plates No Charge	E/plates No Charge
Freight/Delivery	1	Included	Included
Total Bid		**$ 108,351.06**	$ 123,424.62

AGENDA # 23

Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Alexander P. Meyerhoff, City Manager
Kristen Jensen, Public Works Director

DATE: November 15, 2016

RE: Award of Vehicle Purchases to Gosch Ford of Hemet

RECOMMENDATION:

It is respectfully recommended that the City Council:

- Approve the purchase of two (2) Ford F-150 XL Pickup Trucks from Gosch Ford Group of Hemet, CA, in the amount of $53,026.46 for the Water Department; and
- Approve the purchase of one (1) Ford Explorer XLT from Gosch Ford Group of Hemet, CA, in the amount of $36,594.55 for the Facilities Maintenance Division; and
- Authorize the Deputy City Manager to re-allocate current savings realized in Water Equipment Placement Fund No. 380-9000 to fund the Water vehicle purchases; and
- Authorize the City Manager to execute purchase orders in support of the purchases; and
- Declare Unit No. 9025 as surplus to be sold at auction.

BACKGROUND:

As an effective approach to planning future vehicle and equipment replacement needs, the City has an established Equipment Replacement Fund that anticipates the planned replacement of older vehicles. Each department/division contributes to their individual accounts in an effort to properly fund vehicle and equipment purchases prior to replacement. This recommendation represents the replacement of two vehicles, and the addition of one water vehicle, to the fleet to meet the current needs of the requesting divisions as follows:

Water Department Vehicles – Ford 150 Pickup Trucks (2)

Replacement vehicle for Unit #9025.

The first vehicle will be used to replace unit #9025, a 2004 Chevrolet Trailblazer with 102,772 miles. This vehicle has exceeded its useful life as a daily frontline vehicle and is no longer dependable for the amount of daily travel required by the customer service function. Replacing the trailblazer with a new Ford F-150 pickup truck will provide a dependable vehicle that is more suited to transporting small water equipment and will help to standardize the passenger vehicle fleet. Replacement will also allow staff to perform work more efficiently with limited interruptions of down time for vehicle maintenance.

Addition of one vehicle.

The second vehicle to be purchased will be an addition to the fleet to provide a vehicle for the Customer Service Representative position added as a result of the Compliance Order ("Order") issued by the State Water Resources Control Board (SWRCB) related to meeting water conservation mandates. The Order required a compliance with review of water rate structures, conservation program expansion, public education on conservation, and extensive enforcement

of water waste prohibitions. Additional staffing was included as a compliance item and on October 13, 2015, the City Council approved two additional positions, one of which is an additional field Customer Service Representative (CSR).

Although the City has met compliance with the Order, the customer service team must continue to actively educate the public and proactively identify and correct water waste issues to ensure conservation is ongoing. Monthly billing is key to providing accurate reporting information to the State by customer type, and has become a key data tool for planning in the department. The additional CSR has been using any available vehicle to perform duties including pool cars and supervisor vehicles. When no vehicles are available, the staff member will partner up with another employee, reducing the efficiency of work completion in their job function. An additional vehicle would allow the new staff member to work independently on a daily basis and enhance the department's ability to provide timely customer response by all staff on water related issues.

Staff is requesting to use a portion of the budget savings remaining in Equipment Replacement Fund 380-9000 that was originally appropriated for the replacement of two larger service trucks. Staff has reevaluated the need to replace both of the service vehicles, and has opted to replace only one at this time. This will allow available appropriations to be utilized for the purchase of the two pickups.

Facilities Maintenance Vehicle – Ford Explorer XLT

The Facilities Maintenance Division is responsible for the daily maintenance and repair of the City's 56 buildings and provides electrical maintenance to street lights, storm basin pumps and well sites. Staffing reductions in prior years resulted in the divisions light duty vehicles being transferred to another division. After years of retaining a vacancy in the Facilities Manager position for cost saving purposes, the position was permanently filled in 2014. Since that time, the Facilities Manager has been utilizing an available pool car to travel to and from his daily calls and meetings. The purchase of the 2017 Ford Explorer XLT will allow the pool car to be put back into rotation for the City's use and enable the Facilities Manager the ability to personalize his vehicle with the necessary tools and equipment to perform his job duties with more efficiency. This purchase is a replacement for 2000 Chevy Pickup Truck that was previously transferred to another division and funding for the purchase was approved through FY15/16 Equipment Replacement budgets.

COORDINATION AND REVIEW:

On September 29, 2016, Purchasing received three (3), responsive, sealed bids. A Bid Summary Sheet is attached as Exhibit "A" and the three lowest bidders on the two (2) 2017 Ford F150 XL are shown below:

Gosch Ford of Hemet, CA	$53,026.46
Carmenita Truck Center of Santa Fe Springs, CA	$52,107.84
Reynold's Buick of Covina, CA	$54,535.47

In addition to the two (2) Ford F150's, the solicitation of bids also included a request for bid on the 2017 Ford Explorer XLT. A Bid Summary Sheet is attached as Exhibit "A" and the three lowest bidders on the 2017 Ford Explorer XLT are shown below:

Gosch Ford of Hemet, CA	$36,594.55
Carmenita Truck Center of Santa Fe Springs, CA	$39,344.06
Reynold's Ford of Covina, CA	$39,395.69

In reviewing the bid submission, staff determined that Gosch Ford of Hemet qualifies for the local vendor preference as outlined in Hemet Municipal Code Chapter 2 - Administration, Article V - Finance, Division 3 - Purchasing, Section 2-334 - Formal bidding and contract award procedure, subsection (6) Local Vendor Preference Program. Upon applying the local vendor preference, Gosch Ford of Hemet was identified as the lowest, responsive, responsible bidder for both the F150's and the Ford Explorer. Staff recommendation is to approve award of bid for the purchase of two (2) Ford F150 XL Pickup trucks and one (1) Ford Explorer XLT to Gosch Ford of Hemet in the total amount of $89,621.01.

FISCAL IMPACT:

No General Fund Impact. Funding for the purchase of two Water Department vehicles is available in the amount of $53,026.46 through Equipment Replacement Fund No. 380-9000. Funding for the purchase of the Facilities Maintenance vehicle was previously approved in FY15/16 and is available from Equipment Replacement Fund No. 380-4560 in the amount of $36,594.55.

Respectfully submitted,

Kristen Jensen
Public Works Director

Fiscal Review:

Lorena Rocha for Jessica Hurst

Jessica A. Hurst
Deputy City Manager/Administrative Services

Attachments: Bid Summary Sheet, Exhibit "A"

EXHIBIT "A"

City of Hemet - Purchasing Division

445 E. Florida Avenue, Hemet, CA 92543
Bid Name: PW Vehicle Bid

Bid Opening Date: September 29, 2016
Time: 2:00 P.M.

Vehicle Description and Cost Breakdown	Unit	Quantity	Gosch Ford Unit Bid	Gosch Ford Total Bid	Carmenita Truck Center Unit Bid	Carmenita Truck Center Total Bid	Reynold's Ford Unit Bid	Reynold's Ford Total Bid	Unit Bid	Total Bid
2017 Ford F150 XL Supercab	1	2	$ 23,556.00	$ 47,112.00	$ 23,424.00	$ 46,848.00	$ 25,239.80	$ 50,479.60		
Option 1 Extended Warranty	1	2	$ 1,015.00	$ 2,030.00	$ 640.00	$ 1,280.00	$ -	$ -		
Sales Tax	8%	2	$ 1,884.48	$ 3,768.96		$ 3,747.84		$ 4,038.37		
Tire Fees	1	2	$ 8.75	$ 17.50	$ 7.00	$ 14.00	$ 8.75	$ 17.50		
Vehicle Registration	1	2	$ 49.00	$ 98.00	$ 109.00	$ 218.00	$ -	$ -		
Freight/Delivery	1	2	$ -	$ -	$ -	$ -	$ -	$ -		
Sub Total				$ 53,026.46		$ 52,107.84		$ 54,535.47		
Local Vendor Discount	5%	1	$ -	$ 2,651.32		$ -		$ -		
Total less 5% Local Vendor	1			**$ 50,375.14**		**$ 52,107.84**		**$ 54,535.47**		
2017 Ford F350 8' Dump Body	1	1	$ 34,326.88	$ 34,326.88	$ 35,657.00	$ 35,657.00	$ 32,784.69	$ 32,784.69		
Option 1 Extended Warranty	1	1	$ 1,140.00	$ 1,140.00	$ 715.00	$ 715.00	$ -	$ -		
8' Stake Bed Dump Body	1	1	$ 22,030.00	$ 22,030.00	$ 24,230.00	$ 24,230.00	$ 10,123.47	$ 10,123.47		
Sales Tax	8%	1	$ 4,508.48	$ 4,508.55		$ 4,790.96	$ -	$ 3,432.65		
Tire Fees	1	1	$ 10.50	$ 10.50	$ 10.50	$ 10.50	$ -	$ 10.50		
Vehicle Registration	1	1	$ 49.00	$ 49.00	$ 109.00	$ 109.00	$ -	$ -		
Freight/Delivery	1	1	$ -	$ -	$ -	$ -	$ -	$ -		
Sub Total				$ 62,064.93		$ 65,512.46		$ 46,351.31		
Local Vendor Discount	5%	1		$ 3,103.25		$ -		$ -		
Total less 5% Local Vendor				**$ 58,961.68**		**$ 65,512.46**		**$ 46,351.31**		
2017 Ford Explorer XLT	1	1	$ 32,955.37	$ 32,955.37	$ 35,657.00	$ 35,657.00	$ 36,469.39	$ 36,469.39		
Option 1 Extended Warranty	1	1	$ 945.00	$ 945.00	$ 715.00	$ 715.00	$ -	$ -		
Sales Tax	8%	1		$ 2,636.43		$ 2,852.56	$ -	$ 2,917.55		
Tire Fees	1	1	$ 8.75	$ 8.75	$ 10.50	$ 10.50	$ -	$ 8.75		
Vehicle Registration	1	1	$ 49.00	$ 49.00	$ 109.00	$ 109.00	$ -	$ -		
Freight/Delivery	1	1	$ -	$ -	$ -	$ -	$ -	$ -		
Sub Total				$ 36,594.55		$ 39,344.06		$ 39,395.69		
Local Vendor Discount	5%	1		$ 1,829.73		$ -		$ -		
Total less 5% Local Vendor				**$ 34,764.82**		**$ 39,344.06**		**$ 39,395.69**		

The bid results provided are for informational purposes only. Until award is made, the low bid is subject to verification of information and determination that the low bidder is responsive and responsible.

AGENDA # 24

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Alexander P. Meyerhoff, City Manager
Kristen Jensen, Public Works Director

DATE: November 15, 2016

RE: Award of Vehicle Purchase to Reynold's Buick of Covina

RECOMMENDED ACTION:
It is respectfully recommended that the City Council:

- Approve the purchase of One 2017 GMC Sierra 3500HD 4WD Double Cab with Dump Body to Reynold's Buick of Covina, CA, in the amount of $46,737.02; and
- Authorize the City Manager to execute purchase orders in support of the purchase; and
- Declare Unit No. 4208 as surplus to be sold at auction.

BACKGROUND:
The Storm Drain Division is responsible for the maintenance of the City's retention basins and storm drain systems. The division currently performs maintenance and repairs on 30 retention basins and approximately 50 miles of storm drain facilities made up of storm drain laterals, "v" channels and alley channels. This division is responsible to fulfill the standards required by the Environmental Protection Agency's National Pollutant Elimination System. Proper preventative maintenance of storm water facilities decreases the amount of flooding on City streets during storm events.

This division currently has a 2002 Ford F-350 flat dump bed, unit #4208, with 148,363 miles. This unit has exceeded its practical and useful life and is no longer cost efficient to keep in service. The vehicle is used daily and requires frequent down time for repairs, impacting the division's ability to provide maintenance to the storm water infrastructure in an efficient manner. Replacing this vehicle with a new, dependable service truck will allow City crews the ability to perform work more efficiently and complete more maintenance with limited interruptions for vehicle maintenance, improving cost effectiveness for maintenance and parts.

COORDINATION & REVIEW:
In September the Procurement Administrator solicited bids for a 2017 Ford F350 with dump bed. On September 29, 2016, staff received three (3), responsive, sealed bids. A Bid Summary Sheet is attached as Exhibit "A" and the three lowest bidders are shown below:

Reynold's Buick of Covina, CA	$46,351.31 (spare tire not included)
Gosch Ford of Hemet, CA	$62,064.93
Carmenita Truck Center of Santa Fe Springs, CA	$65,512.46

As an alternative to the Ford F350, Reynolds Buick of Covina submitted a quote for a comparable vehicle, a 2017 GMC Sierra 3500HD Double Cab with dump bed. After reviewing the original bid specifications, it was determined that the GMC vehicle met the requirements of the purchase. Based on the overall evaluation of bid submissions, Reynold's Buick of Covina was found to be the lowest, responsive responsible bidder. Following the bid evaluation, City staff also requested a cost for a spare tire which was quoted at a cost of $385.71 including tax. Staff recommendation is to approve award of bid for the purchase of one 2017 GMC Sierra 3500HD 4WD Double Cab with Dump Body to Reynold's Buick in Covina, CA in the amount of $46,737.02, including the additional cost of the spare tire.

FISCAL IMPACT:

No General Fund Impact. Funding for this purchase was previously approved and is available through Storm Drain Equipment Replacement Fund No. 380-4650 in the amount of $46,737.02.

Respectfully submitted,

Kristen Jensen
Public Works Director

Fiscal Review:

Lorena Rocha for Jessica Hurst

Jessica A. Hurst
Deputy City Manager/Administrative Services

Attachment(s): Bid Summary - Exhibit "A"

EXHIBIT "A"

City of Hemet - Purchasing Division

445 E. Florida Avenue, Hemet, CA 92543
Bid Name: PW Vehicle Bid

Bid Opening Date: September 29, 2016
Time: 2:00 P.M.

Vehicle Description and Cost Breakdown	Unit	Quantity	Gosch Ford Unit Bid	Gosch Ford Total Bid	Carmenita Truck Center Unit Bid	Carmenita Truck Center Total Bid	Reynold's Ford Unit Bid	Reynold's Ford Total Bid	Unit Bid	Total Bid
2017 Ford F150 XL Supercab	1	2	$ 23,556.00	$ 47,112.00	$ 23,424.00	$ 46,848.00	$ 25,239.80	$ 50,479.60		
Option 1 Extended Warranty	1	2	$ 1,015.00	$ 2,030.00	$ 640.00	$ 1,280.00	$ -	$ -		
Sales Tax	8%	2	$ 1,884.48	$ 3,768.96		$ 3,747.84		$ 4,038.37		
Tire Fees	1	2	$ 8.75	$ 17.50	$ 7.00	$ 14.00	$ 8.75	$ 17.50		
Vehicle Registration	1	2	$ 49.00	$ 98.00	$ 109.00	$ 218.00	$ -	$ -		
Freight/Delivery	1	2	$ -	$ -	$ -	$ -	$ -	$ -		
Sub Total				$ 53,026.46		$ 52,107.84		$ 54,535.47		
Local Vendor Discount	5%	1	$ -	$ 2,651.32		$ -		$ -		
Total less 5% Local Vendor	1			**$ 50,375.14**		**$ 52,107.84**		**$ 54,535.47**		
2017 Ford F350 8' Dump Body	1	1	$ 34,326.88	$ 34,326.88	$ 35,657.00	$ 35,657.00	$ 32,784.69	$ 32,784.69		
Option 1 Extended Warranty	1	1	$ 1,140.00	$ 1,140.00	$ 715.00	$ 715.00	$ -	$ -		
8' Stake Bed Dump Body	1	1	$ 22,030.00	$ 22,030.00	$ 24,230.00	$ 24,230.00	$ 10,123.47	$ 10,123.47		
Sales Tax	8%	1	$ 4,508.48	$ 4,508.55		$ 4,790.96	$ -	$ 3,432.65		
Tire Fees	1	1	$ 10.50	$ 10.50	$ 10.50	$ 10.50	$ -	$ 10.50		
Vehicle Registration	1	1	$ 49.00	$ 49.00	$ 109.00	$ 109.00	$ -	$ -		
Freight/Delivery	1	1	$ -	$ -	$ -	$ -	$ -	$ -		
Sub Total				$ 62,064.93		$ 65,512.46		$ 46,351.31		
Local Vendor Discount	5%	1		$ 3,103.25		$ -		$ -		
Total less 5% Local Vendor				**$ 58,961.68**		**$ 65,512.46**		**$ 46,351.31**		
2017 Ford Explorer XLT	1	1	$ 32,955.37	$ 32,955.37	$ 35,657.00	$ 35,657.00	$ 36,469.39	$ 36,469.39		
Option 1 Extended Warranty	1	1	$ 945.00	$ 945.00	$ 715.00	$ 715.00	$ -	$ -		
Sales Tax	8%	1		$ 2,636.43		$ 2,852.56	$ -	$ 2,917.55		
Tire Fees	1	1	$ 8.75	$ 8.75	$ 10.50	$ 10.50	$ -	$ 8.75		
Vehicle Registration	1	1	$ 49.00	$ 49.00	$ 109.00	$ 109.00	$ -	$ -		
Freight/Delivery	1	1	$ -	$ -	$ -	$ -	$ -	$ -		
Sub Total				$ 36,594.55		$ 39,344.06		$ 39,395.69		
Local Vendor Discount	5%	1		$ 1,829.73		$ -		$ -		
Total less 5% Local Vendor				**$ 34,764.82**		**$ 39,344.06**		**$ 39,395.69**		

The bid results provided are for informational purposes only. Until award is made, the low bid is subject to verification of information and determination that the low bidder is responsive and responsible.

AGENDA # 25

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Alexander Meyerhoff, City Manager;
Steven Latino, P.E., Engineering Director/City Engineer

DATE: November 15, 2016

RE: Award Construction Contract for the Gilbert Street Sewer Main Replacement Project - C.I.P. No. 5623

RECOMMENDED ACTION:

That the City Council take the following actions:

1. Approve the plans and specifications for CIP 5623.
2. Adopt a resolution awarding the construction contract in the amount of $185,830.00 to the lowest responsive and responsible bidder TBU, Inc. and determining the cost estimate of the city and construction contract amount of $185,830.00 are reasonable pursuant to Hemet Municipal Code Sec. 2-358(3). **Resolution No. 16-094**
3. Authorize the City Manager to execute contracts and related documents and file the Notice of Completion upon satisfactory completion of the project.
4. Authorize the City Manager to execute change order(s) of up to ten percent of the original contract amount not to exceed $25,000.00 for a total authorized expenditure of $210,830.00.

BACKGROUND:

The City of Hemet received federal grant funds to perform pavement resurfacing on Gilbert Street from Acacia to Stetson. During the design of that project Public Works informed Engineering there was an existing section of 8 inch sewer main on Gilbert Street between Elmwood and Central Avenue that needed to be replaced as it was between two 10 inch sections of sewer main. Deficient manholes were also discovered during design of the sewer main replacement that also need to be addressed. The Gilbert Street Sewer Main Replacement Project replaces the 8 inch sewer main segment with a 10 inch sewer main and corrects the manhole deficiencies. It is recommended the Gilbert Street Sewer Main Replacement Project

be completed prior to the Gilbert Street resurfacing project so newly reconstructed pavement does not have to be immediately replaced by the sewer excavation.

PROJECT DESCRIPTION:

The project consists of the installation of approximately 340lf of 10 inch sewer main on Gilbert Street from Elmwood and Central along with replacement and relocation of existing manholes to correct a substandard flow condition. This relocation of manholes at the intersection of Gilbert and Central also requires the reconstruction of approximately 160lf of existing 8 inch sewer on Central Avenue between Gilbert and Ramona to match the new alignment.

ANALYSIS:

On October 25th, 2016 at 2pm the Purchasing office received four (4) responsive, sealed bids, as shown below:

TBU, Inc. – Beaumont, CA	$ 195,830
GRBCON, Inc – Arcadia, CA	$ 198,375
Taylor Underground. – San Jacinto, CA	$ 224,040
Genesis Construction, Inc. – Hemet, CA	$ 262,112

These bids included a $10,000 contingency placeholder item within the bid schedule for all potential bidders, the deletion of which and corresponding reduction of all of the bids by $10,000 does not provide any bidder with a competitive advantage.

COORDINATION & REVIEW:

The project was circulated for informal Public Bidding purposes by publishing an advertisement on the City of Hemet Website and CIP List and was sent by e-mail to all persons/entities that requested notification. Informal bidding per City of Hemet Municipal code Sec. 2-358 is allowed for Public Works projects under $175,000.00. The Engineer's original cost estimate for the Gilbert Street Sewer Main Replacement Project was $130,000.00. All bids received exceeded the $175,000.00 maximum for the City Manager to award public works construction projects following informal bidding procedures. The code further states if all bids received exceed this threshold the Council, by adoption of a resolution by four-fifths vote, may award the contract up to $187,500.00. All bids included a $10,000.00 contingency item to address the potential for unforeseen field conditions on a time and materials basis. The removal of this item from all bids does not affect the bid outcome and results in a total contract amount of $185,830.00 which is within the threshold the council can award.

CONSISTENCY WITH ADOPTED GOALS, PLANS, AND PROGRAMS:

The project is categorically exempt from CEQA under section 15302 (c) replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

FISCAL IMPACT:

No General Fund Impact. The construction of the project is fully funded in Account # 254-4600-5400 already allocated in the FY16/17 Budget.

Respectfully submitted,

Nino Abad

Nino Abad, P.E.
Principal Engineer

Fiscal Review:

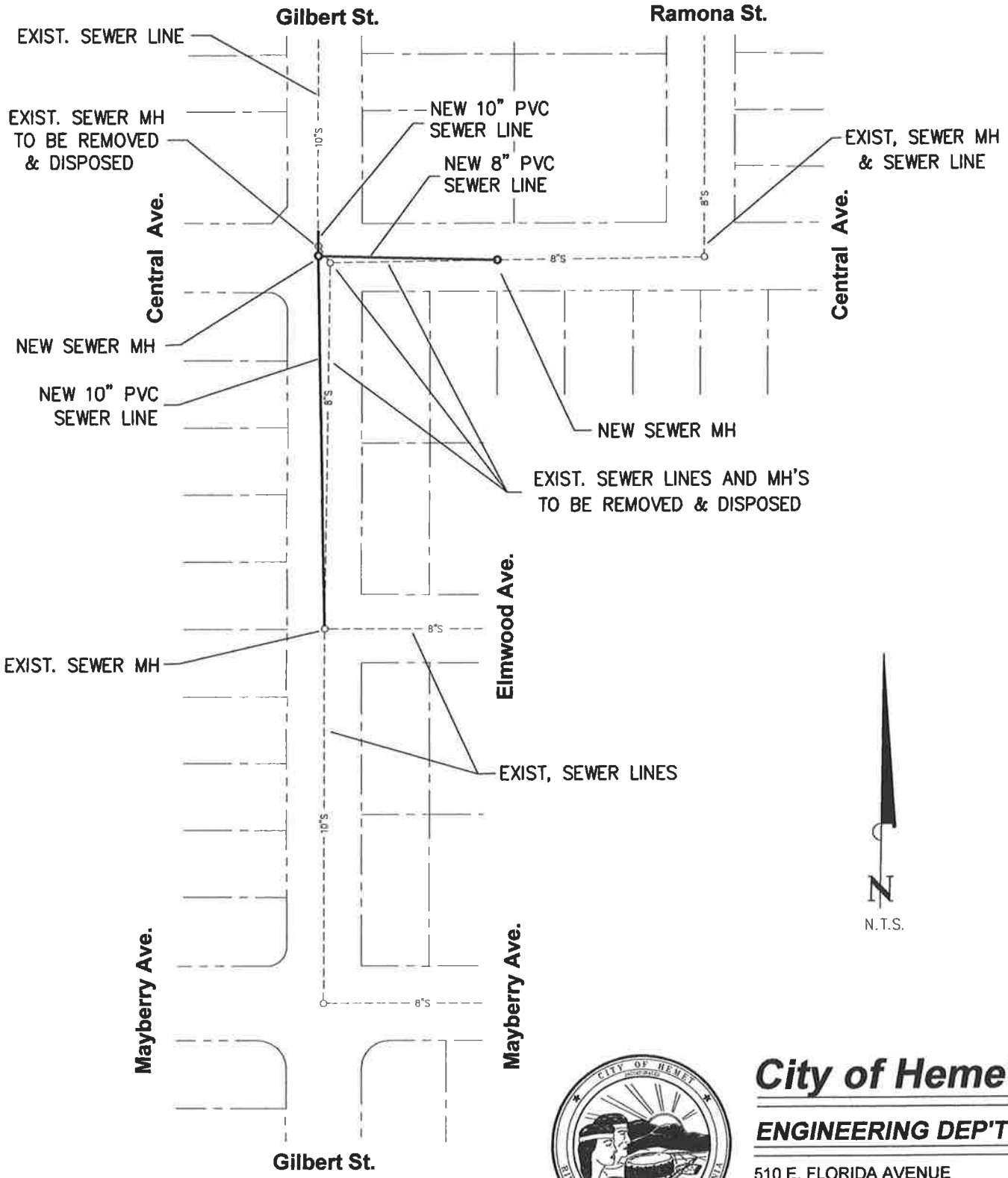
Lorena Rocha for Jessica Hurst

Jessica Hurst
Deputy CM/Admin. Services Director

Attachment(s): Exhibit "A" Project Map
Construction Contract and Bonds
Resolution

Exhibit "A"

Sewer Rehabilitation
Gilbert Street



City of Hemet

ENGINEERING DEP'T

510 E. FLORIDA AVENUE
HEMET, CA 92543
(951) 765-2360

CITY OF HEMET
Hemet, California
RESOLUTION BILL NO. 16-094

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA, AWARDING CONSTRUCTION CONTRACT OF $185,830.00 TO TBU, INC. AND DETERMINING COST ESTIMATE AND CONSTRUCTION AMOUNT ARE REASONABLE

WHEREAS, the City of Hemet received federal grant funds to perform pavement resurfacing on Gilbert Street from Acacia to Stetson; and,

WHEREAS, during the design of the Gilbert Street resurfacing project, the City of Hemet discovered the existence of manhole deficiencies and an undersized segment of sewer main on Gilbert Street between Elmwood and Central Avenue; and,

WHEREAS, the Gilbert Street Sewer Main Replacement Project replaces the 8 inch sewer main segment with a 10 inch sewer main and corrects the manhole deficiencies; and,

WHEREAS, the Gilbert Street Sewer Main Replacement Project was informally bid using the informal bidding procedures set forth in City of Hemet Municipal Code Sec. 2-358, including publishing Notice to contractors and notice inviting informal bids in an advertisement to potential bidders on the City of Hemet Website, the trade journals specified in Public Contract Code section 22036, the CIPList, and by e-mail communication to all persons/entities that requested notification or were on the list of qualified contractors; and,

WHEREAS, on October 25, 2016, at 2:00 pm the City of Hemet received four responsive, sealed bids from (1) TBU, Inc. (Beaumont, CA) of $195,830; (2) GRBCON, Inc. (Arcadia, CA) of $198,375; (3) Taylor Underground (San Jacinto, CA) of $224,040; and (4) Genesis Construction, Inc. (Hemet, CA) of $262,112; and,

WHEREAS, all of the bids exceeded the $175,000.00 maximum for the City Manager to award public works construction projects following informal bidding procedures; and

WHEREAS, all of the bids included a $10,000 contingency placeholder item within the bid schedule for all potential bidders, the deletion of which and corresponding reduction of all of the bids by $10,000 does not provide any bidder with a competitive advantage; and,

WHEREAS, after deleting the $10,000 contingency placeholder and reducing all of the bids by the $10,000 line item, the lowest responsive and responsible bidder is TBU, Inc. with an adjusted bid amount of $185,830.00; and

WHEREAS, City of Hemet Municipal Code Sec. 2-358(3) authorizes the City Council to award by resolution by a four-fifths vote construction contracts at $187,500.00 or less, if the City Council determines the cost estimate was reasonable; and

WHEREAS, City of Hemet Municipal Code Sec. 2-359 authorizes the City Manager to approve a public project contract change order of up to ten percent of the original contract amount not to exceed $25,000.00 provided that adequate budget is available; and

WHEREAS, the project is categorically exempt from CEQA under section 15302 (c) for replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity; and,

WHEREAS, all legal prerequisites prior to adoption of this resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, AND DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City Council finds that the facts, findings and conclusions set forth above are true and correct.

SECTION 2. Based on the foregoing findings and substantial evidence in the record, the City Council does hereby resolve:

1. Approve the plans and specifications for CIP 5623.
2. Find and determine that the deletion of the $10,000 contingency placeholder item from the bid schedule for all potential bidders and reduce all bids by $10,000 does not provide any bidder with a competitive advantage.
3. Waive any and all minor irregularities in the bid and accept TBU, Inc. as the lowest responsive and responsible bidder.
4. Award the construction contract for the Gilbert Street Sewer Main Replacement Project - C.I.P. No. 5623 - in the amount of $185,830.00 to the lowest responsive and responsible bidder TBU, Inc.
5. Determine the cost estimate of the city and construction contract amount of $185,830.00 are reasonable pursuant to Hemet Municipal Code Sec. 2-358(3).
6. Authorize the City Manager to execute contracts and related documents and file the Notice of Completion upon satisfactory completion of the project.
7. Authorize the City Manager to execute change order(s) of up to ten percent of the original contract amount not to exceed $25,000.00 for a total authorized expenditure of $210,830.00.

SECTION 3. The City Council finds that, in accordance with Section 15302(c) of the Guidelines for California Environmental Quality Act, Title 14 of the California Code of Regulations, the Gilbert Street Sewer Main Replacement Project - C.I.P. No. 5623 – involves the replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity, and, is, therefore, categorically exempt from compliance with the California Environmental Quality Act.

SECTION 4. The City Clerk will certify to the passage and adoption of this Resolution by at least a four-fifths vote and enter it into the book of original Resolutions.

PASSED, APPROVED, AND ADOPTED this 15th day of November, 2016.

Bonnie Wright, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City Attorney

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

I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the foregoing Resolution is the actual Resolution adopted by the City Council of the City of Hemet and was passed at a regular meeting of the City Council on the 15th day of November, 2016 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sarah McComas, City Clerk

CITY OF HEMET BID AND CONTRACT DOCUMENTS

CITY OF HEMET CONTRACTOR AGREEMENT

CIP NO. 5623, Gilbert Street Sewer Improvement Plan

This City of Hemet Contractor Agreement ("Agreement") is made and entered into for the above referenced Project by and between the City of Hemet ("Agency"), and TBU, Inc. ("Contractor on the 15th day of November, 2016.

In consideration of the mutual covenants and agreements set forth herein, Agency and Contractor have mutually agreed as follows:

1. CONSTRUCTION

The Contractor agrees to do all the Work in connection with the CIP No. 5623, Gilbert Street Sewer Improvement Plan to be constructed on Gilbert Street between Elmwood and Central Avenues in the City of Hemet, California, including to furnish any and all labor, services, materials and equipment to construct and complete the Project, and appurtenant work in connection therewith, said work to be done and materials to be furnished in strict conformity with the Contract Documents, including but not limited to this Agreement, approved Change Orders, Notice Inviting Bids, Instructions to Bidders, Bidder's Proposal and Information Required for Bid Submittal, Bid Schedules, Addenda and/or Bulletins, plans, Special Provisions (Specifications), General Conditions, General Provisions, Greenbook as amended and supplemented, technical references, all other referenced documents, all codes, permit conditions and regulations, for the total amount(s) and any unit prices and additive/deductive items, including all work, labor, services, materials and equipment described and reasonably inferable from documents enumerated in Exhibit "A" attached hereto and incorporated herein by reference (such construction and furnishing of labor, service, materials and equipment hereinafter referred to as the "Work") in a good workmanlike manner according to any and all applicable best practices to the satisfaction of the Agency.. The term Contract Documents shall mean this Agreement, and all of the items enumerated in Exhibit "A" and all change orders or addenda issued by the Agency with respect thereto. Agency must consent in writing to any changes in the scope of Work. Exhibit "A" shall be deemed revised in accordance with any revisions for which Agency's consent has been issued. Any revisions to the scope of Work for which Agency's written consent has not provided shall be null and void and done at the risk and sole expense of the Contractor.

2. CONTRACT PRICE

Agency hereby agrees to pay and the Contractor agrees to accept as full compensation for all Work performed in accordance with these Contract Documents the Contract Price as set forth in Exhibit "B", Contract Price, attached hereto and incorporated herein by reference. Payments to the Contractor shall be made in the manner described in the Special Provisions.

3. TIME FOR PERFORMANCE

Time is of the essence in Contractor's performance of the Work for this Agreement. Contractor agrees to diligently pursue the performance and completion of the Work in every detail to the satisfaction of the Agency, exclusive of maintenance periods, within the specified duration set forth in the Notice to Proceed. All timing requirements shall be strictly adhered to unless otherwise modified by the Agency in accordance with the Bid and Contract Documents. If Contractor

4. DELAYS AND EXTENSIONS OF TIME

Delays and extensions of time will be handled by Agency and Contractor pursuant to the provisions of Section 6-6 of the Special Provisions. However, Contractor must comply with the written notice requirement, as well as timely report back-up information, in strict compliance with the requirements of the provisions of Section 6-6 of the Special Provisions; Contractor's failure to submit these items within the times specified will constitute a waiver of the extension of time and payment for delay and will be ground for refusal by the Agency to consider such request.

5. LABOR CODE REQUIREMENTS

Pursuant to Labor Code Section 1771.1, the Contractor and all subcontractors shall be registered with the Department of Industrial Relations. Pursuant to Labor Code Section 1771.4, the Contractor is hereby notified that this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor, and any subcontractor engaged by Contractor, must pay not less than the specified prevailing rate of per diem wages to all workers employed in the execution of the contract. (Labor Code § 1774.) Contractor is responsible for compliance with Labor Code section 1776 relative to the retention and inspection of payroll records.

Contractor must comply with all provisions of Labor Code section 1775. Under Section 1775, Contractor may forfeit as a penalty to City up to $50.00 for each worker employed in the execution of the Contract by Contractor or any subcontractor for each calendar day, or portion thereof, in which the worker is paid less than the prevailing rates. Contractor may also be liable to pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate.

Contractor acknowledges and agrees to abide by the provisions of California Labor Code §§ 1720, et seq., as well as 1771, 1773, 1773.1, 1773.2, 1773.6, 1773.7, 1774, 1775 1776 and 1777, pertaining to the obligation to pay prevailing wages with respect to the performance of work ("Prevailing Wage Laws"). Contractor shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

Contractor acknowledges that under California Labor Code sections 1810 et seq., eight hours of labor constitutes a legal day's work. Contractor will forfeit as a penalty to City the sum of $25.00 for each worker employed in the execution of this Contract by Contractor or any

subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Labor Code section 1810. (Labor Code § 1813.)

6. NON-DISCRIMINATION

Contractor, its officers, agents, employees, and subcontractors may not discriminate in the employment of persons to perform the Work because of the race, religion, creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age of such person, except as may be permitted by California Government Code section 12940. Contractor is responsible for compliance with this section.

7. AUTHORIZED AGENCY REPRESENTATIVES

On behalf of the Agency, the City Engineer of the City of Hemet shall be the Agency's authorized representative in the interpretation and enforcement of all Work performed in connection with this Agreement. The City Engineer may delegate authority in connection with this Agreement to his/her assigned designees.

8. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless City, its elected officials, officers, employees and agents from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively, "Claims"), which City may suffer or incur or to which City may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of any negligent or willfully wrongful acts or omissions of Contractor, its officers, employees, agents, or subcontractors committed in performing any Work under this Contract, excluding Claims occurring as a result of the City's sole negligence or willful acts or omissions.

If any action or proceeding is brought against City by reason of any of the matters against which Contractor has agreed to indemnify City as provided above, City need not have first paid for any of the matters to which City is entitled to indemnification in order to be so indemnified. In the event of any Claim made against City, City may, in its sole discretion, reserve, retain or apply any funds due to Contractor under this Contract for the purpose of resolving such Claim. The provisions of this section will survive the expiration or earlier termination of this Agreement.

9. CLAYTON AND CARTWRIGHT ACT ASSIGNMENTS. In entering into this Contract or a contract with a subcontractor to supply goods, services, or materials pursuant to this Contract for the Project, Contractor and any or subcontractor is deemed to have offered and agreed to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700 of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials for the Project. This assignment will be deemed made and will become effective at the time City tenders final payment to Contractor, without further acknowledgement by the Parties.

10. INSURANCE

Contractor agrees to have and maintain in full force and effect during the term of this Agreement the insurance coverages listed in Exhibit B ("Insurance"), which is made a part of this Agreement.

Further, by signing below Contractor certifies that he/she/it is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work of this Agreement. Additionally.Contractor shall require each subcontractor to comply with the requirements of Section 3700 of the Labor Code, including requiring each subcontractor to execute the following certification:

> "I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Agreement."

11. ENTIRE AGREEMENT; CONFLICT

The Contract Documents comprise the entire agreement between the Agency and the Contractor with respect to the Work. In the event of conflict between the terms of this Agreement and the bid of the Contractor, then this Agreement shall control and nothing herein shall be considered as an acceptance of the terms of the bid conflicting herewith.

12. PROJECT DOCUMENTATION

All data, drawings, maps, models, notes, books, documents, papers, daily reports, schedules, time and materials tickets, employee time sheets, accounting records and other evidence pertaining to costs incurred, photographs, reports, studies and other documents (collectively, "Project Documents") prepared, developed or discovered by Contractor in the course of performing any of the Work under this Contract will become the sole property of City. Upon the expiration or termination of this Contract, Contractor must turn over all original Project Documents to City in its possession, but may retain copies of any of the Project Documents it may desire.

Contractor shall maintain the Project Documents and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement any documents not turned over to Agency for inspection by Agency.

13. FALSE CLAIMS

Contractor acknowledges that if a false claim is submitted to the Agency, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or

in reckless disregard of the truth or falsity of the information. In the event the Agency seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

I have read and understood all of the provisions of this Section 15, above:

(Initial) (Initial)

14. INDEPENDENT CONTRACTOR

Contractor is and will at all times remain as to City a wholly independent contractor and shall not be an employee, agent, partner or joint venturer of the Agency. Agency shall have the right to control Contractor insofar as the results of Contractor's services rendered pursuant to this Agreement; however, Agency shall not have the right to control the means by which Contractor accomplishes such services. Neither the City nor any of its officers, employees, or agents will have control over the conduct of Contractor or any of Contractor's officers, employees, agents or subcontractors, except as expressly set forth in the Contract Documents. Contractor may not at any time or in any manner represent that it or any of its officers, employees, agents, or subcontractors are in any manner officers, employees, agents or subcontractors of City.

15. LICENSES AND PERMITS

Contractor must, at Contractor's sole expense, obtain all necessary permits and licenses required for the Work, and give all necessary notices and pay all fees and taxes required by law, including, without limitation, any business license tax imposed by City. Contractor represents and declares to Agency that it has all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. In performing the Work, Contractor must comply with all applicable statutes, laws and regulations, including, but not limited to, OSHA requirements and the Hemet Municipal Code.

16. GENERAL PROVISIONS

a) Authority to Execute. Each Party represents and warrants that all necessary action has been taken by such Party to authorize the undersigned to execute this Contract and to bind it to the performance of its obligations.

b) Assignment. Contractor may not assign this Contract without the prior written consent of City, which consent may be withheld in the City's sole discretion since the experience and qualifications of Contractor were material considerations for this Contract.

c) Binding Effect. This Agreement is binding upon the heirs, executors, administrators, successors and permitted assigns of the Parties.

d) Integrated Contract. This Contract, including the Contract Documents, is the entire, complete, final and exclusive expression of the Parties with respect to the Work to be performed under this Contract and supersedes all other agreements or understandings, whether oral or written, between Contractor and City prior to the execution of this Contract.

e) Modification of Contract. No amendment to or modification of this Contract will be valid unless made in writing and approved by Contractor and by the City Council or City Manager, as applicable. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.

f) Counterparts and Facsimile Signatures. This Contract may be executed in several counterparts, each of which will be deemed an original, and all of which, when taken together, constitute one and the same instrument. Amendments to this Contract will be considered executed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will have the same effect as an original signature.

g) Waiver. Waiver by any Party of any term, condition, or covenant of this Contract will not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Contract will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Contract. Acceptance by City of any Work performed by Contractor will not constitute a waiver of any of the provisions of this Contract.

h) Interpretation. This Contract will be interpreted, construed and governed according to the laws of the State of California. Each party has had the opportunity to review this Contract with legal counsel. The Contract will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.

i) Severability. If any term, condition or covenant of this Contract is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Contract will not be affected and the Contract will be read and construed without the invalid, void or unenforceable provision.

j) Venue. In the event of litigation between the Parties, venue in state trial courts will be in the County of Riverside. In the event of litigation in a U.S. District Court, venue will be in the Central District of California, in Riverside.

IN WITNESS WHEREOF this Agreement is executed as of the date first written above.

AGENCY:

City of Hemet

By: _____

_____, City Manager

CONTRACTOR:

TBU INC

By: _____

Name: TED J. BURTON, SR

Its: PRES / SEC / TREAS

By: _____

Name: CHARLES WHALEN

Its: VICE PRESIDENT

ATTEST:

By: _____

Sarah McComas, City Clerk

APPROVED AS TO FORM:

By: _____

XXXXXX, City Attorney

_____

Contractor's City Business License No.

781050 A, B, C12, C34

State Contractor License No. & Class

244 MAPLE AVE., SUITE T

Street Address

BEAUMONT, CA 92223

City, State, Zip Code

[NOTE: In the event the Contractor is a Corporation, the signatures of two separate persons holding different offices must be provided.]

Project No. 5623

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

State of California)
County of Riverside)
County of Riverside)

On NOV 3, 2016, before me, MICHELLE KILDAY, NOTARY PUBLIC,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared TED J. BURTON, SR,
Name of Signer(~~s~~)

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~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.

Michelle Kilday
Signature of Notary Public

NRO1 MICHELLE KILDAY COMM. #2062306 Notary Public - California Riverside County My Comm. Expires Mar. 27, 2018 NRO1

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: TED J. BURTON, SR

- ¨ Individual
- ¨ Corporate Officer
  PRES/SEC / TREA
  Title(s)
- ¨ Partner(s) ¨ Limited ¨ General
- ¨ Attorney-In-Fact
- ¨ Trustee(s)
- ¨ Guardian/Conservator
- ¨ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document City of HEMET . Gilbert St. SEWER IMPROV.

Number Of Pages 8

Date Of Document 11.3.16

Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

State of California)
County of Riverside)
County of Riverside)

On Nov 3, 2016, before me, MICHELLE KILDAY NOTARY PUBLIC,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared CHARLES WHALEN,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(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/the~~ir 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.

Michelle Kilday
Signature of Notary Public

MICHELLE KILDAY
COMM. #2062306
Notary Public - California
Riverside County
My Comm. Expires Mar. 27, 2018
NRO1 NRO1

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: CHARLES WHALEN

- ¨ Individual
- ¨ Corporate Officer
  VP
  Title(s)
- ¨ Partner(s) ¨ Limited ¨ General
- ¨ Attorney-In-Fact
- ¨ Trustee(s)
- ¨ Guardian/Conservator
- ¨ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document City of Hemet - Gilbert St. Sewer Improv.

Number Of Pages 8

Date Of Document 11.3.16

Signer(s) Other Than Named Above

EXHIBIT A

CONTRACT DOCUMENTS

City of Hemet Contractor Agreement

Change Orders issued by Agency, signed by Contractor and (if necessary) approved by City Council

Notice Inviting Bids, Instructions to Bidders, and Bidder's Proposal and Information Required for Bid Submittal

Bid Schedule(s)

Addenda and/or Bulletins

Plans

Special Provisions (Specifications)

General Conditions

General ProvisionsStandard Specifications for Public Works Construction ("Greenbook") 2015 edition as amended and supplemented

State Standard Specifications

State Standard Plans

Permits issued by jurisdictional regulatory agencies

Electric, gas, telephone, and cable television company specifications and standards

Notice of Award

Notice to Proceed

Certificate(s) of Required Insurance and Worker's Compensation Insurance

Security for Payment (Labor & Materials) and Performance

If there is a conflict between any of the Contract Documents, the documents highest in precedence shall control. The order of precedence of the Contract Documents shall be as provided in Section 2-5.2 of the Special Provisions. Detail drawings shall take precedence over general drawings.

EXHIBIT B

CONTRACT PRICE

The Contract Price of $185,830.00 for performing all Work described in the Contract Documents, including labor, materials, services and equipment is the total amount of all lump sum items and of all unit price sums, determined by multiplying the unit price for each item times the actual quantity of each such item, as determined by the Agency.

Bid item 15 "Field Orders" in the amount of $10,000.00 is deleted from the contract.

PAYMENT BOND

(Bond for Labor and Material)

KNOW ALL MEN BY THESE PRESENTS: THAT

WHEREAS, the City of Hemet, in the County of Riverside, State of California, by minute action passed_____, has awarded to _____ hereinafter designated as the "Principal," a contract for construction of the _____ project together with appurtenances thereto, and

WHEREAS, said Principal is required to furnish a bond in connection with said contract providing that if said principal, or any of his or its subcontractors shall fail to pay for any materials, provisions, provender, or other supplies or equipment used in, upon, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth;

NOW, THEREFORE, we _____as Principal, and _____as Surety, are held and firmly bound unto the City of Hemet , hereinafter called the City, in the penal sum of one hundred percent (100%) of the amount _____Dollars ($_____), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if said Principal, his or its heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, provender, rented or hired teams, implements, or machinery, or other supplies or equipment of any kind used, in, upon, for or about the performance of the work contracted to be done, including, but not limited to, that part of water, gas, power, light, heat, oil, gasoline, or telephone service directly applicable to the contract, or for any work or labor thereon of any kind, or for any amounts due under the California Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code with respect to such work and labor, and provided that any person, so furnishing said supplies or equipment contributing to said work to be done, or any person who performs work or labor upon the same, or any person who supplies both work and supplies or equipment therefore shall have complied with the provisions of Chapter 7 of Title 15 of Part 4 of Division 3 of the California Civil Code, as amended, or any successor thereto, then said Surety shall pay the same in or to an amount not exceeding the amount hereinabove set forth and also shall pay in case suit is brought upon this bond, such reasonable attorney's fees as shall be fixed by the court.

The bond shall inure to the benefit of any and all persons, companies, and corporations named in California Civil Code Section 3181, as amended, or any successor thereto, so as to give a right of action to them or their assigns in any suit brought upon this bond.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modifications of the Contract Documents or of the work to be performed thereunder shall in any way affect its obligations on this bond and it does hereby waive notice of such change, extension of time, alteration, or modification of the Contract Documents or of work to be performed thereunder.

Notices, papers and other documents required by Chapter 2 of Title 14 of Part 2 of Code of Civil Procedure, or by any other law, regulation, or requirement of the Contract may be served upon Principal at this address: _____

_____

and upon Surety at this address:_____

_____

_____

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety herein named, under penalty of perjury, on the _____ day of _____, 2____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

_____
Principal

By _____

_____
Surety

By _____

Civil Code of the State of California, Section 1188, CERTIFICATE OF ACKNOWLEDGMENT

An officer taking the acknowledgment of an instrument must endorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed.

(INDIVIDUAL)

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

On this _____ day of _____, in the year 2_____, before me, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name _____ subscribed to the within instrument and acknowledged that _____ executed the same.

WITNESS my hand and official seal.

SEAL

_____
Notary Public - State of California

(CORPORATION)

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

On this _____ day of _____, in the year 2_____, before me, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as president (or secretary) or on behalf of the corporation therein named acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

SEAL

_____
Notary Public - State of California

(PARTNERSHIP)

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

On this _____day of _____, in the year 2_____, before me, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument on behalf of the partnership and acknowledged to me that the partnership executed it.

WITNESS my hand and official seal.

SEAL

_____
Notary Public - State of California

(ATTORNEY IN FACT)

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

On this _____ day of _____, in the year 2_____ , before me, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney in fact of _____
_____
and acknowledged to me that he/she subscribed the name of _____
_____ thereto as principal, and his/her own name as attorney in fact.

WITNESS my hand and official seal.

SEAL

_____
Notary Public - State of California

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: THAT

WHEREAS, the City of Hemet, County of Riverside, State of California, by minute action passed _____has awarded to _____ hereinafter designated as the "Principal", a Contract for construction of the _____ project together with appurtenances thereto, and

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract.

NOW, THEREFORE, we _____ as Principal, and _____ a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of California, as Surety, are held and firmly bound unto the City of Hemet hereinafter called the Contracting City, in the penal sum of one hundred percent (100%) of the amount of _____ Dollars ($_____), lawful money of the United Stated of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH that, if the hereby bounded Principal, his/hers or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions and agreements in said Contract and any alteration thereof, made as therein provided all within the time and in the manner therein designated and in all respects according to their true intent and meaning, and shall faithfully fulfill the one-year guarantee of all materials and workmanship after final acceptance; and shall indemnify and hold harmless the City of Hemet, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the Contract Documents or of the work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or modification of the Contract Documents or of work to be performed thereunder.

No final settlement between the Principal and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Notices, papers and other documents required by Chapter 2 of Title 14 of Part 2 of Code of Civil Procedure, or by any other law, regulation, or requirement of the Contract may be served upon Principal at this address:_____

_____

and upon Surety at this address: _____

_____

_____

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety herein named on the ____ day of _____, 2___. The name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

_____

Principal

By _____

_____

Surety

By _____

Civil Code of the State of California, Section 1188, CERTIFICATE OF ACKNOWLEDGMENT

An officer taking the acknowledgment of an instrument must endorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed.

(INDIVIDUAL)

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

On this _____ day of _____, in the year 2_____, before me, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name _____ subscribed to the within instrument and acknowledged that _____ executed the same.

WITNESS my hand and official seal.

SEAL

_____
Notary Public - State of California

(CORPORATION)

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

On this _____ day of _____, in the year 2_____, before me, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as president (or secretary) or on behalf of the corporation therein named acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

SEAL

_____
Notary Public - State of California

(PARTNERSHIP)

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

On this _____ day of _____, in the year 2_____, before me, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument on behalf of the partnership and acknowledged to me that the partnership executed it.

WITNESS my hand and official seal.

SEAL

_____
Notary Public - State of California

(ATTORNEY IN FACT)

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

On this _____ day of _____, in the year _____, before me, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney in fact of _____
_____
and acknowledged to me that he/she subscribed the name of
_____ thereto as principal, and his/her own name as attorney in fact.

WITNESS my hand and official seal.

SEAL

_____
Notary Public - State of California

EXHIBIT B

INSURANCE

1. **General Requirements**. Contractor must procure and maintain in full force and effect during the term of this Contract the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

Type of Insurance	Limits (combined single)
Commercial General Liability	$5,000,000
Business Automobile Liability	$5,000,000
Workers' Compensation	$1,000,000
Builder's Risk	Completed value of the project
Surety Bonds	As described below
Professional Liability	$1,000,000
Contractors' Pollution Legal Liability	$1,000,000

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specific minimum limits of insurance and coverage shall be available to the City.

2. **Commercial General Liability Insurance.** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

3. **Business Auto Coverage.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than $5,000,000 per accident for bodily injury and property damage. If Contractor or Contractor's employees will use personal autos in any way on this Project, Contractor must provide evidence of personal auto liability coverage for each such person.

4. **Workers Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than $1,000,000 per accident for bodily injury or disease.

5. **Builder's Risk (Course of Construction)**. Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

6. **Surety Bonds.** Contractor shall provide the following Surety Bonds: (1) Bid bond, (2) performance bond, (3) payment bond, and (4) maintenance bond. The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

7. **Professional Liability.** If design/build, with limits no less than $1,000,000 per occurrence or claim, and $2,000,000 policy aggregate.

8. **Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions** (if project involves environmental hazards) with limits no less than $1,000,000 per occurrence or claim, and $2,000,000 policy aggregate.

9. **Other Insurance.** Contractor may be required to obtain such other insurance coverage as may be required by applicable law or by the City.

10. **Excess or Umbrella Liability Insurance (Over Primary).** If an excess or umbrella liability policy is used to meet limit requirements, the insurance must provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an excess or umbrella liability policy must include a "drop down provision" providing primary coverage above a maximum $25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage must be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There must be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage must be applicable to City for injury to employees of Contractor, its subcontractors or others performing work to satisfy Contractor's obligations under this Contract. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review, but in no event may be less than $2,000,000 per occurrence and aggregate.

11. **Certificates of Insurance and Endorsements**. Prior to commencing any Work under this Contract, Contractor must file with the Director Certificates of Insurance and Endorsements evidencing the existence of all insurance required by this Contract, along with such other evidence of insurance or copies of policies as may reasonably be required by City. Such Certificates of Insurance and Endorsements must be in a form approved by the City Attorney of City. Contractor must maintain current certificates and endorsements on file with City during the term of this Contract reflecting the existence of all required insurance. Each of the certificates must expressly provide that no material change in the policy, or termination thereof, will be effective except upon 30 days prior written notice to City. The City reserves the right to require complete, certified copies of the insurance certificates and endorsements.

12. **Accessability of Insurers**. Insurance is to be placed with insurances with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

13. **Waiver of Subrogation.** Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Entity for all work performed by the Contractor, its employees, agents and subcontractors.

14. **Failure to Maintain Required Insurance**. If Contractor, for any reason, fails to have in place at all times during the term of this Contract all of the required insurance coverage, the Director may obtain such coverage at Contractor's expense and deduct the cost from the sums due Contractor.

15. **Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

16. **Effect of Coverage**. The existence of the required insurance coverage under this Contract will not be deemed to satisfy or limit Contractor's indemnity obligations under this Contract. Contractor acknowledges that the insurance coverage and policy limits set forth in this Contract constitute the minimum coverage and policy limits required. Any insurance proceeds available to City in excess of the limits and coverage required by this Contract, and which is applicable to a given loss, must be made available to City to compensate it for such losses.

17. **Special Risks or Circumstances.** Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

AGENDA # 26

Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Steven Latino, Engineering Director/City Engineer
Alexander Meyerhoff, City Manager

DATE: November 15, 2016

RE: CIP 5641 CUP14-006 Takeover –Professional Services Contract for Engineering, Construction Management and Inspection Services.

RECOMMENDATION:

That the City Council take the following actions:

a. Approve a Professional Services Agreement with Albert A Webb Associates, of Riverside, California to provide Engineering, Construction Management and Inspection Services for CIP 5641 in the amount of $138,450.00.

BACKGROUND:

On December 16, 2014, the City of Hemet Planning Commission approved a Conditional Use Permit (CUP 14-006) for the operation of a 20-megawatt, ground-mounted, solar power generation facility located on a 134-acre property at the southwest corner of Acacia Avenue and Sanderson Avenue. Sun Edison is the operator of the facility under a 25-year lease from the property owner, the Breliant family trust. The electricity that is produced is sold to the Riverside Public Utility to assist in meeting the State requirements under AB 32 to generate 31% of its power from renewable sources by 2030. The solar generated electricity is connected to the Southern California Edison (SCE) power grid and distributed over SCE's existing power network.

The approval of CUP 14-006 was subject to 124 conditions, including the requirement to fully improve the Acacia Avenue and Sanderson Avenue street frontages, relocate existing utility lines, construct sidewalks, streetlights, and landscaped setbacks adjacent to the project (off-site improvements). A letter of credit securing the off-site improvements was submitted to the City in the amount of $2,133,111.00.

On April 21, 2016 the City sent a Notice of Default to Sun Edison indicating that

they had 10 days to submit a plan to correct the default situation for not providing the off-site improvements along Sanderson Avenue and Acacia Avenue. After receiving no response, and learning that Sun Edison had filed for Chapter 11 Bankruptcy Protection, the City sent a Demand Letter to Key Bank requesting the Letter of Credit in the amount of $2,133,111.00. After providing some additional documentation on May 10, 2016; the City received the wire transfer of the monies on May 16, 2016.

On August 10, 2016, the City solicited requests for On-Call Design Phase and Construction Phase Services. Six firms were selected to provide as needed services in each category (Design Phase, Construction Phase) with some qualifying for both.

On September 15, 2016 an informal request for proposal was solicited to the On-Call Consultants. Five of the On-Calls stated they could provide the required services and submitted proposals.

COMPANY	LOCATION
Albert A Webb Associates	Riverside, CA
Cozad and Fox	Hemet, CA
HR Green	Orange, CA
Michael Baker International	Temecula, CA
Penco Engineering	Riverside, CA

Albert A Webb Associates was judged to be the most qualified based on their demonstrated expertise providing the required services to municipal agencies, cost of the services, and capability to perform the work in a timely manner.

The scope of services includes performing a constructability review, making any plan revisions based on the constructability review, revisions to convert the project plans from a privately funded development of a public improvement to a public works capital improvement project, prepare bid documents, assist with the bid process & provide bid support, perform all construction management and inspection tasks.

FISCAL IMPACT:

None. Funding for this project is allocated in Account # 370-4125-2710 as approved by the City Council on June 14, 2016.

Respectfully submitted,

Steven Latino
Engineering Director/
City Engineer

Fiscal review:

Jessica A. Hurst
Deputy City Manager/
Administrative Services

DESIGN PROFESSIONAL SERVICES AGREEMENT

By and Between

THE CITY OF HEMET,
a municipal corporation

and

Albert A. Webb and Associates

for

CUP 14-006 Takeover

October 25, 2016

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN
THE CITY OF HEMET, CALIFORNIA
AND
ALBERT A WEBB AND ASSOCIATES

This Agreement for Design Professional Services ("Agreement") is entered into as of this 15th day of November, 2016 by and between the City of Hemet, a municipal corporation ("City") and Albert A Webb and Associates, a California "S" Corporation ("Design Professional"). City and Design Professional are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

A. City has sought, by ***informal request for proposal from City on-call consultant list***, the performance of the ***engineering and construction project management*** services defined and described particularly in Section 2 of this Agreement.

B. Design Professional, following submission of 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. Design Professional was selected by the City on the basis of Design Professional's demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.

D. Pursuant to the City of Hemet's Municipal Code, City has authority to enter into this Design Professional Services Agreement and the City Manager has authority to execute this Agreement.

E. The Parties desire to formalize the selection of Design Professional 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 ***2 year*** commencing on the date first ascribed above.

SECTION 2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.

(a) Scope of Services. Design Professional 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 Design Professional 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 Design Professional to continue performing the Services.

SECTION 3. ADDITIONAL SERVICES.

Design Professional 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 Design Professional 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 not exceed one hundred thirty eight thousand four hundred fifty dollars ($138,450.00), 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 Design Professional 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 subconsultant contracts. Subconsultant 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 Design Professional 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 Design Professional for correction and resubmission.

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

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

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

City may inspect and accept or reject any of Design Professional's work under this Agreement, either during performance or when completed. City shall reject or finally accept Design Professional's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Design Professional'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 Design Professional'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 Design Professional 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 Design Professional. Upon completion, expiration or termination of this Agreement, Design Professional 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 Design Professional in the course of providing the Services pursuant to this Agreement, Design Professional'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. DESIGN PROFESSIONAL'S BOOKS AND RECORDS.

(a) Design Professional shall maintain any and all documents and records demonstrating or relating to Design Professional's performance of the Services. Consultant 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 Design Professional 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 Design Professional'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 Design Professional'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) Design Professional is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Design Professional 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 Design Professional shall at all times be under Design Professional'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 Design Professional or any of Design Professional's officers, employees, or agents except as set forth in this Agreement. Design Professional shall not at any time or in any manner represent that Design Professional or any of Design Professional's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

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

SECTION 9. STANDARD OF PERFORMANCE.

Design Professional 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. Design Professional 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, Design Professional shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Design Professional under this Agreement, and shall use such skill, prudence, and diligence as other members of Design Professional's profession commonly possess and exercise. 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 Design Professionals 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.

Design Professional 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. Design Professional 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 Design Professional to comply with this section.

SECTION 11. PREVAILING WAGE LAWS.

It is the understanding of City and Design Professional 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.

Design Professional 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.

Design Professional 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 Design Professional 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, Design Professional 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) Design Professional 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 Design Professional's performance of the Services. Design Professional 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. Design Professional 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 Design Professional 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. Design Professional 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 Design Professional 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 Design Professional in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Design Professional. Design

Professional 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) Design Professional, 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 Design Professional gives City notice of such court order or subpoena.

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

(d) Design Professional shall promptly notify City should Design Professional , 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 Design Professional or be present at any deposition, hearing or similar proceeding. Design Professional agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Design Professional. 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 by Design Professional. As provided under Civil Code Section 2782.8, Design Professional 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 claims. actions and proceedings (whether at law or equity, administrative or judicial), demands, orders, judgments, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, (collectively "Claims") to the extent same arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional, its officers, agents, employees or sub-consultants (or any entity or individual that Design Professional shall bear the legal liability thereof) in the performance of professional services under this Agreement, with the understanding that in the event Claims are found by the trier of fact to have been caused by the joint or concurrent negligence of the City and its contractors and Design Professionals, and Design Professional, damages and expenses from both indemnity and duty to defend obligations shall be borne by each party in proportion to its negligence.

(b) Indemnification from Sub-consultants. Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-consultant, sub-contractor or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Design Professional fails to obtain such indemnity obligations from others as required here, Design Professional 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 Design Professional and shall survive the termination of this Agreement or this section.

(c) 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.

Design Professional 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. Design Professional agrees to provide City with copies of required policies upon request.

SECTION 18. ASSIGNMENT.

The expertise and experience of Design Professional 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 Design Professional under this Agreement. In recognition of that interest, Design Professional shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Design Professional'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 Design Professional, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

SECTION 19. CONTINUITY OF PERSONNEL.

Design Professional shall make every reasonable effort to maintain the stability and continuity of Design Professional's staff and subcontractors, if any, assigned to perform the Services. Design Professional shall notify City of any changes in Design

Professional's staff and subcontractors, 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 thirty (30) days written notice of termination to Design Professional. In the event such notice is given, Design Professional shall cease immediately all work in progress.

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

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

(d) Upon termination of this Agreement by either Design Professional or City, all property belonging exclusively to City which is in Design Professional's possession shall be returned to City. Design Professional shall furnish to City a final invoice for work performed and expenses incurred by Design Professional, prepared as set forth in Section 4 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 Design Professional is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Design Professional for any work performed after the date of default. Instead, the City may give notice to Design Professional of the default and the reasons for the default. The notice shall include the timeframe in which Design Professional 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 Design Professional 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 Design Professional does not cure the default, the City may take necessary steps to terminate this Agreement under Section 20. Any failure on the part of the City to give notice of the Design Professional'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.

Design Professional 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 Design Professional. 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 Design Professional 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 Design Professional:	Albert A Webb and Associates Attention: Mr. Reed Chilton, P.E. 3788 McCray Street Riverside, CA 92506

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 Design Professional represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Design Professional 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 Design Professional 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 Design Professional 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 Design Professional 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.

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

CITY OF HEMET

_____
Alexander Meyerhoff
City Manager

ATTEST:

_____
Sarah McComas
City Clerk

APPROVED AS TO FORM

_____
Eric S. Vail
City Attorney

ALBERT A. WEBB ASSOCIATES

By: William T. Malone
William T. Malone
Its: Vice President

By: Wallace H. Franz
WALLACE H. FRANZ
Its: VICE-PRESIDENT

NOTE: **DESIGN PROFESSIONAL'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 DESIGN PROFESSIONAL'S BUSINESS ENTITY.**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)

On 11/2, 20 16,
Date

before me, Susie Reyes, Notary Public,
Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared William Thomas Malone & Wallace Harper Franz,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(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.

SUSIE REYES
COMM #2113131
NOTARY PUBLIC - CALIFORNIA
RIVERSIDE COUNTY
My Commission Expires May 25, 2019

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

- Individual
- Corporate Officer

_____
Title(s)

- Partner(s)
  - Limited
  - General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
Date Of Document

_____
Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who

EXHIBIT "A"
SCOPE OF SERVICES

I. Design Professional will perform the following Services:

A. See Exhibit "D"

II. As part of the Services, Design Professional will prepare and deliver the following tangible work products to the City:

A. See Exhibit "D"

III. During performance of the Services, Design Professional will keep the City appraised of the status of performance by delivering the following status reports:

A. Biweekly informal status reports via email

B. Monthly formal status reports included with the billing describing the work completed during the billing period and anticipated work for the next billing period

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

A. Monthly formal status reports

B. Deliverables corresponding to the appropriate scope of work in Exhibit "D"

C. Construction Management documentation to be uploaded to www.virtual-pm.com to the satisfaction of the Principal Engineer

D. Labor compliance documents as required by the all applicable laws, codes, and ordinances

V. Design Professional will utilize the following personnel to accomplish the Services:

A. Reed Chilton will be primary point of contact and project manager

B. Bill Malone (secondary contact)

C. Other Webb staff as required

D. Subconsultant staff as required

VI. Design Professional will utilize the following subcontractors to accomplish the Services:

A. Inland Foundation Engineering
B. Design West Engineering

EXHIBIT "B"
COMPENSATION

I. Design Professional shall use the following rates of pay in the performance of the Services:

See Fee Schedule for tasks 1 through 10 in Exhibit "D"

See attached rate sheet for hourly rates for Webb and Associates in Exhibit "D"

See attached rate sheet for hourly rates for Inland Foundation Engineering in Exhibit "D"

See attached rate sheet for hourly rates for Design West Engineering in Exhibit "D"

All extra work will be on a time and materials basis per the rate sheets unless otherwise agreed to in writing. Extra work will only be performed upon prior written approval of the City.

II. Design Professional may utilize subcontractors as indicated in this Agreement. The hourly rate for any subcontractor is not to exceed the hourly rates in rate sheet without written authorization from the City Manager or his designee.

IV. The total compensation for the Services shall not exceed $138,450.00 as provided in Section 4 "Compensation and Method of Payment" of this Agreement.

EXHIBIT "C"
INSURANCE

A. Insurance Requirements. Design Professional 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 Design Professional, 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. Design Professional shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Design Professional shall maintain professional liability insurance appropriate to the Design Professional'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 Design Professional's services or the termination of this Agreement. During this additional three (3) year period, Design Professional shall annually and upon request of the City submit written evidence of this continuous coverage.

2. Minimum Limits of Insurance. Design Professional shall maintain limits of professional liability insurance no less than $1,000,000 per occurrence.

B. Other Provisions. 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.

C. Other Requirements. Design Professional agrees to deposit with City, at or before the effective date of this contract, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City Attorney may require that Design Professional furnish City with copies of original endorsements effecting coverage required by this Section. 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. Design Professional shall furnish certificates and endorsements from each subcontractor identical to those Design Professional 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 Design Professional 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 Design Professional's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

EXHIBIT "D"
SCOPE OF WORK

Webb's scope of work will include the following:

1. Field investigation and completion of constructability review for roadway, lighting, and landscape plans. Lighting plan constructability and code conformance review to be performed by our electrical engineer (Design West Engineering).

   Deliverable: Memo summarizing constructability review findings.

2. Dependent upon City feedback from constructability review, prepare plan revisions/modifications sign and stamp such changes by a California Registered Engineer (Street and Lighting plans) or Landscape Architect (Landscape plans).

   Deliverable: Revised design mylars.

3. Prepare project specific specifications using City boiler plate and Greenbook (2015), complete contract documents (i.e. plans, specifications, and engineers estimate of construction costs).

   Deliverable: Electronic Word document of specifications.

4. Prepare estimate of project cost [i.e. construction cost ("hard costs") plus any remaining "soft costs" (e.g. Work related herein, geotechnical & materials testing, etc.).

   Deliverable: Memo providing Engineer's construction cost estimate plus related soft costs.

5. Assist the City with the bidding process. Assume the preparation of one (1) Addendum.

   Deliverable: Addendum.

6. Determine project duration (working days). Currently estimated to be 50 working days.

   Deliverable: Memo providing project duration.

7. Perform Construction Management (CM) and administration services using City software (Virtual-PM). Refer to Attachment A for our typical CM tasks.

   Deliverable: Various documentation as applicable and as outlined in Attachment A.

8. Perform construction inspection services. Assume full time. Refer to Attachment A for our typical inspection tasks.

   Deliverable: Daily inspection reports.

9. Geotechnical and materials testing services (Inland Foundation Engineering) refer to Attachment B for specific Scope of Work and related costs.

   Deliverable: Daily testing reports and final materials testing report.

10. Prepare CEQA document. Assume a Notice of Exemption (NOE) [Optional Task].

    Deliverable: Notice of Exemption for project.

At conclusion of the project Webb and Associates will deliver digital files in file formats (Cadd, MS Office, etc) to the satisfaction of the City Engineer for all plans, specifications, and reports generated during the project.

Schedule/Budget

Based upon the roadway, lighting, and landscape plans received we currently estimate a construction duration of 50 working days (10 weeks). In addition to the actual construction time we anticipate one (1) week of pre-construction activities and one (1) week of post construction activities. Refer to Attachment A for our typical pre-construction, construction, and post construction activities.

Based upon the Scope of Services outlined herein, and current project assumptions our total estimated budget for said services is $138,450 (Attachment C). This project will be performed on a time and materials not to exceed basis.

ATTACHMENT A

TYPICAL WEBB CONSTRUCTION MANAGEMENT AND INSPECTION TASKS

Bidding and Construction Services

Task 1. Pre-Bid Stage

1. Perform constructability review of project plans.
2. Field review the project area and generally assess existing conditions to develop an understanding of the issues that are critical to the City's project and identify any special concerns.
3. Thorough review of project plans and specifications for possible errors and deficiencies with emphasis on "constructability" of the design based upon WEBB's construction expertise. The review will also verify compliance with applicable standards, regulations, and codes.
4. Obtain City approval of bid package including final plans, specifications, and cost estimates.
5. Verify funding sources and any required agreements are in place.
6. Confirm all R-O-W acquisition and required permits have been obtained.
7. In combination with the client's financial consultant, set up billing codes for future identification of reimbursable charges as identified in the infrastructure funding, acquisition, and reimbursement agreement.
8. Arrange for geotechnical services by a qualified consultant (Inland Foundation Engineering, Inc.) to be under contract to WEBB for testing of soils, concrete and/or other materials required during the construction phase of the project. The geotechnical firm will provide daily reports and a final report summarizing testing results, and locations and results of any retests.

Task 2. Bidding Stage

1. Advertise for bids through a local newspaper and several "trade papers". Newspaper advertisement shall occur for a minimum of ten consecutive days in a newspaper of general circulation.
2. The advertisements for bids shall comply with the Public Contract Code and will specifically state criteria with respect to scope of work, time and place for bid opening, bonding, insurance, contractor license requirements, non-collusion, nondiscrimination, and payment of prevailing wage.
3. The bid documents shall adhere to the requirements of the City.
4. During the bidding process, respond to calls from contractors and other interested parties and answer questions if appropriate or solicit answers to the inquiries from some other party, such as the design consultants.
5. Maintain a list of all parties who have the improvement project's plans and specifications.
6. Prepare Addenda: Any interpretation or correction of the proposed bid documents shall be made only by written addendum. Addenda will be mailed, faxed, or delivered to all parties who have the original bid package and shall be added to bid packages yet to be distributed. WEBB will obtain written confirmation from all bid package holders that said addenda were received prior to the bid opening. WEBB will issue all addenda to bid documents in a timely manner.
7. WEBB will require project bidders to provide written evidence that all addenda were received, reviewed, and taken into account in their bid proposal.
8. Assist with Bid Opening: Bids must be submitted by contractors to the City at a designated location and time not later than the time stated in the advertisements for bids.
9. All bids will be tabulated by WEBB.
10. WEBB will be responsible to conduct due diligence activities to confirm lowest responsible bidder. Activities shall include, but not be limited to checking the bid for mathematical errors, reference check, review of previous experience, review of financial capability, etc.
11. WEBB will provide proof of publication of the advertisement for bids and certify that all applicable public bid procedures have been followed.
12. WEBB will provide the City with a recommendation to award the contract to the "lowest responsible bidder".

Task 3. Construction Stage

1. Prior to commencement of work, WEBB will conduct a preconstruction meeting. A meeting agenda shall be prepared by WEBB. Attendees should include the contractor, design consultants, inspectors, affected agencies and utility companies, adjacent property owners, and/or businesses, and other interested parties as required.
2. WEBB will administer documentation and reporting system in conjunction with the client's financial consultant, which includes current costs against current budget information, construction change orders, progress payment procedures, daily construction documentation, force account forms, and other reports and forms as are deemed necessary by WEBB.
3. WEBB's inspectors will monitor the daily construction operations by providing daily labor, equipment and material reports, extra work reports, and disputed work reports.
4. The inspector, with the assistance of the construction manager, shall monitor all construction for satisfactory performance.
5. WEBB will schedule ongoing weekly meetings. Attendees will include consultants, contractor, inspector(s), applicable utility companies, geotechnical/materials testing representative, as well as other interested parties. Meetings will consist of a review of contractor problems, scheduling, cost items, etc. Meeting notes shall document all "action items", responsible party to follow up on the action item, and a target completion date for the completion of the action item. WEBB will prepare and distribute meeting notes to all attendees.
6. Produce video and "still" photographic documentation of project site at the start of construction and throughout construction.
7. Monitor contractor's compliance with all federal, state, and local laws and regulations applicable to the work, including NPDES and SWPPP compliance.
8. WEBB will prepare Weekly Working Day Statements and send to the contractor.
9. WEBB will prepare and process Construction Change Orders (CCO's) as outlined in the following procedures:
   - The contracting party and City will be notified of pending change orders
   - Scope of Work will be defined
   - Reason for change order will be defined
   - Backcharge, if applicable, will be determined
   - All change orders shall require the signature of the following parties:
     - Contractor
     - Construction Manager
     - Project Inspector
     - Contracting Party
   - At the conclusion of the construction project, a Change Order Summary shall be provided to the contracting party and City
   - Project specifications will use the latest edition of the State of California Labor Surcharge and Equipment Rental Rates for billing rates for labor, equipment, mark-up, etc., for time and material ("force account") types of change orders
10. Review the construction schedule prepared by the Contractor for compliance with the contract and monitor throughout construction.
11. Coordinate construction staking with WEBB's Survey Manager.
12. Review and verify contractor's monthly progress estimates and payments made therein and prepare progress payments.
13. Coordinate review of contractor's R.F.I. (request for information).
14. Furnish periodic reports of progress of the project as required.
15. Coordinate the review and approval by others of shop drawings and other submissions from the contractor, record

data received, maintain a file of the drawings and submissions, and check construction for compliance with approved documents.

16. Coordinate compaction and materials testing and review laboratory test reports.
17. Monitor the contractor's traffic control and safety provisions.
18. Coordinate daily full-time inspection services and prepare the daily construction inspection reports for the project work. Review construction inspector reports.
19. Recommend to the City the stoppage of work or the requirement of special examination or testing whenever it is necessary or advisable to ensure work is carried out in accordance with the intent of the contract documents.
20. Cooperate with the City and contractor in dealings with the various local agencies that have jurisdiction over the project and with the various utilities performing work in the project in order to facilitate completion of the work.
21. Maintain orderly project files for correspondence, reports of job conferences, shop drawings and other submittals, reproductions or original contract documents including all addenda, change orders and additional drawings issued subsequent to the award of contract, the City's interpretations of the contract documents, inspection reports, test reports, progress reports and other project-related documents. Provide the City of Hemet with copies of all correspondence to and from the contractor.
22. Monitor the contractor's record drawings.

Task 4. Post Construction Stage

1. WEBB's inspector and the City's oversight inspector will prepare a list of incomplete or unsatisfactory items ("punch list") and supply this list to the contractor. Following corrections and completion of the punch list and contractor giving notice to the inspectors that the work is ready for inspection, the inspectors will inspect the work for final compliance.
2. Perform final contract reconciliation including:
   - Letter recommending acceptance of the project
   - Final contract amount with percentage of change orders with brief explanation of each change order
   - Determination of fundable/non-fundable expenditures
   - Coordinate approvals of any other affected agencies
3. The last change order to be prepared shall be a "balancing change order" that reconciles all quantity adjustments and previous change orders.
4. WEBB will prepare and have a Notice of Completion (NOC) recorded.
5. WEBB will provide copies of all contractor/subcontractor and material suppliers "unconditional" lien releases.
6. WEBB will provide an executed Conditional Release Form to the City.
7. WEBB will make a copy of and coordinate transfer of record drawings ("as-builts") to the engineer who in turn will provide revised mylars to the City.

ATTACHMENT B

GEOTECHNICAL AND MATERIALS TESTING SERVICES SCOPE OF WORK AND COSTS

INLAND FOUNDATION ENGINEERING, INC.
Consulting Geotechnical Engineers and Geologists
www.inlandfoundation.com
P.O. Box 937, San Jacinto, California 92581

September 27, 2016

Albert A. Webb Associates
3788 McCray Street
Riverside, California 92506

Attention: Mr. Reed E. Chilton, P.E. – Associate Engineer

Subject: Proposal for Geotechnical and Materials Testing Services
Acacia Avenue and Sanderson Avenue Improvements
Hemet, California

Dear Mr. Chilton:

Inland Foundation Engineering, Inc. (IFE) is pleased to submit this proposal to provide geotechnical and materials testing services for the subject project. This proposal is based on our experience with similar projects and our review of the following plans.

- City of Hemet Street Improvement Plans, Acacia Avenue and Sanderson Avenue, prepared by iWalk, Inc., 7 Sheets, dated July 21, 2015

PROJECT DESCRIPTION

We understand that the subject project will primarily consist of:

- Widening Acacia Avenue from Cawston Avenue to Sanderson Avenue, a distance of approximately 2,640 feet. The existing street will be widened to the south by a distance varying from 17 to 22 feet. The new pavement will be constructed by over-excavating to a depth of three (3) feet and placing four (4) inches of asphalt concrete (AC) over eight (8) inches of Class 2 aggregate base. Other improvements will include utility pole relocation and construction of 4-inch Portland cement concrete (PCC) sidewalk.

- Constructing a new meandering trail and sidewalk section along the west side of Sanderson Avenue, from Acacia Avenue to about 2,377 feet south of Acacia Avenue. The new trail and sidewalk section will consist of a new 4-inch Portland cement concrete (PCC) sidewalk adjacent to six feet wide trail constructed of four inches of D.G. The subgrade below the sidewalk and D.G. is to be over-excavated to a minimum depth of 20 inches, with the upper foot of subgrade compacted to 95% relative compaction.

In preparing this proposal, we noticed a discrepancy in the proposed Acacia Avenue asphalt concrete pavement section. General Note 4 on Sheet 1 indicates that the section will include a surface course consisting of ½" maximum aggregate. Note 5 on Sheets 2 through 4 calls for a ¾" maximum medium aggregate mix for the entire section.

General Note 27 on Sheet 1 states that R-values should be obtained prior to the placement of any aggregate base material. We have completed a number of projects in the immediate vicinity of the subject project site; the local soil is known to have very low R-values and poor pavement support characteristics. The scope of service outlined below includes sand equivalent and R-value sampling and testing to verify the pavement section, which is highly recommended. The pavement section currently proposed (4 inches of AC over 8 inches of Class 2 aggregate base) may be under-designed, based on our experience.

SCOPE OF SERVICE

Based on our project understanding, we anticipate that our scope of service will include:

- Sampling soil, aggregate base and asphalt concrete for laboratory testing
- Laboratory R-value testing and pavement section design verification
- Laboratory maximum density testing of sidewalk and pavement subgrade soil
- Laboratory maximum density testing of aggregate base
- Laboratory maximum density, extraction and gradation tests for asphalt concrete
- Laboratory concrete compression testing
- Compaction testing of pavement subgrade
- Compaction testing of Class 2 aggregate base
- Compaction testing of asphalt concrete pavement
- Concrete slump and temperature testing and fabrication of concrete test cylinders
- Final compaction report

Our services will be provided on an on-call basis under the direction of a representative of the Albert A. Webb Associates. Site visits and consultation will be provided by a registered geotechnical engineer as necessary. Interim compaction and materials testing reports can be prepared during the course of construction upon request.

FEE ESTIMATE

Our fee estimate to provide the services described above is attached. Actual charges will vary and will be billed on a time and materials basis. Albert A. Webb Associates will only be billed for actual services performed. Any services provided that are not specifically described herein will be invoiced at our standard fee schedule rates.

GENERAL

Inland Foundation Engineering, Inc. carries general liability insurance coverage in the amounts of $1 million per occurrence and $2 million aggregate. IFE also carries auto liability and Workers' Compensation & Employer Liability insurance coverage. We also carry professional errors and omissions liability. Our current coverage for professional liability is for $2,000,000 and $2,000,000 aggregate.

IFE maintains a fully equipped laboratory for performing the complete scope of testing used for geotechnical engineering and materials testing. Inland Foundation Engineering, Inc. is a Caltrans and DSA LEA approved laboratory. Our laboratory equipment is calibrated on a semi-annual and annual basis and is accredited by NIST/NVLAP (formerly National Bureau of Standards). Inland Foundation Engineering, Inc. also participates in informal interlaboratory testing and programs administered by AASHTO and CCRL as part of our QA/QC System.

Our services will be performed in accordance with the standard of practice exercised by other practicing geotechnical engineering consultants at the time the service is provided. No warranty is offered.

We appreciate the opportunity of working with you on this project. If there are any questions, please contact our office.

Sincerely,
INLAND FOUNDATION ENGINEERING, INC.

Allen D. Evans, P.E.
Principal

DRL:ADE:es
Distribution: Addressee (1)

Fee Estimate
Geotechnical and Materials Testing Services
Acacia Avenue and Sanderson Avenue
Hemet, California
September 27, 2016

TASK			Total	Rate		
Field Testing and Observation	**Days**	**Hrs/Day**	**Hours**	**($/Hr)**		**Fee**
Preconstruction meeting - project engineer	1	2	2	No charge		No charge
Field technician - sidewalk and pavement subgrade	20	4	80	$ 105.00	$	8,400.00
Field technician - aggregate base	5	4	20	$ 105.00	$	2,100.00
Field technician - AC pavement	5	4	20	$ 105.00	$	2,100.00
Field technician - miscellaneous backfill	10	2	20	$ 105.00	$	2,100.00
Field technician - concrete	5	4	20	$ 105.00	$	2,100.00
Vehicle w/ testing equipment			140	$ 12.00	$	1,680.00
Subtotal Field Testing and Observation					**$**	**18,480.00**

Laboratory Testing	**No**	**Rate (ea)**		**Fee**
ASTM D2844 - R-value	1	$ 250.00	$	250.00
ASTM D2419 - Sand Equivalent	4	$ 75.00	$	300.00
ASTM D1557 - A/B, Max Density - Opt Moist - Soil	6	$ 160.00	$	960.00
ASTM D1557 - C, Max Density - Opt Moist - Aggregate Base	2	$ 175.00	$	350.00
ASTM C39 - Concrete Compressive Strength	20	$ 22.00	$	440.00
CTM 382 Gradation and Asphalt Content by Ignition Oven	4	$ 265.00	$	1,060.00
CTM 304 Asphalt Concrete Maximum Density	2	$ 110.00	$	220.00
Subtotal Laboratory Testing			**$**	**3,580.00**

Project Management / Engineering / Reporting	**Total Hours**	**Rate ($/Hr)**		**Fee**
Project Engineer	12	150	$	1,800.00
Supervisory Technician	16	105	$	1,680.00
Clerical	12	65	$	780.00
Subtotal Project Management / Engineering			**$**	**4,260.00**

TOTAL ESTIMATED FEE	**$**	**26,320.00**
10% Contingency	**$**	**2,632.00**
TOTAL RECOMMENDED BUDGET	**$**	**28,952.00**

ATTACHMENT C

PROJECT SERVICES BUDGET

ATTACHMENT B

CITY OF HEMET
Proposal for Engineering Services for the CUP 14-006

Task Description	Personnel Hours						Budget
	Principal Engineer	Associate Engineer	Assistant Engineer	Inspector	Subconsultant	Total Hours	Labor
Task 1 - Constructability Review	2.0	8.0			$ 1,150	10.0	$ 2,990.00
Task 2 - Plan Revisions[1]						0.0	$ - [1]
Task 3 - Prepare Project Specifications	4.0	40.0	8.0			52.0	$ 8,800.00
Task 4 - Prepare Project Cost Estimate	1.0	4.0	2.0			7.0	$ 1,180.00
Task 5 - Assist the City with the Bidding Process	1.0	4.0	2.0			7.0	$ 1,180.00
Task 6 - Determinie Project Duration	1.0	1.0				2.0	$ 410.00
Task 7 - Construction Management[2]	22.0	90.0	68.0			180.0	$ 29,420.00
Task 8 - Inspection (Assume Full Time)				456.0		456.0	$ 54,720.00
Task 9 - Geotechnical and Materials Testing	2.0	8.0			$ 30,268		$ 32,108.00
Expenses							$ 3,592.00
Sub-Totals	**33.0**	**155.0**	**80.0**	**456.0**	**$ 31,418**	**714.0**	**$ 134,400.00**
Task 10 - Prepare CEQA Document (NOE) (Optional)	5.0	3.0	18.0			26.0	$ 4,050.00
TOTAL	**38.0**	**158.0**	**98.0**	**456.0**	**$31,418**	**740.0**	**$ 138,450.00**

[1]Dependent upon City's input regarding road constructability items (Table 1) and results of street lighting and landscape plan constructability review.

[2]Assumes 50 working day construction duration plus 1 week of pre-construction activities plus 1 week of post construction activities

ALBERT A. WEBB ASSOCIATES

FEE SCHEDULE

CLASSIFICATION	RATES $/HOUR
Engineers/Project Managers/Planners/Scientists/ Assessment/Special Tax Consultants/Landscape Architects/Designers	
Principal II	240.00
Principal I	220.00
Senior III	200.00
Senior II	190.00
Senior I	180.00
Associate III	170.00
Associate II	155.00
Associate I	145.00
Assistant V	130.00
Assistant IV	120.00
Assistant III	103.00
Assistant II	88.00
Assistant I	73.00
Survey Services	
2-Person Survey Party	220.00
1-Person Survey Party	160.00
Inspection Services	
Inspector (Non-Prevailing Wage)	110.00
Inspector (Prevailing Wage)	120.00
Administrative Services	
Project Coordinator	90.00
Administrative Assistant III	80.00
Administrative Assistant II	70.00
Administrative Assistant I	55.00
Other Direct Expenses	
Incidental Charges	Cost + 5%
Postage	Cost
Special Consultant	325.00/Hour
Subcontracted Services	Cost + 5% Per SOQ
Survey/Inspection Per Diem	100.00/Day
Survey/Inspection Vehicle	0.81/Mile
Mileage	0.72/Mile

NOTE: All rates are subject to change based on annual inflation and cost of living adjustments.

***A FINANCE CHARGE** of 1 ½ % per month (18% per year) will be added to any unpaid amount commencing thirty (30) days from invoice date. A mechanic's lien may be filed for any invoice remaining unpaid after thirty (30) days from invoice date.*

SCH 38 (07/01/2014)

5151 Shoreham Place, Suite 240
San Diego, CA 92122
Tel: 619-330-6043
Email: cadd@designwesteng.com

275 W. Hospitality Lane, Suite 100
San Bernardino, CA 92408
Tel: 909-890-3700 Fax: 909-890-3770
Email: info@designwesteng.com

DESIGN WEST ENGINEERING

Principal Engineering ..... $180.00 per hour

Mechanical & Plumbing Engineering

Senior Engineer, Mechanical ..... $160.00 per hour
Mechanical Project Manager ..... $125.00 per hour
Mechanical Designer ..... $95.00 per hour
Mechanical CAD Draftsperson ..... $75.00 per hour

Electrical Engineering

Senior Engineer, Electrical ..... $160.00 per hour
Electrical Project Manager ..... $125.00 per hour
Electrical Designer ..... $95.00 per hour
Electrical CAD Draftsperson ..... $75.00 per hour

Commissioning Services

Director of Commissioning Services ..... $160.00 per hour
Commissioning Agent ..... $125.00 per hour
Commissioning Engineer ..... $95.00 per hour

Energy Services

Director of Energy Services Engineering ..... $160.00 per hour
Energy Services Engineer ..... $125.00 per hour
Energy Services Designer ..... $95.00 per hour

Fire Protection Engineering

Senior Engineer, Mechanical ..... $160.00 per hour
Fire Protection Project Manager ..... $125.00 per hour
Fire Protection Designer ..... $95.00 per hour

Utility Coordination

Senior Engineer ..... $160.00 per hour
Project Manager ..... $125.00 per hour
Utility Coordinator ..... $95.00 per hour
CAD Draftsperson ..... $75.00 per hour

Low Voltage Engineering

Senior Engineering, Electrical ..... $160.00 per hour
Low Voltage Project Manager ..... $125.00 per hour
Low Voltage Designer ..... $95.00 per hour

Clerical Support ..... $60.00 per hour

INLAND FOUNDATION ENGINEERING, INC.
Consulting Geotechnical Engineers and Geologists

2016 Fee Schedule

• 1310 South Santa Fe Avenue, P.O. Box 937, San Jacinto, CA 92581-0937 - (951) 654-1555
• Country Club Business Park, 77622 Country Club Drive, Suite Q, Palm Desert, CA 92211 - (760) 200-2400

INLAND FOUNDATION ENGINEERING, INC.
2016 Fee Schedule Basis of Charges

1. The prices listed herein are for typical services most frequently performed by Inland Foundation Engineering, Inc. (IFE). Prices for other services, including special quotes for volume work, will be provided upon request, but will be subject to the terms set forth below.
2. The Client agrees to limit IFE's liability to the client and to all agents of the client, including contractors and subcontractors on the project, due to IFE's professional negligent acts, errors or omissions to $50,000 or IFE's fee, whichever is greater.
3. Invoices will be issued on a monthly basis, or upon completion of the project, whichever is sooner. The net amount of invoices is payable on presentation of the invoice. If not paid within 30 days after the date of the invoice, the unpaid balance will be subject to a FINANACE CHARGE of 1.5% per month, which is an ANNUAL PERCENTAGE RATE of 18%.
4. A two-hour minimum charge will be invoiced for all field services, including standby time. A four-hour minimum charge will be invoiced for any field services that exceed two hours per day. A six-hour minimum charge will be invoiced for field services that exceed four hours per day. An eight-hour minimum charge will be invoiced for field services that exceed six hours per day. No charge will be incurred if cancellation is received by 5:00 pm the preceding day.
5. Field Services are invoiced on a portal-to-portal basis from our nearest office.
6. A one-hour minimum charge per day will be invoiced for any office service.
7. Field services that exceed 8 hours per day Monday through Friday and the first 12 hours on Saturday will be invoiced at 1.5 times the listed hourly rate. Field services that exceed 12 hours per day Monday through Saturday and all Sunday and holiday time will be invoiced at 2 times the listed hourly rates.
8. Per diem for projects farther than 50 miles from IFE's office will be charged at a rate of $125 per day per person or expenses plus 20%, whichever is greater.
9. Outside services will include a 20% markup, unless otherwise noted.
10. The prices listed herein include standard invoicing with time detail summary. Additional administrative time will be charged if invoice backup information (timesheets, daily field reports, or work summaries) is requested.
11. Certified payroll for prevailing wage projects will be provided only if requested and will be subject to additional charges for administrative time for each pay period.
12. IFE carries workers' compensation & employer liability insurance, general liability insurance, automobile liability insurance and professional errors and omissions liability insurance, and will provide certificates upon request.
13. IFE routinely disposes of all soil samples after 30 days from submission of our final report. IFE reserves the right to return all obtained samples, including contaminated and potentially contaminated environmental samples to client, at client's expense.
14. Proper disposal or handling of soil boring cuttings, well development and purge waters, decontamination solutions, and other contaminated/potentially contaminated materials is the responsibility of the client. Upon request, IFE can provide containers for onsite containment and can advise the client regarding proper handling procedures.
15. Proposed rates and fees will be valid for 90 days from the proposal date.
16. IFE reserves the right to adjust the fee schedule on projects not completed within 180 days from the contract signature date.

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PROFESSIONAL CHARGES	RATES
Litigation: Expert Witness and Preparation (4 hr. minimum)	$300.00/hr.
Principal Engineer / Geologist	175.00/hr.
Project Engineer / Geologist	150.00/hr.
Staff Engineer / Geologist	105.00/hr.
Supervisory Technician	105.00/hr.
Construction Inspector (ICC / AWS) – Regular Wage	75.00/hr.
Construction Inspector (ICC / AWS) – Prevailing Wage*	105.00/hr.
Field Soil / Concrete Technician – Regular Wage	70.00/hr.
Field Soil / Concrete Technician – Prevailing Wage*	105.00/hr.
Laboratory Technician	70.00/hr.
Drafting	75.00/hr.
Clerical (i.e.; typing, collating, printing, etc.)	65.00/hr.

* Public works projects or projects receiving public funds may be subject to payment of prevailing wages which are determined annually by the California Department of Industrial Relations. The prevailing wage rates listed above are valid through July 1, 2015 and are subject to revision as prevailing wage rates are revised by the California Department of Industrial Relations.

OTHER CHARGES	RATES
Field Vehicle with Testing Equipment	$12.00/hr.
Nuclear Density Gauge	5.00/hr.
Mileage (No charge for local projects)	0.54/mile
Grading Compaction Report – Comprehensive	550.00 ea.
Compaction Test Report (i.e.; curb and gutter, electrical, gas, sewer, sidewalk, street, etc.)	200.00 ea.
Reproduction Charges: Xerox Copies (White paper)	0.20 ea.
Xerox Copies (Color paper)	0.40 ea.
Large Documents – 18" x 24"	2.00 ea.
Large Documents – 24" x 36"	3.00 ea.
Additional Copies of Bound and Signed Reports[2]:	
Cost per Copy (Up to 30 pages)	25.00 ea.
Per Sheet (Over 30 pages)	0.40 ea.
File access charge after three (3) years:	
Cost of Reproduction Charges above, Plus one hour Clerical.	

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2016 Laboratory Testing Fee Schedule

SOIL	**RATES**

SOIL	**RATES**
Atterberg Limits (ASTM 4318)	$ 150.00 ea.
Consolidation (ASTM D2435) – Intact Sample	250.00 ea.
Corrosivity – Chlorides, pH, Resistivity, Sulfates (CTM 417, 422, 643, ASTM 657)	130.00 ea.
Direct Shear (ASTM D3080) – Intact Sample	250.00 ea.
Expansion Index (ASTM D4829)	150.00 ea.
Moisture Content (ASTM D2216)	20.00 ea.
Optimum Moisture/Maximum Density (ASTM D1557):	
Method A & B (4 in.)	160.00 ea.
Method C (6 in.)	175.00 ea.
California Test Method 216	175.00 ea.
R-Value (ASTM D2844)	250.00 ea.
Sand Equivalent (ASTM D2419)	75.00 ea.
Sieve Analysis with Hydrometer (ASTM D422)	225.00 ea.
Sieve Analysis without Hydrometer (ASTM D422)	145.00 ea.
Unit Weight and Moisture Content, ring samples (ASTM D2216)	25.00 ea.
Visual Classification (ASTM D2488)	50.00 ea.

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2016 Laboratory Testing Fee Schedule

AGGREGATE	RATES
Abrasion Resistance (L.A. Rattler) (ASTM C131, C535)	$ 175.00 ea.
Clay Lumps and Friable Particles (ASTM C142)	125.00 ea.
Cleanness Value (CTM 227)	125.00 ea.
Durability Index, Coarse (ASTM D3744)	175.00 ea.
Durability Index, Fine (ASTM D3744)	110.00 ea.
Moisture Content by Drying (ASTM C566)	50.00 ea.
Organic Impurities (ASTM C40)	70.00 ea.
Sand Equivalent (ASTM D2419)	75.00 ea.
Sieve Analysis – Coarse to Fine (ASTM C136) (Includes No. 200 Wash)	145.00 ea.
Sieve Analysis – Processed Coarse (ASTM C136) (w/o No. 200 Wash)	75.00 ea.
Sieve Analysis – Processed Fine (ASTM C136) (Includes No. 200 Wash)	95.00 ea.
Materials Finer than No. 200 Sieve by Washing (ASTM C117)	50.00 ea.
Soundness Test, Sodium Sulfate (per sieve size) (ASTM C88)	150.00 ea.
Specific Gravity and Absorption, Coarse (ASTM C127)	100.00 ea.
Specific Gravity and Absorption, Fine (ASTM C128)	125.00 ea.
Unit Weight and Percent Voids (ASTM C29)	75.00 ea.

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2016 Laboratory Testing Fee Schedule

CONCRETE	RATES
Concrete Mix Design (Excluding Aggregate Quality Testing)	$ 175.00 ea.
Concrete Mix Design Review	150.00 ea.
Compressive Strength (ASTM C39) (samples cured and/or tested)	22.00 ea.
Compressive Strength, Concrete/Gunite Core (ASTM C42)	50.00 ea.
Flexural Strength, 6" x 6" Beam (ASTM C78)	70.00 ea.
Length Measuring of Drilled Core (ASTM C174)	50.00 ea.
Splitting Tensile Test (ASTM C496)	50.00 ea.
MASONRY	
Brick and Structural Clay Tile – Compression (ASTM C67)	40.00 ea.
Concrete Masonry Unit Compressive Strength (ASTM C140)	60.00 ea.
Concrete Masonry Unit Moisture Content and Absorption (ASTM C140)	50.00 ea.
Concrete Masonry Unit, Unit Weight (ASTM C140)	40.00 ea.
Mortar Strength (Cylinder)	20.00 ea.
Mortar Strength (2" Cube) (ASTM C109)	35.00 ea.
Grout Prism Compressive Strength (3" x 3" x 6") (ASTM C942)	35.00 ea.
Masonry Core Compressive Strength (ASTM C42)	50.00 ea.
Masonry Prism Compressive Strength (8" x 8" x 16") (ASTM E447)	125.00 ea.

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2016 Laboratory Testing Fee Schedule

ASPHALT CONCRETE	RATES
Asphalt Content by Ignition Oven (CTM 382)	$125.00 ea.
Gradation and Asphalt Content by Ignition Oven (CTM 382)	265.00 ea.
Specific Gravity of Compacted Specimen (ASTM D1188, D2726)	175.00 ea.
Compressive Strength of Bituminous Mixture (ASTM D1074)	110.00 ea.
Marshall Stability and Flow Test (ASTM D1559)	225.00 ea.
Hveem Stability Value and Maximum Density (CTM 366)	140.00 ea.
Kneading Compacted Maximum Density (CTM 304)	110.00 ea.
Marshall Maximum Density (ASTM D1559)	150.00 ea.
Theoretical Maximum Density of Asphalt Mixture (ASTM D2041)	140.00 ea.

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2016 Laboratory Testing Fee Schedule

REINFORCING STEEL	RATES
Tensile Strength and Elongation	
No.11 Bar and Smaller	$55.00 ea.
No.14 Bar	90.00 ea.
Bend Test, No.11 Bar and Smaller	30.00 ea.

STRUCTURAL STEEL	
Machining and Preparation of Test Specimen	Cost + 20%
Tensile Strength and Elongation	
Up to 200,000 lbs	75.00 ea.
200,000 to 300,000 lbs	95.00 ea.
300,000 to 400,000 lbs	115.00 ea.
Bend Test	50.00 ea.

PRESTRESSING WIRE AND TENDONS	
Tensile Strength, Single Wire (ASTM A421)	100.00 ea.
Tensile Strength, 7–Wire Strand (ASTM A416)	160.00 ea.

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AGENDA # 27

Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Steven Latino, Engineering Director/City Engineer
Alexander Meyerhoff, City Manager

DATE: November 15, 2016

RE: CIP 5635 Well 10A –Professional Services Contract for Construction Management and Inspection Services.

RECOMMENDATION:

That the City Council take the following actions:

a. Approve a Professional Services Agreement with Albert A Webb Associates, of Riverside, California to provide Construction Management and Inspection Services for the construction of Well 10A, CIP 5635 in the amount of $126,267.00.

BACKGROUND:

At the January 26, 2016 meeting Council approved the Public Works Departments request for award of a construction contract for the rehabilitation of Well 10. This contract was executed, however, the rehabilitation process failed and Well 10 was taken off line in August 2016. In July 2016 Public Works asked the Engineering Department to assist in the preparation of bid documents for test boring and potential re-drilling of a new well at the same site. The bid documents are nearing completion with construction anticipated to begin in early 2017.

The test boring and well drilling process is a continuous 24hr/day operation that requires specialized inspection and testing equipment. The City also does not have the Construction Management and Inspection Staff to run a 24hr/day operation. Therefore a consultant is needed to provide these services. Additionally, the well location at 777 Augusta Lane is in a vacant lot of a housing tract directly adjacent to several homes. It is recommended a constructability review be performed to anticipate and mitigate any potential impacts that may arise during construction due to the proximity of the site to the surrounding homes. The selected consultant will also provide this service.

On August 10, 2016, the City solicited requests for On-Call Design Phase and Construction Phase Services. Six firms were selected to provide as needed services in each category (Design Phase, Construction Phase) with some qualifying for both.

On September 13, 2016 an informal request for proposal was solicited to the On-Call Consultants. Four of the On-Calls stated they could provide the required services and submitted proposals.

COMPANY	LOCATION
Albert A Webb Associates	Riverside, CA
Cozad and Fox	Hemet, CA
Dudek	Riverside, CA
Michael Baker International	Temecula, CA

Albert A Webb Associates was judged to be the most qualified based on their demonstrated expertise providing the required services to municipal agencies, cost of the services, and capability to perform the work in a timely manner.

FISCAL IMPACT:

None. Funding for this project is allocated in the approved FY16/17 Budget in Account # 571-5635-2710

Respectfully submitted,

Steven Latino
Engineering Director/
City Engineer

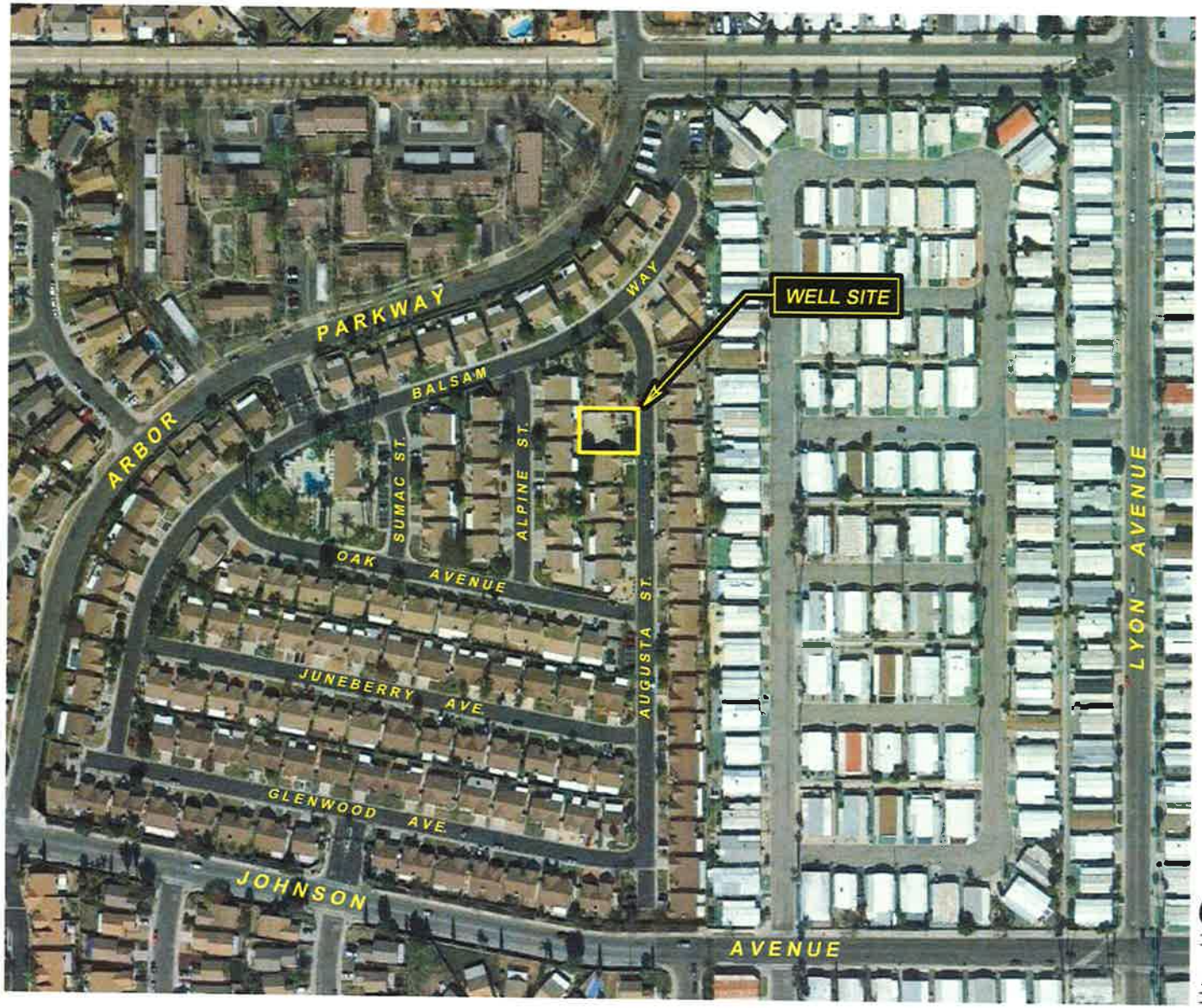
Fiscal review:

Jessica A. Hurst
Deputy City Manager/
Administrative Services

Exhibit

Well Site No.10

777 AUGUSTA ST.
HEMET, CA. 92543



N

NO SCALE

City of Hemet

ENGINEERING DEP'T

510 E. FLORIDA AVENUE
HEMET, CA 92543
(951) 765-2360

DESIGN PROFESSIONAL SERVICES AGREEMENT

By and Between

THE CITY OF HEMET,
a municipal corporation

and

Albert A. Webb and Associates

for

Well 10A

October 25, 2016

AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN
THE CITY OF HEMET, CALIFORNIA
AND
ALBERT A WEBB AND ASSOCIATES

This Agreement for Design Professional Services ("Agreement") is entered into as of this 15th day of November, 2016 by and between the City of Hemet, a municipal corporation ("City") and Albert A Webb and Associates, a California "S" Corporation ("Design Professional"). City and Design Professional are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

A. City has sought, by ***informal request for proposal from City on-call consultant list***, the performance of the ***engineering and construction project management*** services defined and described particularly in Section 2 of this Agreement.

B. Design Professional, following submission of 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. Design Professional was selected by the City on the basis of Design Professional's demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.

D. Pursuant to the City of Hemet's Municipal Code, City has authority to enter into this Design Professional Services Agreement and the City Manager has authority to execute this Agreement.

E. The Parties desire to formalize the selection of Design Professional 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 ***1 year*** commencing on the date first ascribed above.

SECTION 2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.

(a) Scope of Services. Design Professional 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 Design Professional 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 Design Professional to continue performing the Services.

SECTION 3. ADDITIONAL SERVICES.

Design Professional 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 Design Professional 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 not exceed one hundred twenty six thousand two hundred sixty seven dollars ($126,267.00), 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 Design Professional 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 subconsultant contracts. Subconsultant 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 Design Professional 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 Design Professional for correction and resubmission.

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

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

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

City may inspect and accept or reject any of Design Professional's work under this Agreement, either during performance or when completed. City shall reject or finally accept Design Professional's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Design Professional'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 Design Professional'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 Design Professional 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 Design Professional. Upon completion, expiration or termination of this Agreement, Design Professional 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 Design Professional in the course of providing the Services pursuant to this Agreement, Design Professional'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. DESIGN PROFESSIONAL'S BOOKS AND RECORDS.

(a) Design Professional shall maintain any and all documents and records demonstrating or relating to Design Professional's performance of the Services. Consultant 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 Design Professional 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 Design Professional'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 Design Professional'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) Design Professional is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Design Professional 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 Design Professional shall at all times be under Design Professional'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 Design Professional or any of Design Professional's officers, employees, or agents except as set forth in this Agreement. Design Professional shall not at any time or in any manner represent that Design Professional or any of Design Professional's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

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

SECTION 9. STANDARD OF PERFORMANCE.

Design Professional 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. Design Professional 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, Design Professional shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Design Professional under this Agreement, and shall use such skill, prudence, and diligence as other members of Design Professional's profession commonly possess and exercise. 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 Design Professionals 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.

Design Professional 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. Design Professional 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 Design Professional to comply with this section.

SECTION 11. PREVAILING WAGE LAWS.

It is the understanding of City and Design Professional 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.

Design Professional 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.

Design Professional 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 Design Professional 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, Design Professional 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) Design Professional 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 Design Professional's performance of the Services. Design Professional 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. Design Professional 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 Design Professional 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. Design Professional 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 Design Professional 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 Design Professional in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Design Professional. Design

Professional 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) Design Professional, 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 Design Professional gives City notice of such court order or subpoena.

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

(d) Design Professional shall promptly notify City should Design Professional , 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 Design Professional or be present at any deposition, hearing or similar proceeding. Design Professional agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Design Professional. 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 by Design Professional. As provided under Civil Code Section 2782.8, Design Professional 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 claims. actions and proceedings (whether at law or equity, administrative or judicial), demands, orders, judgments, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, (collectively "Claims") to the extent same arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional, its officers, agents, employees or sub-consultants (or any entity or individual that Design Professional shall bear the legal liability thereof) in the performance of professional services under this Agreement, with the understanding that in the event Claims are found by the trier of fact to have been caused by the joint or concurrent negligence of the City and its contractors and Design Professionals, and Design Professional, damages and expenses from both indemnity and duty to defend obligations shall be borne by each party in proportion to its negligence.

(b) Indemnification from Sub-consultants. Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-consultant, sub-contractor or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Design Professional fails to obtain such indemnity obligations from others as required here, Design Professional 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 Design Professional and shall survive the termination of this Agreement or this section.

(c) 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.

Design Professional 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. Design Professional agrees to provide City with copies of required policies upon request.

SECTION 18. ASSIGNMENT.

The expertise and experience of Design Professional 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 Design Professional under this Agreement. In recognition of that interest, Design Professional shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Design Professional'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 Design Professional, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

SECTION 19. CONTINUITY OF PERSONNEL.

Design Professional shall make every reasonable effort to maintain the stability and continuity of Design Professional's staff and subcontractors, if any, assigned to perform the Services. Design Professional shall notify City of any changes in Design

Professional's staff and subcontractors, 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 thirty (30) days written notice of termination to Design Professional. In the event such notice is given, Design Professional shall cease immediately all work in progress.

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

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

(d) Upon termination of this Agreement by either Design Professional or City, all property belonging exclusively to City which is in Design Professional's possession shall be returned to City. Design Professional shall furnish to City a final invoice for work performed and expenses incurred by Design Professional, prepared as set forth in Section 4 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 Design Professional is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Design Professional for any work performed after the date of default. Instead, the City may give notice to Design Professional of the default and the reasons for the default. The notice shall include the timeframe in which Design Professional 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 Design Professional 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 Design Professional does not cure the default, the City may take necessary steps to terminate this Agreement under Section 20. Any failure on the part of the City to give notice of the Design Professional'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.

Design Professional 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 Design Professional. 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 Design Professional 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 Design Professional:	Albert A Webb and Associates Attention: Mr. Shabe Bloomfield, P.E. 3788 McCray Street Riverside, CA 92506

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 Design Professional represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Design Professional 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 Design Professional 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 Design Professional 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 Design Professional 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.

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

CITY OF HEMET

_____
Alexander Meyerhoff
City Manager

ATTEST:

_____
Sarah McComas
City Clerk

APPROVED AS TO FORM

_____
Eric S. Vail
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)

On 11/2, 2016,
before me, Susie Reyes (Date), Notary Public (Name And Title Of Officer (e.g. "Jane Doe, Notary Public")),
personally appeared William Thomas Malone & Wallace Harper Franz (Name of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(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.

SUSIE REYES
COMM #2113131
NOTARY PUBLIC - CALIFORNIA
RIVERSIDE COUNTY
My Commission Expires May 25, 2019
MSC1

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

- Individual
- Corporate Officer

_____
Title(s)

- Partner(s) — Limited / General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
Date Of Document

_____
Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who

ALBERT A. WEBB ASSOCIATES

By: William T Malone
William T. Malone
Its: Vice President

By: Walter H. F
WALLACE H. FRAUE
Its: VICE-PRESIDENT

NOTE: **DESIGN PROFESSIONAL'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 DESIGN PROFESSIONAL'S BUSINESS ENTITY.**

EXHIBIT "A"
SCOPE OF SERVICES

I. Design Professional will perform the following Services:

A. See Exhibit "D"

II. As part of the Services, Design Professional will prepare and deliver the following tangible work products to the City:

A. See Exhibit "D"

III. During performance of the Services, Design Professional will keep the City appraised of the status of performance by delivering the following status reports:

A. Biweekly informal status reports via email

B. Monthly formal status reports included with the billing describing the work completed during the billing period and anticipated work for the next billing period

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

A. Monthly formal status reports

B. Deliverables corresponding to the appropriate scope of work in Exhibit "D"

C. Construction Management documentation to be uploaded to www.virtual-pm.com to the satisfaction of the Principal Engineer

D. Labor compliance documents as required by the all applicable laws, codes, and ordinances

V. Design Professional will utilize the following personnel to accomplish the Services:

A. Shane Bloomfield will be primary point of contact and project manager

B. Bill Malone (secondary contact)

C. Other Webb staff as required

D. Subconsultant staff as required

VI. Design Professional will utilize the following subcontractors to accomplish the Services:

A. Wood Rogers, Inc.

EXHIBIT "B"
COMPENSATION

I. Design Professional shall use the following rates of pay in the performance of the Services:

See Fee Schedule for tasks 1 through 8 in Exhibit "D"

See attached rate sheet for hourly rates for Webb and Associates in Exhibit "D"

See attached rate sheet for hourly rates for Wood Rogers, Inc. in Exhibit "D"

All extra work will be on a time and materials basis per the rate sheets unless otherwise agreed to in writing. Extra work will only be performed upon prior written approval of the City.

II. Design Professional may utilize subcontractors as indicated in this Agreement. The hourly rate for any subcontractor is not to exceed the hourly rates in rate sheet without written authorization from the City Manager or his designee.

IV. The total compensation for the Services shall not exceed $126,267.00, as provided in Section 4 "Compensation and Method of Payment" of this Agreement.

EXHIBIT "C"
INSURANCE

A. Insurance Requirements. Design Professional 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 Design Professional, 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. Design Professional shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Design Professional shall maintain professional liability insurance appropriate to the Design Professional'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 Design Professional's services or the termination of this Agreement. During this additional three (3) year period, Design Professional shall annually and upon request of the City submit written evidence of this continuous coverage.

2. Minimum Limits of Insurance. Design Professional shall maintain limits of professional liability insurance no less than $1,000,000 per occurrence.

B. Other Provisions. 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.

C. Other Requirements. Design Professional agrees to deposit with City, at or before the effective date of this contract, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City Attorney may require that Design Professional furnish City with copies of original endorsements effecting coverage required by this Section. 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. Design Professional shall furnish certificates and endorsements from each subcontractor identical to those Design Professional 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 Design Professional 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 Design Professional's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

Exhibit D
Scope of Work

Webb's scope of work will include the following:

Task 1 – Constructability Review

Webb Associates, together with our hydrogeologist sub-consultant, Wood Rodgers, Inc., will provide a technical review of the existing plans and specifications for the drilling of the well. Specific attention will be given to the sound attenuation portions of the technical specification to minimize the disturbances to the surround residents. Webb/Wood Rodgers will provide recommendations to the City on any portions of the plans and specifications that are considered necessary.

Task 2 – Bid Support Services

A. Attend a Pre-Bid Meeting

Webb Associates and Wood Rodgers will attend a pre-bid conference and conduct a site visit to the site if necessary.

B. Respond to Contractor Inquiries/Prepare Addenda

Webb/Wood Rodgers will assist the City's staff throughout the bidding process, including preparing addenda to the contract documents including design clarifications as necessary and responding to contractor inquiries to the contract documents.

C. Review Bids and Make Recommendation for Award

Webb/Wood Rodgers will review the bid documents and prepare a summary of bid results and make a recommendation to the City for award of the contract to the lowest qualified bidder.

Task 3 – Construction Management and Engineering Support Services for Pilot borehole

Webb Associates will provide the District with engineering support services for the project as follows:

Maintain Project Communications with City's Construction Manager

Review of Shop Drawings and Construction Documents submitted by Contractor for conformance with specifications and interpretation of contract documents to Contractor as necessary. Provide for the review of an estimated 4 submittals

Attend preconstruction conference (one meeting).

Review contractor claims for extra work, make recommendations (assume 2 claims).

Review the Contractor Requests for Information and clarifications. Five (5) RFI/RFCs are budgeted.

Review of Contractor's Partial Pay Request/Labor Compliance

Project Management

Task 4 – Inspection Services – Pilot Borehole Drilling and Zone Testing

Task 4.1 - Drilling and Installation of the Conductor Casing
Wood Rodgers will provide full-time inspection during drilling of the conductor borehole and installation of the conductor casing and sanitary cement seal. Equipment and materials (i.e., bit size, conductor casing and cement) will be inspected to verify compliance with the technical plans and specifications, and with State and County regulatory requirements. Our proposal assumes a 50 foot deep sanitary seal.

Task 4.2 - Pilot Borehole Drilling
Wood Rodgers will provide part-time inspection during drilling of the pilot borehole to an anticipated depth of 800 feet bgs. Composite formation cuttings will be collected at 10 ft intervals or at major changes in formation materials. Each sample will be classified by Wood Rodgers utilizing the Unified Soil Classification System (USCS) visual method. For cost estimating purposes, and assuming an average drilling rate of 10 ft per hour, it is anticipated that pilot borehole drilling will take a little over 3 days to complete.

Task 4.3 - Geophysical Logging
Upon completion of pilot borehole drilling, Wood Rodgers will provide full-time inspection of downhole geophysical borehole logging for the logging suite identified in the technical specifications These logs, in combination with the pilot borehole lithology, will be used to identify target aquifer intervals for the completed well, and intervals for isolated aquifer zone testing.

Task 4.4 - Selection of Zones for Isolated Aquifer Zone Testing
Wood Rodgers will review borehole lithology and the geophysical logs and identify up to two (2) intervals for isolated aquifer zone testing. Zone testing will characterize yield and groundwater quality from the target aquifers and assist with estimation of yield and water quality from the completed well. The recommended zones will be presented in letter format for review and comment prior to implementation.

Deliverable: Zone Test Selection Letter (electronic pdf format)

Task 4.5 - Isolated Aquifer Zone Testing
Wood Rodgers recommends that each isolated aquifer zone pump clean water (i.e., less than 2 NTU) at rates exceeding 200 gpm for 3 to 6 hours before sample collection. This will help to ensure that the samples collected are representative of groundwater and not impacted by drilling fluids. During testing, flow rate, groundwater levels, and field water quality parameters (turbidity, pH, electrical conductivity, and temperature) will be measured regularly by the Contractor. Wood Rodgers will verify that the zone tool has been properly cleaned prior to installation to each test interval and will verify that the zone seals are holding following pumping of each zone. Once pumping from each zone is determined to be acceptable, Wood Rodgers will collect groundwater samples and relinquish them to the City for delivery to a State-Certified analytical laboratory for analysis. As indicated in the Special Provisions, laboratory fees will be at the Owner's expense and are not included in this proposal.

Task 4.6 - Mechanical Grading Analysis
Up to eight (8) formation samples will be selected for mechanical grain size (i.e., sieve) analysis based on visual observation, geophysical logging, and the results of isolated aquifer zone testing. The selected samples will be analyzed by Wood Rodgers soils laboratory using established ASTM protocol. The results of the analyses, along with knowledge of the regional aquifer characteristics, will be used as a basis for preparing the custom gravel envelope and well screen design.

Task 4.7 - Final Well Design
A properly designed gravel envelope will control production of formation sand while allowing for a highly efficient pumping well. Proper design of the gravel envelope can be accomplished through conformance with Terzaghi migration and permeability criteria, as well as appropriate uniformity coefficients and pack-to-aquifer ratios. These factors allow design of a gravel envelope which is sufficiently fine and graded to control the finest formation sand through stabilization, and coarse enough to allow efficient water flow. Once an appropriate gravel envelope gradation has been designed to complement the formation materials, a screen opening size will be selected to stabilize the gravel envelope. The gravel envelope gradation will be designed based on the results of mechanical grading analysis.

The location of the well screen interval(s), deep annular seal, and well appurtenances, will be selected based on pilot borehole lithology, geophysical borehole logs, and results of isolated aquifer zone testing. The lateral positioning of ancillary tubing at the ground surface will be designed to complement the anticipated wellhead design and not interfere with pumping and conveyance equipment. Recommendations will also be provided regarding the suitability of borehole/casing depths and diameters, and materials to be used. The final well design will be presented in letter format for discussion prior to implementation.

Deliverables: Draft Well Design Letter (electronic pdf format)
Final Well Design Letter (electronic pdf format)

Optional Scope of Work

If requested, Webb will provide the following optional tasks:

Task 5 – Construction Management and Engineering Support Services for Well Construction

Webb Associates will provide the District with engineering support services for the project as follows:

Maintain Project Communications with City's Construction Manager

Review of Shop Drawings and Construction Documents submitted by Contractor for conformance with specifications and interpretation of contract documents to Contractor as necessary. Provide for the review of an estimated 10 submittals

Attend preconstruction conference (one meeting).

Review contractor claims for extra work, make recommendations (assume 4 claims).

Review the Contractor Requests for Information and clarifications. Ten (10) RFI/RFCs are budgeted.

Review of Contractor's Partial Pay Requests/Labor Compliance

Project Management

Task 6 – Inspection Services – Final Well Drilling and Well Installation

Task 6.1 - Borehole Reaming and Caliper Logging

Wood Rodgers will provide part-time inspection during enlargement of the pilot borehole (i.e., reaming) prior to well construction. Borehole diameters and depths will be verified as conforming to the final well design. Of particular importance is the monitoring of drilling fluid parameters to ensure protection of producing formations and the integrity and gauge of the enlarged borehole. Following reaming of the pilot borehole and prior to well construction, a caliper survey will be performed to verify borehole diameters and depths, as well as to provide detailed information regarding annular volume to be used during installation of the gravel envelope material and annular cement seal.

Task 6.2 - Well Construction

Wood Rodgers will inspect all construction materials as they are delivered to the site, including well casing, well screen, appurtenances, and gravel envelope. Casing materials will be inspected to verify that dimensions and material types are in conformance with the final well

design. The gravel envelope will be sampled upon delivery and sieved to verify that the as-delivered gradation meets design parameters. Cement mixes will be compared to design and the time of mixing will be noted to verify no more than 2 hours has elapsed between mixing and installation. Cement samples will be collected during installation and submerged in drilling fluid to simulate downhole conditions. These samples will be monitored to verify that the cement has sufficiently set, particularly when multiple cement pours are called for.

Wood Rodgers will provide full-time inspection during installation of the well casing, screen, gravel envelope, and annular seal to ensure placement in accordance with the well design and technical specifications. Installed volumes of gravel envelope and cement seal will be checked throughout the construction process to verify that there are no bridges or voids within the annular space between the well casing and borehole wall.

Task 6.3 & 6.4 - Well Development

Well development is a critical phase of well installation and will provide for an efficient well from which aquifer yield and groundwater quality can be assessed. The ultimate goal is to remove residual drilling fluids and to grade the gravel envelope and near-well zone such that water can be transmitted as efficiently as possible without producing sand. Well development will consist of two phases: 1) initial well development through simultaneous airlifting and swabbing of the well screen, and 2) final well development through pumping and surging.

Wood Rodgers will provide part-time inspection of initial well development through simultaneous airlifting and swabbing of the well screen. For each 10-ft interval of screen, sand production will be measured immediately following swabbing, and as the discharge clears. Those intervals exhibiting significant sand production (i.e., greater than 1 ml/L) will be targeted for additional development on subsequent passes through the well screen.

Wood Rodgers will provide part-time inspection of final well development through pumping and surging. During the final development process, pumping will begin at low rates, with no surging, slowly building to the maximum specified pumping rate (i.e., 1.5x the anticipated design pumping rate). Gentle surging will then begin at lower rates, becoming increasingly aggressive as development progresses. Tests for sand production and specific capacity will be performed throughout the process to measure the progress of development. Once specific capacity approaches a maximum, sand production approaches its minimum, and well performance criteria are met, development is considered complete and the aquifer pumping tests can begin.

It is assumed that 24 hours of airlift development and 50 hours of final development will be sufficient to develop the well per the technical specifications provided as part of the RFP. This can vary based on many factors, including the drilling fluid properties, formation characteristics, and well design. As such, Wood Rodgers will review data collected during the development process and provide real-time recommendations regarding additional development time.

Task 6.5 - Aquifer Pumping Tests
Wood Rodgers will provide part-time inspection during a step-drawdown pumping test, the purpose of which is to allow calculation of well efficiency, and to determine the desired rate for the constant rate pumping test. During the test, static and pumping water levels, totalizer flowmeter readings, and sand production, will be measured at specified intervals. A pressure transducer will be utilized to accurately measure ground water levels during testing. For cost estimating purposes, it is assumed that the test will be 10 hours in duration.

Following the step-drawdown test, Wood Rodgers will provide part-time inspection during the 24-hour constant rate pumping test, the purpose of which is to determine the design pumping rate, allow calculation of short- and long-term pumping dynamics, and determine the optimal pump intake setting. As with the step-drawdown test, totalizer flowmeter readings and sand production will be measured at specified intervals.

Wood Rodgers will collect Title 22 water quality samples near the end of the constant rate pumping test and will relinquish them to the City for delivery to a State-Certified analytical laboratory for analysis. Selected field parameters will be measured at the time of sample collection, including pH, temperature, electrical conductivity, total dissolved solids, and turbidity. As indicated in the Special Provisions, laboratory fees will be at the Owner's expense and are not included in this proposal.

Task 6.6 - Downhole Video Survey
Wood Rodgers will provide full-time inspection of a downhole dual-cam video survey to verify and document well construction details and to serve as a record of the condition of the well prior to acceptance. The video inspection shall be conducted following the Wood Rodgers established protocol that has been developed to ensure that a complete continuous downward view is conducted prior to side scanning.

Task 6.7 – Well Plumbness & Alignment Testing
Wood Rodgers recommends full-time inspection during plumbness and alignment testing of the well to verify acceptable alignment and verticality. It is anticipated that this testing will take the form of a gyroscopic alignment survey and will follow well development and testing.

Task 6.8 – Well Disinfection
Wood Rodgers will also provide full-time inspection during final disinfection of the well to ensure that suitable chemicals, concentrations, and methods of mixing and emplacement are employed.

Task 6.9 - Aquifer Pumping Test Analysis
The data collected from the aquifer pumping tests will be analyzed immediately following completion. Results of the analysis will allow recommendation of optimal operational parameters for the well, including design pumping rate, short- and long term drawdown characteristics, well efficiency, and recommended pump setting.

Deliverables: Aquifer Pumping Test Analysis Letter (electronic pdf format)

Task 7 – Reporting

Wood Rodgers will assemble all of the pertinent construction records from the project and provide this information in a written report. The report will include a summary of the project, project construction timeline, all daily field reports, an inventory of the materials installed, an as-built well profile of the water supply well, well pumping test plots, recommended well capacity, geophysical surveys, field data, water quality analyses, and our assessment of well acceptance testing.

Task 8 – Environmental Services

Based on Webb's initial review of the project, the project should qualify as a Notice of Exemption (NOE). However, if required, Webb will prepare a draft and final Initial Study/Mitigated Negative Declaration (IS/MND) will be prepared for this project.

The following assumptions have been made:

- One IS/MND will be drafted and assumes one round of comments from the City staff on the draft and brief review/editorial comments prior to release of draft MND.
- City will handle the distribution of the document for public/agency review and all required noticing.
- A qualitative discussion on aesthetics will be included; no photo simulations will be prepared.

Schedule/Budget

It is anticipated that Task 1 will be completed within three (3) days from the City issuing the Notice to Proceed. Tasks 2 through 4 will be as indicated by the construction schedule. The total fees for Tasks 1 – 4 described in this proposal shall be $44,210 (see **Attachment A**). If it is determined that the pilot borehole will be completed as a production well, the total additional fees to complete the well will be $57,817, not including the necessary environmental documentation (NOE or IS/MND) determined for the project. This project will be performed on a time and materials, not to exceed basis.

Construction/Emergency Response

Since construction on this project is a 24hr operation, at all times during construction (24hrs a day) Webb shall have a qualified on-call construction manager and/or inspector available who can respond to emergencies and be on site within 1hr.

ATTACHMENT A

CITY OF HEMET
Proposal for Engineering Services for the Re-Drilling of Well 10A

Task Description	Personnel Hours					Budget
	Principal Engineer	Senior Engineer	Project Coordinator	Subconsultant	Total Hours	Labor
Scope of Services						
Task 1 - Constructability Review						**$ 9,039.00**
Kick-Off Meeting	3.0	3.0	1.0	$ 2,082	7.0	$ 3,497.00
Review of Project Plans and Specifications	2.0	4.0	3.0	$ 1,621	9.0	$ 3,186.00
Recommendations and Revisions to Plans and Specs	1.0	2.0	1.0	$ 1,621	4.0	$ 2,356.00
Task 2 - Bid Support Services						**$ 10,082.00**
Attend Pre-bid Meeting	4.0	4.0	1.0	$ 1,810	9.0	$ 3,665.00
Respond to Questions	2.0	10.0	4.0	$ 1,700	16.0	$ 4,560.00
Summarize Bids and Make Recommendation	1.0	4.0	1.0	$ 722	6.0	$ 1,857.00
Task 3 - Construciton Management and Engineering Support Services for Pilot borehole						**$ 7,963.00**
Attend Pre-Construction Meeting	1.0	3.0	1.0	$ 1,966	5.0	$ 2,901.00
Review of Shop Drawings		2.0		$ 256	2.0	$ 656.00
Review request for Change Orders		2.0			2.0	$ 400.00
Review RFI/RFCs		2.0		$ 256	2.0	$ 656.00
Review Partial Pay Request		1.0			1.0	$ 200.00
Project Management	4.0	10.0	2.0		16.0	$ 3,150.00
Task 4 - Inspection Services - Pilot Borehole Drilling and Zone Testing						**$ 16,126.00**
Inspection of Conductor casing and sanitary seal installation				$ 1,788	0.0	$ 1,788.00
Inspection of Pilot Borehole drilling to 800 ft.				$ 5,704	0.0	$ 5,704.00
Geophysical Borehole Logging				$ 1,064	0.0	$ 1,064.00
Review of geophysical logs and recommendations for isolated aquifer zone testing				$ 1,866	0.0	$ 1,866.00
Inspection during isolated aquifer zone testing				$ 5,704	0.0	$ 5,704.00
Mechanical Grading Analysis				$ 2,323	0.0	$ 2,323.00
Final Well Design Recommendation Analysis/Letter				$ 6,003	0.0	$ 6,003.00
Optional Scope of Services						
Task 5 - Construciton Management and Engineering Support Services for Well Construction						**$ 12,341.00**
Attend Pre-Construction Meeting	1.0	3.0	1.0	$ 1,966	5.0	$ 2,901.00
Review of Shop Drawings		6.0		$ 722	6.0	$ 1,922.00
Review request for Change Orders		4.0		$ 256	4.0	$ 1,056.00
Review RFI/RFCs		4.0		$ 722	4.0	$ 1,522.00
Review Partial Pay Request		2.0			2.0	$ 400.00
Project Management	4.0	16.0	4.0		24.0	$ 4,540.00
Task 6 - Inspection Services - Final Well Drilling and Well Installation						**$ 34,551.00**
Borehole Reaming and Caliper Logging				$ 4,255	0.0	$ 4,255.00
Well Construction				$ 9,528	0.0	$ 9,528.00
Well Development				$ 7,958	0.0	$ 7,958.00
Aquifer Pumping Test				$ 5,434	0.0	$ 5,434.00
Downhole Video Survey				$ 1,064	0.0	$ 1,064.00
Well Plumbness and Alignment Testing				$ 1,064	0.0	$ 1,064.00
Well Disinfection				$ 1,098	0.0	$ 1,098.00
Aquifer Pumping Test Analayis				$ 4,150	0.0	$ 4,150.00
Task 7 - Reporting						**$ 10,925.00**
Well Completion Report				$ 10,925	0.0	$ 10,925.00
Task 8 - Environmental Services						**$ 24,240.00**
Prepare Notice of Exemption	4.0	6.0	2.0	$ -	22.0	$ 4,050.00
Prepare IS/MND (added cost to NOE)	16.0	36.0	10.0	$ 6,500	72.0	$ 20,190.00
Expenses						**$ 1,000.00**
SCOPE OF SERVICES SUBTOTAL (Tasks 1-4)	**18.0**	**47.0**	**14.0**	**$36,486**	**79.0**	**$ 44,210.00**
GRAND TOTAL - ALL SERVICES (Tasks 1-8)	**43.0**	**124.0**	**31.0**	**$92,128**	**218.0**	**$ 126,267.00**

(1) The amounts indicated for each individual project task are estimated budget amounts and accordingly the actual amounts may be more or less than shown. However, the total budget will not be exceeded without written authorization from the City.

ALBERT A. WEBB ASSOCIATES

FEE SCHEDULE

CLASSIFICATION	RATES $/HOUR
Engineers/Project Managers/Planners/Scientists/ Assessment/Special Tax Consultants/Landscape Architects/Designers	
Principal II	240.00
Principal I	220.00
Senior III	200.00
Senior II	190.00
Senior I	180.00
Associate III	170.00
Associate II	155.00
Associate I	145.00
Assistant V	130.00
Assistant IV	120.00
Assistant III	103.00
Assistant II	88.00
Assistant I	73.00
Survey Services	
2-Person Survey Party	220.00
1-Person Survey Party	160.00
Inspection Services	
Inspector (Non-Prevailing Wage)	110.00
Inspector (Prevailing Wage)	120.00
Administrative Services	
Project Coordinator	90.00
Administrative Assistant III	80.00
Administrative Assistant II	70.00
Administrative Assistant I	55.00
Other Direct Expenses	
Incidental Charges	Cost + 15%
Postage	Cost
Special Consultant	325.00/Hour
Subcontracted Services	Cost + 15%
Survey/Inspection Per Diem	100.00/Day
Survey/Inspection Vehicle	0.81/Mile
Mileage	0.72/Mile

NOTE: All rates are subject to change based on annual inflation and cost of living adjustments.

***A FINANCE CHARGE** of 1 ½ % per month (18% per year) will be added to any unpaid amount commencing thirty (30) days from invoice date. A mechanic's lien may be filed for any invoice remaining unpaid after thirty (30) days from invoice date.*

SCH 38 (07/01/2014)

WOOD RODGERS

LOS ANGELES FEE SCHEDULE
Effective January 1, 2016

CLASSIFICATION	STANDARD RATE
Principal Engineer/Geologist/Surveyor/Planner/LA* II	$240
Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* III	$195
Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* II	$185
Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* I	$175
Engineer/Geologist/Surveyor/Planner/GIS/LA* III	$165
Engineer/Geologist/Surveyor/Planner/GIS/LA* II	$155
Engineer/Geologist/Surveyor/Planner/GIS/LA* I	$145
Assistant Engineer/Geologist/Surveyor/Planner/GIS/LA*	$125
Inspector II	$105
CAD Technician III	$135
CAD Technician II	$125
CAD Technician I	$115
Project Coordinator	$115
Administrative Assistant	$100
1 Person Survey Crew**	$170
2 Person Survey Crew**	$250
3 Person Survey Crew**	$330
Consultants, Outside Services, Materials & Direct Charges	Cost Plus 10%
Overtime Work	Rate Plus 50%

*LA = Landscape Architect

** Survey rate subject to change March 1, 2016, pending Union contract negotiations.

Blueprints, reproductions, and outside graphic services will be charged at vendor invoice. Auto mileage will be charged at the IRS standard rate, currently 54.0 cents per mile.

Fee Schedule subject to change January 1, 2017.

AGENDA # 28

Staff Report

TO: Honorable Mayor and Members of the City Council

FROM: Alex Meyerhoff, City Manager
Deanna Elliano, Director of Community Development
Scott Brown, Fire Chief

DATE: November 15, 2016

RE: **Municipal Code Amendment (MCA 16-001) to Chapter 14 (Buildings and Building Regulations**: An ordinance to adopt by reference the 2016 California Building Standards Code (California Code of Regulations, Title 14), re-adoption of various other uniform Building and Fire Codes, and local amendments thereto pursuant to Ordinance Bill No. 16-086

RECOMMENDATION:

That the City Council:

1. *Conduct a public hearing, and;*

2. *ADOPT* ***Ordinance Bill No. 16-086****, approving amendments to Chapter 14 of the Hemet Municipal Code, incorporating by reference the 2016 California Building Standards Code and various other uniform Building and Fire Codes, and local amendments thereto.*

SUMMARY:

The proposed ordinance to update the City's Building and Fire Codes in accordance with State law was originally introduced and discussed at the October 25, 2016 meeting of the City Council. Pursuant to California Government Code requirements, a noticed public hearing must be held at the time of second reading of the proposed ordinance. A Public Hearing Notice regarding the proposed Ordinance was published in the Press-Enterprise on October 28, 2016 and the ordinance text has been available for public review at City Hall and on the City's website for the past 2 weeks. As of this date, staff has not received any public comment regarding the proposed Ordinance Bill No. 16-086.

The purpose of the public hearing is to provide one final opportunity for the public to comment on the proposed ordinance amendments prior to adoption. Upon adoption of

the ordinance by the City Council, the ordinance will take effect within 30 days. The following report provides additional background and details regarding the proposed ordinance.

BACKGROUND:

California Health and Safety Code section 17922 requires the City to adopt by reference the California Building Standards Code (Title 24 of the California Code of Regulations) (hereinafter "CBSC"). The CBSC is the established minimum regulations for the design and construction of buildings and structures in California. The California Building Standards Commission updates the CBSC every three years. The Commission recently completed the revision cycle and published the 2016 CBSC this past July. The 2016 CBSC will take effect statewide on January 1, 2017. The proposed ordinance adopts the new statewide 2016 California Building Standards Code, and re-adopts other existing standard codes that are currently part of Chapter 14 of the Hemet Municipal Code regarding buildings and construction.

In addition to requiring the City to adopt the CBSC, state law also authorizes local agencies to make amendments to the Code that apply within their jurisdiction. Health and Safety Code sections 17958.5 and 18945 provide that the City may make local amendments to the "building standards" contained in the Code if the City makes express findings that the amendments are reasonably necessary due to local climatic, geological or topographical conditions. Health and Safety Code section 18909(a) defines "building standard" as any regulation that "specifically regulates, requires, or forbids the method of use, properties, performance, or types of materials used in the construction, alteration, improvement, repair, or rehabilitation of a building, structure, factory-built housing, or other improvement to real property, including fixtures therein and as determined by the Commission." Subsection (c) of Section 18909 clarifies that regulations relating to the implementation and enforcement of building standards that are "procedural ordinances by a City or the public agency relating to civil, administrative, or criminal procedures and remedies available for enforcing code violations" are not building standards, and thus do not require that the City make express findings for these administrative amendments.

ORDINANCE DESCRIPTION:

The 2016 California Building Standards Code made only minor modifications and additions to the previously adopted 2013 Code.

The proposed ordinance adopts by reference the 2016 CBSC and makes local amendments to the CBSC. Detailed below are new local revisions and changes made to the previously adopted code in addition to the State of California adopted code. Several of the local amendments are administrative in nature, and do not result in any new or additional construction requirements.

1) Local Building Code Amendments:

- Section 505 Working Hours: The City of Hemet previously had construction hours in the noise ordinance. During a previous change to that ordinance, the construction hours were deleted. Therefore, they have relocated into the administrative portion of the code. The working hours are comprised of 6:00 a.m – 6:00 p.m. during the months of June through September and between the hours of 7:00 a.m. – 6:00 p.m. during the months of October through May and on Saturdays. Sunday construction hours are prohibited. Exceptions can be made by the Building Official or City Council.

2) Local Fire Code Amendments:

- Fire Sprinkler Requirements: In previous code amendments the square footage limits were lowered to 3,500 sq. ft. for when the requirement for fire sprinklers to be installed in new building was triggered. It is our proposal to return to the State adopted square footage, which brings the City of Hemet in line with most other California cities. These square footage requirements average around 12,000 sq. ft. for most occupancies. For high-hazard occupancies, the square footages were unchanged in the previous code cycle.

- Building Addressing: Lack of proper addressing of properties in the City of Hemet is an issue. Having legible addressing that can be seen by public safety personnel can increase the response time when minutes count. As an added benefit, properly addressed buildings assist our citizens and visitors in being able to locate the address they are seeking. Section 505 of the California Fire Code regulations, only require 4" high numbers which are not legible from many of the City of Hemet roadways because the buildings are set-back from the main street. These regulations have already been put into practice for many of our new buildings during the permit approval process. These requirements are consistent with most other local agencies in the region. The amendment requires the following:

    - Minimum 6" high numbers for commercial and industrial properties, residential would remain at 4".
    - Commercial and industrial properties shall be 1/10 taller than the setback distance measured in feet, expressed in inches plus 2". For example if the setback was 60 feet, 1/10 of 60 feet is 6 feet, converted to inches, plus 2" would be 8" high numbers.
    - Multi-Family would require 12" building numbers with 6" walkway address, if applicable and 4" apartment addressing.
    - Location of the address shall be on the upper ¼ portion of the building.
    - The address must be illuminated during evening hours.
    - The address shall contrast with the background on which it is affixed.

- Material used shall be a weather-resistant material.

COORDINATION AND PUBLIC REVIEW:

The proposed ordinance and the incorporation of the 2016 California Building Standards Code, uniform codes, appendices, and amendments was reviewed and recommended by the City of Hemet Building Official, Fire Chief, Community Development Director, and City Attorney's office. Any amendments or exceptions to the uniform codes were determined to be in the public health and safety for the citizens of Hemet, and the protection of public and private property. Pursuant to California Government Code Section 6066, the City is required to set a noticed public hearing for the ordinance after the first reading, and make the ordinance available for public review for a minimum of two weeks prior to adoption of the ordinance at second reading. The ordinance was introduced for first reading on October 25, 2016, and the public hearing was advertised for the November 15, 2016 meeting of the City Council on October 28th, providing an approximate two- week period for public review and comment. The draft ordinance is available for public review on the City's website, at the City Clerk's office, and at the Building Division public counter.

CONSISTENCY WITH ADOPTED GOALS, PLANS AND PROGRAMS:

The proposed ordinance and code updates are consistent with the City's 2030 General Plan Implementation Programs PS-P-6 and PS-P-15, regarding the adoption and enforcement of Uniform Building Code updates and fire protection codes and standards.

CEQA REVIEW AND COMPLIANCE:

The City has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA"} under section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA The ordinance does not relate to any physical project and will not result in any physical change to the environment, and in fact the ordinance seeks to enhance public safety and protect property from the potential effects of earthquakes, subsidence, high winds, and fire. Therefore, it can be seen with certainty that there is no possibility that this Ordinance may have a significant adverse effect on the environment and, therefore, the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b) (3) of the CEQA Guidelines.

FISCAL IMPACT:

The adoption of the ordinance has no fiscal impact.

Respectfully submitted,

Deanna Elliano, Community Development Director

Sara Retmier, Building Official

Attachment:

1. Proposed Ordinance Bill No 16-086, Amendments to Chapter 14 of the Hemet Municipal Code.

CITY OF HEMET
Hemet, California
ORDINANCE BILL NO. 16-086

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA, AMENDING CHAPTER 14, BUILDINGS AND BUILDING REGULATIONS, OF THE HEMET MUNICIPAL CODE AND ADOPTING BY REFERENCE PARTS 1 THROUGH 12 OF TITLE 24 OF THE CALIFORNIA CODE OF REGULATIONS, AND THE 1997 UNIFORM HOUSING CODE, 1997 UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, 1997 UNIFORM SIGN CODE, 2009 UNIFORM SOLAR ENERGY CODE, 2009 UNIFORM SWIMMING POOL, SPA AND HOT TUB CODE, AND 2012 INTERNATIONAL FIRE CODE, AS AMENDED BY THE CITY COUNCIL, BASED ON THE COUNCIL'S FINDING THAT LOCAL CLIMATIC, GEOLOGICAL OR TOPOGRAPHICAL CONDITIONS RENDER THE LOCAL AMENDMENT REASONABLY NECESSARY.

WHEREAS, California Health and Safety Code sections 17922 and 17958, and Government Code section 50022.1 *et seq.* authorize and require the City to adopt by reference the California Building Standards Code as set forth in Title 24 of the California Code of Regulations; and,

WHEREAS, California Health and Safety Code section 17958.5 authorizes the City to adopt amendments to the building standards contained in the California Building Standards Code if the City makes express findings that the amendments are reasonably necessary because of local climatic, geological, or topographical conditions; and,

WHEREAS, California Health and Safety Code section 18909(c) provide that amendments relating to civil, administrative, or criminal procedures and remedies available for enforcing violations of the 2016 California Building Standards Code are not amendments to "building standards," and the City may adopt such amendments without making express findings; and,

WHEREAS, the California Building Standards Commission has published the 2016 California Building Standards Code, which shall take effect on January 1, 2017.

WHEREAS, the City has previously adopted by reference and made local amendments to previous versions of the California Building Standards Code, codified in Article II of Chapter 14 of the Hemet Municipal Code; and,

WHEREAS, the City desires to amend Article II of Chapter 14 of the Hemet Municipal Code to adopt by reference and make certain local amendments to the 2016 California Building Standards Code; and,

WHEREAS, Health and Safety Code section 17958.7 provides that the local amendments set forth in this ordinance shall not become effective until a copy of the express findings justifying each of the local amendments has been filed with the California Building Standards Commission; and,

WHEREAS, at least one full, true, and correct copy, as certified by the City Clerk, of the 2016 California Building Standards Code has been filed in the office of the City Clerk in accordance with the provisions of Government Code Section 50022.6; and

WHEREAS, pursuant to Government Code section 50022.3, the City Council has conducted a duly noticed public hearing regarding this ordinance; and,

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

SECTION 1: FINDINGS OF FACT. Based on the whole record before it, the City Council finds that the local amendments to the building standards contained in Title 24 set forth in Section 3 of this ordinance are reasonably necessary because of the following determinations due to local climatic, geological, or topographical conditions:

1. The amendments to 2016 California Building Code sections 406.3.4, [F]903.2 through [F]903.2.10, and 1505.6, and the amendment to 2016 California Residential Building Code section R105.2 and Table R301.2(1), the amendments to 2016 California Fire Code Appendix B are all justified by the following local geological, topographical and climatic conditions:

The City of Hemet receives relatively low amounts of precipitation, low humidity and high temperatures. Normal prevailing winds in the afternoon often reach 15 to 20 miles per hour. Strong winds commonly referred to as Santa Ana Winds have reached speeds up to 60 miles per hour in the San Jacinto Valley during various months of past years. Damage that can occur during such winds includes: downed trees, utility poles, utility circuits and lines. These conditions create increased fire hazards, and cause small fires to grow rapidly. These amendments will create increased on-site fire protection, and protect against accidental wildfires caused by fireworks. The amendment to 2016 California Residential Building Code section R105.2 will enhance the Fire Department's ability to respond to fires by increasing access to enclosed areas.

1.The amendments to 2016 California Building Code Appendix J, section J110.1 and J110.8 are justified by the following local geological, topographical and climatic conditions:

The City of Hemet receives relatively low amounts of precipitation, low humidity and high temperatures. Normal prevailing winds in the afternoon often reach 15 to 20 miles per hour. Strong winds commonly referred to as Santa Ana Winds have reached speeds up to 60 miles per hour in the San Jacinto Valley during various months of past years. Damage that can occur during such winds includes: downed trees, utility poles, utility circuits and lines. These amendments respond to these issues by increasing the requirements for landscaping to be water-efficient, and to control the erosion and sediment that results from these conditions.

2.The amendments to 2016 California Existing Building Code section A115.1 through A115.2 and 2016 California Residential Building Code Table R301.2(1) are justified by the following local geological, topographical and climatic conditions:

Within the Hemet City limits there is an active earthquake fault called the San Jacinto Fault. This fault has produced earthquakes in the past, which severely damaged the City. There are also other faults in the adjacent areas, including the San Andreas Fault. In the event of a severe earthquake, these faults present the potential for

catastrophic damage. These amendments aim at reducing the potential for damage by ensuring that the existing buildings that present the greatest threat of damage in the event of an earthquake are identified, analyzed, and made safer.

3. The remainder of the amendments made by this ordinance are to administrative in nature and findings are not required to make these amendments.

SECTION 2: 2016 CALIFORNIA BUILDING STANDARDS CODE ADOPTED. The City Council of the City of Hemet hereby adopts by reference the 2016 California Building Standards Code, contained in Parts 1 through 12 of Title 24 of the California Code of Regulations, in its entirety except as amended by Section 3 of this ordinance.

SECTION 3: AMENDMENT OF ARTICLE II OF CHAPTER 14 OF THE HEMET MUNCIPAL CODE. Article II of Chapter 14 of the Hemet Municipal Code is hereby amended and shall read in its entirety as shown in Exhibit A.

SECTION 4: NOTIFICATION OF BUILDING STANDARDS COMMISSION. The City Council of the City of Hemet hereby authorizes and directs the City Clerk to file a copy of this ordinance with the California Building Standards Commission.

SECTION 5: 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 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 6: EFFECTIVE DATE.

This Ordinance shall take effect January 1, 2017.

SECTION 7:PUBLICATION.

The City Clerk is authorized and directed to cause this Ordinance to be published within 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 _____ 2016.

APPROVED AND ADOPTED this ___ day of _____ 2016.

_____
Bonnie Wright, Mayor

ATTEST:

_____
Sarah McComas, City Clerk

APPROVED AS TO FORM:

_____
Eric S. Vail, City Attorney

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 ___ day of _____ 2016, and had its second reading at the regular meeting of the Hemet City Council on the ___ day of _____, 2016, and was passed by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Sarah McComas, City Clerk

EXHIBIT A

CHAPTER 14

BUILDINGS AND BUILDING REGULATIONS

ARTICLE II. UNIFORM CODES

Division 1. Generally

Sec. 14-31. Codes Adoption.

The 2016 California Building Standards Code, as set forth in Parts I through 12 of Title 24 of the California Code of Regulations, and as such Code may be amended from time to time; the "Uniform Housing Code", 1997 Edition; the "Uniform Code for the Abatement of Dangerous Buildings," 1997 Edition; the "Uniform Sign Code," 1997 Edition; the "Uniform Solar Energy Code," 2009 Edition; the "Uniform Swimming Pool, Spa and Hot Tub Code," 2009 Edition; and the "International Fire Code," 2012 Edition are hereby adopted together with certain amendments, deletions, additions, and exceptions, including fees and penalties.

Secs. 14-32 – 14-34. Reserved.

Division 2. California Administrative Code

Sec. 14-35. Adoption.

The 2016 California Administrative Code, as set forth in Part 1 of Title 24 of the California Code of Regulations, as such code may be amended from time to time, except as hereinafter amended by this Division, is adopted by reference as the administrative code of the City.

Secs. 14-36 – 14-39. Reserved.

Division 3. California Building Code

Sec. 14-40. Adoption.

The 2016 California Building Code, codified in Part 2 of Title 24 of the California Code of Regulations, including Appendix Chapters C, G, I, and J, as such code may be amended from time to time, except as hereinafter amended by this division, is adopted by reference as the building code of the city.

Sec. 14-41. Amendments

Building heading in Subsection 105.2 of Section 105 of Chapter 1, Division II of the California Building Code, 2016 Edition, is amended to read as follows:

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11.15m^2) and all setbacks per the Hemet municipal code are adhered to.
2. Oil derricks.

3. Retaining walls, concrete and masonry fences that are not over 2 feet in height measured from the top of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
4. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18 925 L) and the ratio of height to diameter or width does not exceed 2:1.
5. Sidewalks and walks not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
6. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
7. Temporary motion picture, television and theater stage sets and scenery.
8. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 24 inches (610 mm) deep, are not greater than 5,000 gallons (18 925 L) and are installed entirely above ground.
9. Shade cloth structures constructed for nursery or agriculture purposes, not including service systems.
10. Swings and other playground equipment accessory to detached one- and two-family dwellings.
11. Window awnings in Group R-3 and U occupancies, supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.
12. Non fixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Subsection 105.5, of Section 105 of Chapter 1, Division II of the California Building Code, 2016 Edition, is amended to read as follows:

Expiration. Every permit issued by the building official shall expire by limitation and become null unless work for which the permit was issued has not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced and no inspection of significant progress (as determined by the building official) is obtained for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefore shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after one year, the permittee shall pay a new full permit fee.

Exceptions:
1. Demolition and moving permits shall be valid for a period not to exceed 60 days.

2. A permittee holding an unexpired permit may apply for an extension of the time when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. Permits shall not be extended more than once.

3. Permits issued for work started prior to obtaining a building permit as required under section 105.1 shall be valid for a period not to exceed 30 days. If an inspection(s) are performed that can verify compliance with all code requirements at the current stage of construction, therein after the permit will be automatically extended per section 105.5

Subsection 105.6 of Section 105 of Chapter 1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 105.6.1 to read as follows:

> 105.6.1. Unfinished buildings and structures. Whenever the building official determines by inspection that work in or on any building or structure for which a permit has been issued and the work started thereon has been suspended for a period 180 days or more, the owner of the property upon which such building or structure is located or other person or agent of control of said property, upon receipt of notice in writing from the building official to do so, shall, within 60 days from the date of such written notice, obtain a new permit to complete the required work and diligently pursue the work to completion or shall remove or demolish the building or structure within 90 days from the date of written notice.

Subsection 109.2 of Section 109 of Chapter 1, Division II of the California Building Code, 2016 Edition, is amended to read as follows:

> 109.2 Schedule of permit fees. On buildings, structures, electrical, gas, mechanical and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 109.4 of Section 109 of Chapter 1, Division II of the California Building Code, 2016 Edition, is amended to read as follows:

> 109.4. Work commencing before permit issuance. Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to a special investigation fee. The special investigation fee shall be double the permit fee. This fee shall be in addition to the required permit fees. The special investigation fee shall be made before a permit may be issued for such work.

Subsection 109.6 of Section 109 of Chapter 1, Division II of the California Building Code, 2016 Edition, is amended to read as follows:

> 109.6 Refunds. The building official may authorize refunding of any fee paid hereunder in the following situations.
>
> 1. Wherein a fee was erroneously paid or collected.
> 2. The building official may authorize refunding of not more than 75 percent of the permit application fee when an application for a permit is withdrawn or canceled before any plan review is done.
> 3. The building official may authorize refunding of not more than 75 percent of the permit fee when an application for permit is withdrawn or canceled before any inspections are performed.
>
> The building official shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment. Except for the refunding of fees paid in error, no refund of permit or plan review fees shall be made where the permit or plan review fee paid is $100.00 or less.

Section 109 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 109.7 to read as follows:

> 109.7 Plan Review Fees. On buildings, structures, electrical, gas, mechanical and plumbing systems or alterations requiring a plan review, a fee for each plan review shall

be paid as required in accordance with the City of Hemet, Building Division Schedule of Fees and Charges. Upon submittal construction documents, this fee shall be due and payable before the construction documents will be reviewed.

The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 109.2 and are in addition to the permit fees.

When plans require three (3) or more reviews, are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in the City of Hemet, Building Division Schedule of Fees and Charges.

Section 109 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 109.8 to read as follows:

109.8 Special Investigation Fees: Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be twice the amount of all permit fees, required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in the current City of Hemet, Building Division Schedule of Fees and Charges. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

Section 111 of Chapter 1, Division II of the California Building Code, 2016 Edition is amended by adding subsection 111.5 to read as follows:

111.5 Expiration. Every application for Certificate of Occupancy shall become invalid unless an inspection of the business is performed within 60 days after the application date. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 60 days each. The extension shall be requested in writing and justifiable cause demonstrated. This provision shall not be perceived as to allow a business to conduct business without first being issued a Certificate of Occupancy.

Section 111 of Chapter 1, Division II of the California Building Code, 2016 Edition is amended by adding subsection 111.6 to read as follows:

111.6 Certificate of Occupancy Fee. On buildings, structures, and areas requiring a certificate of occupancy under Section 111.1 a fee for each application shall be paid as required in accordance with the City of Hemet, Building Division Schedule of Fees and Charges. Upon all required submittal documents, this fee shall be due and payable at time of application submittal.

Subsection 113.1 of Section 113 of Chapter 1, Division II of the California Building Code, 2016 Edition is amended to read as follows:

113.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this Code, there shall be and is hereby created a Board of Appeals consisting of five members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The Building Official shall be an ex officio member and shall act as secretary to said Board, but shall have no vote upon any matter before the Board. The Board of Appeals shall be appointed by the City Council and shall hold office at its pleasure. The Board shall adopt

rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

Subsection 113.2 of Section 113 of Chapter 1, Division II of the California Building Code, 2016 Edition is amended to read as follows:

113.2 Limitations of Authority. The Board of Appeals shall have no authority relative to interpretation of administrative provisions of this Code, nor shall the Board be empowered to waive requirements of this Code.

Subsection 113.3 of Section 113 of Chapter 1, Division II of the California Building Code, 2016 Edition is amended to read as follows:

113.3 Appeal hearing fee. A fee, as provided in the current City of Hemet, Building Division Schedule of Fees and Charges, shall accompany an application for a hearing before the Board of Appeals.

Section 113.4 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 113.4 to read as follows:

113.4 Special purposes members. For the purpose of appeals to the standards of Title 24 of the California Code of Regulations affecting accommodations for persons with disabilities, two (2) members shall be added who shall have a disability as defined by Section 202 of the California Building Code, 2016 Edition.

Section 113.5 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 113.5 to read as follows:

113.5 Notice of appeal. Within the limitations provided for below, a person aggrieved by any order, act or determination of the building official or his subordinates, may appeal therefrom to the board of appeals. The appeal shall be taken by filing a written notice of appeal within 15 days, exclusive of holidays, after the date of making the order or determination or performing the act and by paying the appeal hearing fee. The notice of appeal must be in writing on a form provided by the city, and the notice must be filed and the fee paid at the office of the building official. The notice of appeal shall be sufficient if it identifies the act, order or determination appealed from and stated wherein it is erroneous or invalid. The operation of the act, order, or determination appealed from is suspended by the filing of the notice of appeal and upon the determination of the appeal or termination of proceedings thereunder.

Section 113.6 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 113.6 to read as follows:

113.6. The chairman of said board shall fix the time and place of hearing the appeal. The date of hearing shall not be less than five days nor more than 15 days after the date of filing the notice of appeal, and the hearing must not be postponed for more than ten days without good and sufficient cause. The board shall give written notice of the time and place of such hearing to the appellant and the officer or head of the department or division whose act, order, or determination is appealed from. Witnesses may be sworn and examined and evidence produced by interested parties, who may appear in person or by attorney. The board shall keep a record of each appeal and proceedings thereunder. At the conclusion of the hearing, the board shall prepare and file its written findings and decision. The affirmative vote of two-thirds of the board is necessary to modify or reverse the order, act or determination appealed from. The failure of the board

to file its findings and decisions within five days after termination of the hearing shall result in the automatic confirmation of the order, act or determination appealed from.

Section 113.7 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 113.7 to read as follows:

113.7 Any person aggrieved or affected by a decision of the board may appeal to the city council from such decision at any time within ten days after the date upon which the board announces its decision or loses jurisdiction. An appeal to the city council shall be taken by filing a letter of appeal with the building division and by concurrently paying to such division an appeal hearing fee in the amount established by Table A. Such letter shall set forth the grounds upon which the appeal is based. Within 15 days after the receipt of the letter of appeal and the filing fee, the building division shall transmit to the city council the letter of appeal and the record of appeal at the board and the board's findings and decision. The city council may affirm, reverse, or modify the decision of the board.

Section 113.8 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 113.8 to read as follows:

113.8 In the event the board as established in Section 113.1 herein above should for any reason not be appointed by the city councilor cease to exist after such appointment, the city council may serve as the board of appeals.

Section 114.5 of Chapter 1, Division II of the California Building Code, 2016 Edition is amended by adding a new subsection 114.5 to read as follows:

114.5 Violation penalties. Any person, firm or corporation violating any of the provisions, regulations, requirements, additions, amendments and/or deletions of this code is guilty of a misdemeanor and the penalty for such a misdemeanor shall be as set forth in Chapter 1-8 of the Hemet Municipal Code.

Subsection 114.5.1 of Section 114 of Chapter 1, Division II of the California Building Code, 2016 Edition is amended by adding a new subsection 114.5.1 to read as follows:

114.5.1 In addition thereto, violation of this code is declared to be a public nuisance, and the city attorney may institute necessary legal procedures for the abatement, removal or the enjoinment thereof in the manner provided by law, or may take such other steps as he or she deems necessary to accommodate these ends.

Subsection 116.6.1 of Section 116 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 116.6.1 to read as follows:

116.6.1 Intent. This section establishes standard placards to be used to indicate the condition of a structure for continued occupancy. The section further authorizes the building official and his or her authorized representatives to post the appropriate placard at each entry point to a building or structure upon completion of a safety assessment.

Subsection 116.6.2 of Section 116 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 116.6.2 to read as follows:

116.6.2. Application of provisions. The provisions of this section are applicable to all buildings and structures and all occupancies regulated by the city. The council may extend the provisions as necessary.

Subsection 116.6.3 of Section 116 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 116.6.3 to read as follows:

116.6.3. Definitions. "Safety assessment" means a visual, nondestructive examination of a building or structure for the purpose of determining the condition of the building or structure for continued occupancy.

Subsection 116.6.4 of Section 116 of Chapter1, Division II of the California Building Code, 2016 Edition, is amended by adding a new subsection 116.6.4 to read as follows:

116.6.4. Placards.

1. The following are verbal descriptions of the official jurisdiction placards to be used to designate the condition for continued occupancy of buildings or structures. Copies of actual placards are attached to the ordinance codified in this chapter and adopted by reference.

a. "INSPECTED - Lawful Occupancy Permitted" (Green Placard) is to be posted on any building or structure wherein no apparent structural hazard has been found. This placard is not intended to mean that there is no damage to the building or structure.

b. "RESTRICTED USE" (Yellow Placard) is to be posted on each building or structure that has been damaged wherein the damage has resulted in some form of restriction to the continued occupancy. The individual who posts this placard will note in general terms the type of damage encountered and will clearly and concisely note the restrictions on continued occupancy.

c. "UNSAFE - Do Not Enter or Occupy" is to be posted on each building or structure that has been damaged such that continued occupancy poses a threat to life safety. Buildings or structures posted with this placard shall not be entered under any circumstance except as authorized in writing by the building official, or his or her authorized representative. Safety assessment teams shall be authorized to enter these buildings at any time. This placard is not to be used or considered as a demolition order. The individual who posts this placard will note in general terms the type of damage encountered.

2. The number of the ordinance codified in this section, the name of the jurisdiction, its address and phone number shall be permanently affixed to each placard.

3. Once it has been attached to a building or structure, a placard is not to be removed, altered or covered until done so by an authorized representative of the building official. It is unlawful for any person, firm or corporation to alter, remove, cover or deface a placard unless authorized pursuant to this section.

Subsection 116 of Section 116 of Chapter1, Division II of the California Building Code, 2016 Edition, shall be deleted:

Chapter 1 of the California Building Code, 2016 Edition is amended by adding Section 117 to read as follows:

Section 117 Rubbish and Debris

117.1 Rubbish and Debris. Every person who constructs, alters, adds to, rehabilitates, places or repairs any building structure or building service equipment is subject to the following provision relating to rubbish and debris:

1. Collection and Disposal. During the process of constructing a building or structure, the construction site and the general area around the site shall be kept clear of rubbish and debris that result from the construction activities. Rubbish and debris shall not be allowed to accumulate on or be blown from the site and shall be placed inappropriate containers or removed from the construction site to an authorized disposal area. All containers shall be emptied periodically at an authorized disposal area so they will remain usable for the collection of rubbish and debris. When the building or structure is completed, a final cleanup of the site shall be conducted by the permittee.

2. Inspections. A permit holder shall not be entitled to, and no building inspector shall make an inspection of any phase of completed construction work, including the final inspection, if the construction site or general area thereof contains an accumulation of construction rubbish and debris. If a building inspector is unable to conduct a requested inspection because of an accumulation of rubbish and debris, a re-inspection fee may be assessed and required to be paid prior to a request for re-inspection is made. Failure to maintain a construction site clear of waste and other trash or debris, and in such a manner that is determined to constitute a health and safety hazard or constitutes a public nuisance, shall result in the issuance of a Stop Work order.

3. Rubbish and debris for the purpose of this section, includes, but is not limited to, stub ends of cut lumber, broken lumber and other scrap wood, scrap cement and plaster, scrap metal, paper cartons, wrappings, and similar materials that result from the process of constructing a building or structure."

Chapter 1 of the California Building Code, 2016 Edition is amended by adding Section 118 to read as follows:

118 Working Hours. Construction activities shall be permitted between the hours of 6:00 a.m. and 6:00 p.m. during the months of June through September and between the hours of 7:00 a.m. and 6:00 p.m. during the months of October through May. Saturday construction shall be permitted between the hours of 7:00 a.m. and 6:00 p.m. Sunday construction shall be prohibited. Exceptions to these standards may be granted only by the City building official and/or the city council. This subsection is not intended to prohibit infrequent homeowner or small construction on the site of an existing home.

Item 1 of Subsection 406.3.4 of Section 406 of the California Building Code, 2016 Edition is amended to read as follows:

1. The private garage shall be separated from the dwelling unit and its attic area by means of gypsum board, not less than 5/8-inch (15.9mm) Type X gypsum board applied to the garage side. Garages beneath habitable rooms shall be separated from all habitable rooms above by not less than a 5/8-inch (15.9mm) Type X gypsum board or equivalent and 5/8-inch (15.99mm) Type X gypsum board applied to structures supporting the separation from habitable rooms above the garage. Door openings between a private garage and the dwelling unit shall be equipped with either solid wood doors or solid or honeycomb core steel doors not less than 1 3/8 inches (34.9mm) in thickness, or doors in compliance with Section 716.5.3 with a fire protection rating of not

less than 20 minutes. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Doors shall be self-closing and self-latching.

Subsection 1505.6 of Section 1505 of the California Building Code, 2016 Edition is amended to read as follows:

1505.6 Wood shingles and shakes. It shall be unlawful to install or cause to be installed, wood-shake or wood-shingle roofs on a building.

Exception: Any building which presently has wooden shakes or shingles may be re-roofed with a listed and approved Class A assembly with a rated wood shake or shingle. Approved fire-retardant-treated wood shakes and shingles are those complying with UBC Standard 15-3 or 15-4 which are impregnated by the full-cell vacuum-pressure process with fire-retardant chemicals, which have been qualified by UBC Standard 15-2 for use on Class A roofs.

Roof coverings on buildings located in a designated fire hazard area shall be rated as Class A. All wood-shingles and wood-shakes are prohibited in high fire hazard areas.

Subsection J110.1 of Section J110 of Appendix J of the California Building Code, 2016 Edition, is amended to read as follows:

J110.1 General. The faces of cut and fill slopes shall be prepared and maintained to control erosion and to provide stability.

Exception: Erosion control measures need not be provided on cut slopes not subject to erosion due to erosion-resistant character of materials.

Unless otherwise recommended in the approved soil engineering or engineering geology report, cut and fill slopes shall be planted in accordance with this section. The protection for the slopes shall be installed as soon as practicable and prior to calling for final permit approval.

Subsection J110.2 of Section J110 of Appendix J of the California Building Code, 2016 Edition, is amended to read as follows:

J110.2. Planting.

1. All slopes equal to or greater than three feet in vertical height shall be planted with drought-tolerant grass or ground cover in order to protect the slope from erosion and instability. Other slopes as deemed necessary by the building official shall also be planted.
2. Slopes exceeding 15 feet in vertical height shall be planted with drought-tolerant shrubs, spaced at no more than ten feet on center; or trees, spaced not to exceed 20 feet on center; or a combination of such shrubs and trees at equivalent spacing, in addition to a drought-tolerant grass or ground cover. Fifty percent of the total number of trees provided shall be of a drought-tolerant nature and a minimum five-gallon size. The plants selected and planting methods used shall be suitable for the soil and climatic conditions found on the site. The landscape design shall consider and locate plants in zones, according to their water needs. Plant materials and planting patterns may be varied upon the recommendations of a landscape architect or a slope control specialist with approval of the building official.

If a species other than those from the recommended plants list provided by the street and park supervisor is selected, a written statement shall be submitted by a landscape architect or slope control specialist certifying that the plant is drought-tolerant and suitable for erosion control and slope stabilization purposes. This statement must accompany the grading plan at the time of submittal. Plant material shall be allowed that is specifically identified as being drought-tolerant and suitable for erosion control and slope stabilization on an erosion control landscape plan signed by a registered landscape architect.

Section J110 of Appendix Chapter J, of the California Building Code, 2016 Edition, is amended by adding a new subsection J110.3 to read as follows:

J110.3 Plans.

1.Erosion-control landscape plan requirements. Landscape plans shall be submitted for all slopes required to be planted. The landscape plan may be incorporated as part of the grading plan unless, in the opinion of the building official, the plan becomes too obscured to be effective. A landscape plan shall include:

a. A slope planting schedule that provides common and scientific names and specifications of all plants, including the names of all species, number and size of each three and shrub and the spacing of each tree.

b. The location of the planting.

2.Erosion-control landscape plans involving more than four structures shall be prepared and signed by a registered landscape architect. This plan shall include the details necessary to complete the project including scope of work, materials to be used (seed mixtures, plant species listed by size, quantity, fertilizer used and rate of application), construction methods, maintenance and timetable for project completion.

3.Irrigation plan requirements. Except where approved by the building official, slopes required to be planted shall be provided with an approved system of irrigation designed to cover all portions of the slope and shall be of sufficient clarity to indicate the extent of work proposed. The irrigation system shall have zones which take into account the water requirements of the different types of plant species located in the zone and shall be adjusted to vary the water within the zone in accordance with the needs of the plant material. Care shall be taken to minimize runoff. Turf areas shall be irrigated separately from slope areas. The irrigation system provided shall make use of automatic timers, moisture sensors and low precipitation heads or emitters. The use of a drip type irrigation system is highly recommended wherever possible. Seasonal irrigation requirements of the plant species proposed shall be determined and recommendations provided as to the duration and frequency of irrigation. Specifications for proposed devices, size and type of pipe, flow and precipitation rates are to be included on the erosion-control landscape plan.

An approved backflow prevention device shall be installed in each irrigation system, which conforms to Chapter 6 of the Uniform Plumbing Code. Projects with access to or of sufficient size to economically justify the use of reclaimed water through use of a dual distribution system are encouraged to do so. Prior to building official approval, reclaimed water irrigation systems are subject to the approval of the state water quality control board.

If the planting requirements specified in Section 4 are waived by the building official, the requirements specified in this subsection may be waived.

4.Sediment control plan. A sediment control plan shall be incorporated as part of the grading plan by a registered civil engineer or erosion control specialist. The plan shall minimize the deposition of sediment from rough graded lots and streets to adjacent properties.

a. Temporary sediment control measures may consist of the placement of straw or hay bales, gravel or earth-filled sandbags, gravel or earthen berms, filter fabric type fences and desilting basins with energy dissipaters.

b. The placement and design of sediment control measures shall be based on a hydrologic study of the site.

c. The sediment control plan shall specify the placement of the sediment control measures including spacing, alignment and typical detail.

d. In addition, all notes and related information shall be included on the sediment control plan.

e. The sediment control plan shall be submitted and approved prior to the issuance of a grading permit.

Section J110 of Appendix Chapter J, of the California Building Code, 2016 Edition, is amended by adding a new subsection J110.4 to read as follows:

J110.4 Planting method. Planting shall commence as soon as slopes are completed on any portion of the site and shall provide for rapid short-term coverage of the slope as well as long-term permanent coverage. Minimum requirements shall include:

1. Planting holes. Planting holes shall be excavated twice as wide as the diameter and two inches less than the depth of the root ball of the plant. The planting holes shall be backfilled with a mixture of native soil, slowly decomposing organic matter and an appropriate fertilizer. The construction of a watering basin at the base of all trees and shrubs at a distance encompassing the drip line is recommended in order to encourage deep percolation of irrigation. The application of mulch to the surface area of the watering basin will help minimize the amount of irrigation lost to evaporation. Commercially prepared mulch, wood chips, grass clippings or a combination of vegetal matter may be used in this regard.

2. Staking. Each tree shall be staked in order to anchor the root system and to support the trunk in an upright position. Stake material shall be of adequate dimension and length to support the tree. Ties used for tying the tree to the stake shall have a broad surface to minimize rubbing or girdling and have some elasticity. In lieu of stakes, a three-wire, tie-down system may be used.

3. Ground cover spacing. Ground covers are to be spaced in such a manner that 100 percent coverage of the planted slope will be achieved in as short a time as possible.

4. The finish grading and drainage, provided on the adjacent all-planted slopes, shall promote healthy plant growth and minimize erosion and runoff.

Exceptions: Waiver of planting requirements. Waiver of planting and irrigation requirements may be approved by the building official if found to be unreasonable or unnecessary for one of the following reasons:

1. The erosion resistant character of material composing the slopes makes planting unnecessary.

2. The unavailability of water making irrigation either impossible or impractical.

3. Slope heights are less than those requiring planting by subsection (a) of this section.

Section J110 of Appendix Chapter J, of the California Building Code, 2016 Edition, is amended by adding a new subsection J110.5 to read as follows:

J110.5 Planting maintenance. All vegetation planted for erosion control shall be maintained in a healthy, vigorous condition. Maintenance of slopes shall include watering, weeding and restoration of any plant material that may die. Slopes that are affected by the future installation of walls, fences, swimming pools or any other building must be properly replanted upon the completion of subsequent projects.

Section J110 of Appendix Chapter J, of the California Building Code, 2016 Edition, is amended by adding a new subsection J110.6 to read as follows:

J110.6 Bonding. A performance bond for all projects involving more than four structures and such other projects, as may be determined by the building official, shall be required for erosion control remedies, at the time the landscaping plan is approved. The bond shall be released upon approval of the final planting inspection but may be earlier released in the discretion of the building official.

Section J110.7 of Appendix Chapter J, of the California Building Code, 2016 Edition, is amended by adding a new subsection J110.7 to read as follows:

J110 Final planting inspection. A final planting inspection shall be required for all building sites requiring planting. For building sites not requiring a performance bond, the final planting inspection shall be approved prior to the building permit final inspection. Any required irrigation system and all planting shall be installed at the time of the final planting inspection. A function a test of the irrigation system maybe required. For building sites requiring a performance bond, slope certification required by the next subsection shall be approved prior to the building permit final inspection. The final planting inspection shall be performed at the end of the one-year bond period.

Section J110 of Appendix Chapter J, of the California Building Code, 2016 Edition, is amended by adding a new subsection J110.8 to read as follows:

J110.8 Slope verification. A site inspection shall be performed by the responsible landscape architect to assure compliance with the approved plans and to perform a functional test of the sprinkler system. Said landscape architect shall verify in writing to the building official that the soils, additives, amendments, weed control, planting of the slopes and the installation of the irrigation system comply to the approved plans and to all the provisions of this section. Verification to contain a statement as to grow stock vitality.

Secs. 14-42 – 14-44. Reserved.

Division 4. California Residential Building Code

Sec. 14-45. Adoption.

The 2016 California Building Code, codified in Part 2.5 of Title 24 of the California Code of Regulations, as such code may be amended from time to time, except as hereinafter amended by this division, is adopted by reference as the building code of the city.

Sec.14-46. Amendments

Building section in Subsection R105.2 of Section R105 of Chapter 1, Division II of the California Residential Code, 2016 Edition, are amended to read as follows:

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11.15m^2) and all setbacks per the Hemet municipal code are adhered to.
2. Retaining walls, concrete and masonry fences that are not over 2 feet in height measured from the top of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
3. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18 927 L) and the ratio of height to diameter or width does not exceed 2 to 1.
4. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
5. Prefabricated swimming pools that are less than 24 inches (610 mm) deep.
6. Swings and other playground equipment.
7. Window awnings supported by an exterior wall which do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.
8. Decks not exceeding 200 square feet (18.58 m^2) in area, that are not more than 30 inches (762 mm) above grade at any point, are not attached to a dwelling and do not serve the exit door required by Section R311.4

Subsection R105.5, of Section R105 of Chapter 1, Division II of the California Residential Code, 2016 Edition, is amended to read as follows:

Expiration. Every permit issued by the building official shall expire by limitation and become null unless work for which the permit was issued has not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced and no inspection of significant progress (as determined by the building official) is obtained for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefore shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after one year, the permittee shall pay a new full permit fee.

Exception:

1. Demolition and moving permits shall be valid for a period not to exceed 60 days.
2. A permittee holding an unexpired permit may apply for an extension of the time when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. Permits shall not be extended more than once.
3. Permits issued for work started prior to obtaining a building permit as required under section R105.1 shall be valid for a period not to exceed 30 days. If an inspection(s) are performed that can verify compliance with all code requirements at the current stage of construction, therein after the permit will be automatically extended per section R105.5

Subsection R105.6 of Section R105 of Chapter1, Division II of the California Residential Code, 2016 Edition, is amended by adding a new subsection 105.6.1 to read as follows:

105.6.1. Unfinished buildings and structures. Whenever the building official determines by inspection that work in or on any building or structure for which a permit has been issued and the work started thereon has been suspended for a period 180 days or more, the owner of the property upon which such building or structure is located or other person or agent of control of said property, upon receipt of notice in writing from the building official to do so, shall, within 60 days from the date of such written notice, obtain a new permit to complete the required work and diligently pursue the work to completion or shall remove or demolish the building or structure within 90 days from the date of written notice.

Subsection R108.2 of Section R108 of Chapter 1, Division II of the California Residential Building Code, 2016 Edition, is amended to read as follows:

R108.2 Schedule of permit fees. On buildings, structures, electrical, gas, mechanical and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection R108.5 of Section R108 of Chapter 1, Division II of the California Residential Building Code, 2016 Edition, is amended to read as follows:

R108.5 Refunds. The building official may authorize refunding of any fee paid hereunder in the following situations.

1.Wherein a fee was erroneously paid or collected.

2.The building official may authorize refunding of not more than 75 percent of the permit application fee when an application for a permit is withdrawn or canceled before any plan review is done.

3.The building official may authorize refunding of not more than 75 percent of the permit fee when an application for permit is withdrawn or canceled before any inspections are performed.

The building official shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee

payment. Except for the refunding of fees paid in error, no refund of permit or plan review fees shall be made where the permit or plan review fee paid is $100.00 or less.

Subsection R108.6 of Section R108 of Chapter 1, Division II of the California Residential Building Code, 2016 Edition, is amended to read as follows:

R108.6. Work commencing before permit issuance. Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to a special investigation fee. The special investigation fee shall be double the permit fee. This fee shall be in addition to the required permit fees. The special investigation fee shall be made before a permit may be issued for such work.

Section R108 of Chapter1, Division II of the California Residential Building Code, 2016 Edition, is amended by adding a new subsection R108.7 to read as follows:

R108.7 Plan Review Fees. On buildings, structures, electrical, gas, mechanical and plumbing systems or alterations requiring a plan review, a fee for each plan review shall be paid as required in accordance with the City of Hemet, Building Division Schedule of Fees and Charges. Upon submittal construction documents, this fee shall be due and payable before the construction documents will be reviewed.

The plan review fees specified in this subsection are separate fees from the permit fees specified in Section R108.2 and are in addition to the permit fees.

When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in the City of Hemet, Building Division Schedule of Fees and Charges.

Section R108 of Chapter1, Division II of the California Residential Building Code, 2016 Edition, is amended by adding a new subsection R109.8 to read as follows:

R108.8 Special Investigation Fees: Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be twice the amount of all permit fees, required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in the current City of Hemet, Building Division Schedule of Fees and Charges. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

Subsection R112.1 of Section R112 of Chapter 1, Division II of the California Residential Building Code, 2016 Edition is amended to read as follows:

R112.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this Code, there shall be and is hereby created a Board of Appeals consisting of five members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The Building Official shall be an ex officio member and shall act as secretary to said Board, but shall have no vote upon any matter before the Board. The Board of Appeals shall be appointed by the City Council and shall hold office at its pleasure. The Board shall adopt

rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

Subsection R112.2 of Section R112 of Chapter 1, Division II of the California Residential Building Code, 2016 Edition is amended to read as follows:

R112.2 Limitations of Authority. The Board of Appeals shall have no authority relative to interpretation of administrative provisions of this Code, nor shall the Board be empowered to waive requirements of this Code.

Subsection R112.3 of Section R112 of Chapter 1, Division II of the California Residential Building Code, 2016 Edition is amended to read as follows:

R112.3 Appeal hearing fee. A fee, as provided in the current City of Hemet, Building Division Schedule of Fees and Charges, shall accompany an application for a hearing before the Board of Appeals.

Subsection R112.4 of Section R112 of Chapter1, Division II of the California Residential Building Code, 2016 Edition, is amended to read as follows:

R112.4 Special purposes members. For the purpose of appeals to the standards of Title 24 of the California Code of Regulations affecting accommodations for persons with disabilities, two (2) members shall be added who shall have a disability as defined by Section 202 of the California Building Code, 2016 Edition.

Section R112 of Chapter1, Division II of the California Residential Building Code, 2016 Edition, is amended by adding a new subsection R112.5 to read as follows:

R112.5 Notice of appeal. Within the limitations provided for below, a person aggrieved by any order, act or determination of the building official or his subordinates, may appeal therefrom to the board of appeals. The appeal shall be taken by filing a written notice of appeal within 15 days, exclusive of holidays, after the date of making the order or determination or performing the act and by paying the appeal hearing fee. The notice of appeal must be in writing on a form provided by the city, and the notice must be filed and the fee paid at the office of the building official. The notice of appeal shall be sufficient if it identifies the act, order or determination appealed from and stated wherein it is erroneous or invalid. The operation of the act, order, or determination appealed from is suspended by the filing of the notice of appeal and upon the determination of the appeal or termination of proceedings thereunder.

Section R112 of Chapter1, Division II of the California Residential Building Code, 2016 Edition, is amended by adding a new subsection R112.6 to read as follows:

R112.6. The chairman of said board shall fix the time and place of hearing the appeal. The date of hearing shall not be less than five days nor more than 15 days after the date of filing the notice of appeal, and the hearing must not be postponed for more than ten days without good and sufficient cause. The board shall give written notice of the time and place of such hearing to the appellant and the officer or head of the department or division whose act, order, or determination is appealed from. Witnesses may be sworn and examined and evidence produced by interested parties, who may appear in person or by attorney. The board shall keep a record of each appeal and proceedings thereunder. At the conclusion of the hearing, the board shall prepare and file its written findings and decision. The affirmative vote of two-thirds of the board is necessary to modify or reverse the order, act or determination appealed from. The failure of the board

to file its findings and decisions within five days after termination of the hearing shall result in the automatic confirmation of the order, act or determination appealed from.

Section R112 of Chapter1, Division II of the California Residential Building Code, 2016 Edition, is amended by adding a new subsection R112.7 to read as follows:

R112.7 Any person aggrieved or affected by a decision of the board may appeal to the city council from such decision at any time within ten days after the date upon which the board announces its decision or loses jurisdiction. An appeal to the city council shall be taken by filing a letter of appeal with the building division and by concurrently paying to such division an appeal hearing fee in the amount established by Table A. Such letter shall set forth the grounds upon which the appeal is based. Within 15 days after the receipt of the letter of appeal and the filing fee, the building division shall transmit to the city council the letter of appeal and the record of appeal at the board and the board's findings and decision. The city council may affirm, reverse, or modify the decision of the board.

Section R112 of Chapter 1, Division II of the California Residential Building Code, 2016 Edition, is amended by adding a new subsection R112.8 to read as follows:

R112.8 In the event the board as established in Section R112.1 herein above should for any reason not be appointed by the city council or cease to exist after such appointment, the city council may serve as the board of appeals.

Section R113 of Chapter 1, Division II of the California Residential Building Code, 2016 Edition is amended by adding a new subsection R113.4 to read as follows:

R113.4 Violation penalties. Any person, firm or corporation violating any of the provisions, regulations, requirements, additions, amendments and/or deletions of this code is guilty of a misdemeanor and the penalty for such a misdemeanor shall be as set forth in Chapter 1-8 of the Hemet Municipal Code.

Section R113 of Chapter 1, Division II of the California Residential Building Code, 2016 Edition is amended by adding a new subsection R113.5 to read as follows:

R113.5 In addition thereto, violation of this code is declared to be a public nuisance, and the city attorney may institute necessary legal procedures for the abatement, removal or the enjoinment thereof in the manner provided by law, or may take such other steps as he or she deems necessary to accommodate these ends.

Table R301.2 (1) of Chapter 3 of the California Residential Building Code, 2016 Editions, is amended to read as follows:

CLIMATIC AND GEOGRAPHICAL DESIGN CRITERIA

GROUND SNOW LOAD	WIND DESIGN		SEISMIC DESIGN CATEGORY[f]	SUBJECT TO DAMAMGE FROM			WINTER DESIGN TEMP[e]	ICE BARRIER UNDERLAYMENT REQUIRED[h]	FLOOD HAZARDS[g]	AIR FREEZING INDEX[i]	MEAN ANNUAL TEMP[j]
	Speed[d] (MPH)	Topographic effects[k]		Weathering[a]	Frost line depth[b]	Termite[c]					

0	85	YES	D	NEGLIGIBLE	12			NONE	--		

Sec. 14-47 – 14-49. Reserved

Division 5. California Electrical Code

Sec. 14-50. Adoption.

The 2016 California Electrical Code, codified in Part 3 of Title 24 of the California Code of Regulations, including Annex Chapters A, B, C, D, E, F and G, and as such code may be amended from time to time, except as hereinafter amended by this Division, is adopted by reference as the electrical code of the City.

Sec. 14-51. Amendments.

Subsection 89.108.4.2 of Section 89.108.4 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding subsection 89.108.4.2.1 to read as follows:

> 89.108.4.2.1 Permit Fee. On buildings, structures, electrical systems or alterations requiring a permit, a fee for each permit shall be paid as required in accordance with the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 89.108.4.2 of Section 89.108.4 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding subsection 89.108.4.2.2 to read as follows:

> 89.108.4.2.2 Plan Review Fees. When plans or other data are required to be submitted by Section 89.108.4.3, a plan review fee shall be paid at the time of submitting plans and specifications for review. The plan review fees for mechanical work shall be as set forth in the City of Hemet, Building Division Schedule of Fees and Charges. Upon submittal construction documents, this fee shall be due and payable before the construction documents will be reviewed.
>
> The plan review fees specified in this subsection are separate fees from the permit fees specified in subsection 89.108.4.2.1 and are in addition to the permit fees.
>
> When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 89.108.4.2 of Section 89.108.4 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding subsection 89.108.4.2.3 to read as follows:

> 89.108.4.2.3 Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit shall be subject to a special investigation fee. This fee shall be in addition to the required permit fees. The special investigation fee shall be made before a permit may be issued for such work.

Subsection 89.108.4.2 of Section 89.108.4 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding subsection 89.108.4.2.4 to read as follows:

> 89.108.4.2.4 Special Investigation Fee. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An

investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be twice the amount of all permit fees, required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in the current City of Hemet, Building Division Schedule of Fees and Charges. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

Subsection 89.108.4.2 of Section 89.108.4 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding subsection 89.108.4.2.5 to read as follows:

89.108.4.2.5 Fee Refunds. The Building Official may authorize refunding of any fee paid hereunder in the following situations.

1. Wherein a fee was erroneously paid or collected.

2. The building official may authorize refunding of not more than 75 percent of the permit application fee when an application for a permit is withdrawn or canceled before any plan review is done.

3. The building official may authorize refunding of not more than 75 percent of the permit fee when an application for permit is withdrawn or canceled before any inspections are performed.

The building official shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment. Except for the refunding of fees paid in error no refund of permit or plan review fees shall be made where the permit or plan review fee paid is $100.00 or less.

Section 89.108.4 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding a new subsection 89.108.4.5

89.108.4.5 Unfinished buildings and structures. Whenever the building official determines by inspection that work in or on any building or structure for which a permit has been issued and the work started thereon has been suspended for a period of 180 days or more, the owner of the property upon which such building or structure is located or other person or agent of control of said property, upon receipt of notice in writing from the building official to do so, shall, within 60 days from the date of such written notice, obtain a new permit to complete the required work and diligently pursue the work to completion or shall remove or demolish the unpermitted work within 90 days from the date of written notice.

Section 89.108.4 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding a new subsection 89.108.4.6

89.108.4.6 Qualified Persons. For all commercial projects, a California Licensed Electrical Contractor shall be responsible for obtaining permits for electrical work performed within or on the commercial building.

Section 89.108.8 of Article 89 of the California Electrical Code, 2016 Edition is amended in its entirety as follows:

89.108.8.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this Code, there shall be and is hereby created a Board of Appeals consisting of five members who are qualified by experience and training to pass upon matters pertaining

to building construction and who are not employees of the jurisdiction. The Building Official shall be an ex officio member and shall act as secretary to said Board, but shall have no vote upon any matter before the Board. The Board of Appeals shall be appointed by the City Council and shall hold office at its pleasure. The Board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

89.108.2 Limitations of Authority. The Board of Appeals shall have no authority relative to interpretation of administrative provisions of this Code, nor shall the Board be empowered to waive requirements of this Code.

89.108.8.3 Appeal hearing fee. A fee, as provided in the current City of Hemet, Building Division Schedule of Fees and Charges, shall accompany an application for a hearing before the Board of Appeals.

89.108.8.4 Special purposes members. For the purpose of appeals to the standards of Title 24 of the California Code of Regulations affecting accommodations for persons with disabilities, two (2) members shall be added who shall have a disability as defined by Section 202 of the California Building Code, 2016 Edition.

89.108.8.5 Notice of appeal. Within the limitations provided for below, a person aggrieved by any order, act or determination of the building official or his subordinates, may appeal therefrom to the board of appeals. The appeal shall be taken by filing a written notice of appeal within 15 days, exclusive of holidays, after the date of making the order or determination or performing the act and by paying the appeal hearing fee. The notice of appeal must be in writing on a form provided by the city, and the notice must be filed and the fee paid at the office of the building official. The notice of appeal shall be sufficient if it identifies the act, order or determination appealed from and stated wherein it is erroneous or invalid. The operation of the act, order, or determination appealed from is suspended by the filing of the notice of appeal and upon the determination of the appeal or termination of proceedings thereunder.

89.108.8.6 The chairman of said board shall fix the time and place of hearing the appeal. The date of hearing shall not be less than five days nor more than 15 days after the date of filing the notice of appeal, and the hearing must not be postponed for more than ten days without good and sufficient cause. The board shall give written notice of the time and place of such hearing to the appellant and the officer or head of the department or division whose act, order, or determination is appealed from. Witnesses may be sworn and examined and evidence produced by interested parties, who may appear in person or by attorney. The board shall keep a record of each appeal and proceedings thereunder. At the conclusion of the hearing, the board shall prepare and file its written findings and decision. The affirmative vote of two-thirds of the board is necessary to modify or reverse the order, act or determination appealed from. The failure of the board to file its findings and decisions within five days after termination of the hearing shall result in the automatic confirmation of the order, act or determination appealed from.

89.108.8.7 Any person aggrieved or affected by a decision of the board may appeal to the city council from such decision at any time within ten days after the date upon which the board announces its decision or loses jurisdiction. An appeal to the city council shall be taken by filing a letter of appeal with the building division and by concurrently paying to such division an appeal hearing fee in the amount established by Table A. Such letter shall set forth the grounds upon which the appeal is based. Within 15 days after the receipt of the letter of appeal and the filing fee, the building division shall transmit to the city council the letter of appeal and the record of appeal at the board and the board's

findings and decision. The city council may affirm, reverse, or modify the decision of the board.

89.108.8.8 In the event the board as established in Section 110.1 herein above should for any reason not be appointed by the city councilor cease to exist after such appointment, the city council may serve as the board of appeals.

Section 89.108 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding a new Subsection 89.108.11 titled "Violations".

89.108.11.1 Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, or maintain mechanical systems or equipment or cause or permit the same to be done in violation of this code.

Subsection 89.108.11 of Section 89.108 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding a subsection 89.108.11.2 to read as follows:

89.108.11.2 Notice of Violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, enlargement, alteration, repair, moving, improving, removing, converting or demolishing, equipping, using, or maintaining mechanical systems or equipment in violation of this code, or in violation of a permit under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

Subsection 89.108.11 of Section 89.108 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding a subsection 89.108.11.3 to read as follows:

89.108.11.3 Prosecution of violation. If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

Subsection 89.108.11 of Section 89.108 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding a subsection 89.108.11.4 to read as follows:

89.108.11.4 Violation penalties. Any person, firm or corporation violating any of the provisions, regulations, requirements, additions, amendments and/or deletions of this code is guilty of a misdemeanor and the penalty for such a misdemeanor shall be as set forth in Chapter 1-8 of the Hemet Municipal Code.

Subsection 89.108.11 of Section 89.108 of Article 89 of the California Electrical Code, 2016 Edition is amended by adding a subsection 89.108.11.5 to read as follows:

89.108.11.5 In addition thereto, violation of this code is declared to be a public nuisance, and the city attorney may institute necessary legal procedures for the abatement, removal or the enjoinment thereof in the manner provided by law, or may take such other steps as he or she deems necessary to accommodate these ends.

Secs. 14-52 – 14-54. Reserved.

Division 6. California Mechanical Code

Sec. 14- 55. Adoption.

The 2016 California Mechanical Code, codified in Part 4 of Title 24 of the California Code of Regulations, including Appendix Chapters A, B, C and D, as such code may be amended from time to time, except as hereinafter amended by this Division, is adopted by reference as the mechanical code of the City.

Sec. 14-56. Amendments.

Subsection 104.4.3 of Section 104.4 of Chapter 1, Division II of the California Mechanical Code, 2016 Edition, is amended to read as follows:

> Expiration. Every permit issued by the building official shall expire by limitation and become null unless work for which the permit was issued has not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced and no inspection of significant progress (as determined by the building official) is obtained for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefore shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after one year, the permittee shall pay a new full permit fee.
>
> Exceptions:
> 1. Demolition permits shall be valid for a period not to exceed 60 days.
>
> 2. A permittee holding an unexpired permit may apply for an extension of the time when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. Permits shall not be extended more than once.
>
> 3. Permits issued for work started prior to obtaining a building permit as required under section 104 shall be valid for a period not to exceed 30 days. If an inspection(s) are performed that can verify compliance with all code requirements at the current stage of construction, therein after the permit will be automatically extended per section 104.

Section 104.0 of Chapter 1, Division II of the California Mechanical Code, 2016 Edition is amended by adding a new subsection 104.4.7 to read as follows:

> 104.4.7 Unfinished buildings and structures. Whenever the building official determines by inspection that work in or on any building or structure for which a permit has been issued and the work started thereon has been suspended for a period of 180 days or more, the owner of the property upon which such building or structure is located or other person or agent of control of said property, upon receipt of notice in writing from the building official to do so, shall, within 60 days from the date of such written notice, obtain a new permit to complete the required work and diligently pursue the work to completion or shall remove or demolish the unpermitted work within 90 days from the date of written notice.

Subsection 104.5 of Section 104 of Chapter 1, Division II of the California Mechanical Code, 2016 Edition is amended to read as follows:

> 104.5 General. Fees shall be assessed in accordance with the provisions of this section and as set forth in the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 104.3.2 of Section 104 of Chapter 1, Division II of the California Mechanical Code, 2016 Edition is amended to read as follows:

> 104.3.2 Plan Review Fees. When plans or other data are required to be submitted, a plan review fee shall be paid at the time of submitting plans and specifications for review. The plan review fees for mechanical work shall be as set forth in the City of Hemet, Building Division Schedule of Fees and Charges. Upon submittal construction documents, this fee shall be due and payable before the construction documents will be reviewed.
>
> The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 104.5 and are in addition to the permit fees.
>
> When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 104.5.1 of Section 114, of Chapter 1, Division II of the California Mechanical Code, 2016 Edition is amended by adding a new subsection 104.5.1 to read as follows:

> 104.5.1 Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit shall be subject to a special investigation fee. This fee shall be in addition to the required permit fees. The special investigation fee shall be made before a permit may be issued for such work.

Subsection 104.5.2 of Section 114 of Chapter 1, Division II of the California Mechanical Code, 2016 Edition is amended to read as follows:

> 104.5.2 Fee. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be twice the amount of all permit fees, required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in the current City of Hemet, Building Division Schedule of Fees and Charges. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

Subsection 104.5.3 of Section 104, of Chapter 1, Division II of the California Mechanical Code, 2016 Edition is amended to read as follows:

> 104.5. Fee Refunds. The Building Official may authorize refunding of any fee paid hereunder in the following situations.
>
> 1. Wherein a fee was erroneously paid or collected.
>
> 2. The building official may authorize refunding of not more than 75 percent of the permit application fee when an application for a permit is withdrawn or canceled before any plan review is done.

3. The building official may authorize refunding of not more than 75 percent of the permit fee when an application for permit is withdrawn or canceled before any inspections are performed.

The building official shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment. Except for the refunding of fees paid in error no refund of permit or plan review fees shall be made where the permit or plan review fee paid is $100.00 or less.

Subsection 106.1 of Section 106.0 of Chapter 1, Division II of the California Mechanical Code, 2016 Edition, is amended to read as follows:

106.1 Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, or maintain mechanical systems or equipment or cause or permit the same to be done in violation of this code.

Subsection 106.2 of Section 106.0 of Chapter 1, Division II of the California Mechanical Code, 2016 Edition, is amended to read as follows:

106.2 Notice of Violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, enlargement, alteration, repair, moving, improving, removing, converting or demolishing, equipping, using, or maintaining mechanical systems or equipment in violation of this code, or in violation of a permit under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

Subsection 106.2 of Section 106.0 of Chapter 1, Division II of the California Mechanical Code, 2016 Edition, is amended by adding subsection 106.2.1 to read as follows:

106.2.1 Prosecution of violation. If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

Subsection 106.2 of Section 106.0 of Chapter 1, Division II of the California Mechanical Code, 2016 Edition, is amended to read as follows:

106.2 Violation penalties. Any person, firm or corporation violating any of the provisions, regulations, requirements, additions, amendments and/or deletions of this code is guilty of a misdemeanor and the penalty for such a misdemeanor shall be as set forth in Chapter 1-8 of the Hemet Municipal Code.

In addition thereto, violation of this code is declared to be a public nuisance, and the city attorney may institute necessary legal procedures for the abatement, removal or the enjoinment thereof in the manner provided by law, or may take such other steps as he or she deems necessary to accommodate these ends.

Section 107 and subsection 107.1 are deleted in their entirety of Chapter 1, Division II of the California Mechanical Code, 2016 Edition is amended to read as follows:

107.0 Board of Appeals

107.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this Code, there shall be and is hereby created a Board of Appeals consisting of five members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The Building Official shall be an ex officio member and shall act as secretary to said Board, but shall have no vote upon any matter before the Board. The Board of Appeals shall be appointed by the City Council and shall hold office at its pleasure. The Board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

107.2 Limitations of Authority. The Board of Appeals shall have no authority relative to interpretation of administrative provisions of this Code, nor shall the Board be empowered to waive requirements of this Code.

107.3 Appeal hearing fee. A fee, as provided in the current City of Hemet, Building Division Schedule of Fees and Charges, shall accompany an application for a hearing before the Board of Appeals.

107.4 Special purposes members. For the purpose of appeals to the standards of Title 24 of the California Code of Regulations affecting accommodations for persons with disabilities, two (2) members shall be added who shall have a disability as defined by Section 202 of the California Building Code, 2016 Edition.

107.5 Notice of appeal. Within the limitations provided for below, a person aggrieved by any order, act or determination of the building official or his subordinates, may appeal therefrom to the board of appeals. The appeal shall be taken by filing a written notice of appeal within 15 days, exclusive of holidays, after the date of making the order or determination or performing the act and by paying the appeal hearing fee. The notice of appeal must be in writing on a form provided by the city, and the notice must be filed and the fee paid at the office of the building official. The notice of appeal shall be sufficient if it identifies the act, order or determination appealed from and stated wherein it is erroneous or invalid. The operation of the act, order, or determination appealed from is suspended by the filing of the notice of appeal and upon the determination of the appeal or termination of proceedings thereunder.

107.6. The chairman of said board shall fix the time and place of hearing the appeal. The date of hearing shall not be less than five days nor more than 15 days after the date of filing the notice of appeal, and the hearing must not be postponed for more than ten days without good and sufficient cause. The board shall give written notice of the time and place of such hearing to the appellant and the officer or head of the department or division whose act, order, or determination is appealed from. Witnesses may be sworn and examined and evidence produced by interested parties, who may appear in person or by attorney. The board shall keep a record of each appeal and proceedings thereunder. At the conclusion of the hearing, the board shall prepare and file its written findings and decision. The affirmative vote of two-thirds of the board is necessary to modify or reverse the order, act or determination appealed from. The failure of the board to file its findings and decisions within five days after termination of the hearing shall result in the automatic confirmation of the order, act or determination appealed from.

107.7 Any person aggrieved or affected by a decision of the board may appeal to the city council from such decision at any time within ten days after the date upon which the board announces its decision or loses jurisdiction. An appeal to the city council shall be taken by filing a letter of appeal with the building division and by concurrently paying to

such division an appeal hearing fee in the amount established by Table A. Such letter shall set forth the grounds upon which the appeal is based. Within 15 days after the receipt of the letter of appeal and the filing fee, the building division shall transmit to the city council the letter of appeal and the record of appeal at the board and the board's findings and decision. The city council may affirm, reverse, or modify the decision of the board.

107.8 In the event the board as established in Section 110.1 herein above should for any reason not be appointed by the city councilor cease to exist after such appointment, the city council may serve as the board of appeals.

Secs. 14-57 – 14-59. Reserved.

Division 7. California Plumbing Code

Sec. 14-60. Adoption.

The 2016 California Plumbing Code, codified in Part 5 of Title 24 of the California Code of Regulations, including Appendix Chapters A, B, D, G, I and K, and as such code may be amended from time to time, except as hereinafter amended by this Division, is adopted by reference as the plumbing code of the City.

Sec. 14-61. Amendments.

Section 104.0 of Chapter 1, Division II of the California Plumbing Code, 2016 Edition, is amended by adding subsection 104.4.7 to read as follows:

104.4.7 Unfinished buildings and structures. Whenever the building official determines by inspection that work in or on any building or structure for which a permit has been issued and the work started thereon has been suspended for a period of 180 days or more, the owner of the property upon which such building or structure is located or other person or agent of control of said property, upon receipt of notice in writing from the building official to do so, shall, within 60 days from the date of such written notice, obtain a new permit to complete the required work and diligently pursue the work to completion or shall remove or demolish the unpermitted work within 90 days from the date of written notice.

Subsection 104.4.3 of Section 104.4 of Chapter 1, Division II of the California Plumbing Code, 2016 Edition, is amended to read as follows:

Expiration. Every permit issued by the building official shall expire by limitation and become null unless work for which the permit was issued has not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced and no inspection of significant progress (as determined by the building official) is obtained for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefore shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after one year, the permittee shall pay a new full permit fee.

Exceptions:

1. Demolition permits shall be valid for a period not to exceed 60 days.

2. A permittee holding an unexpired permit may apply for an extension of the time when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. Permits shall not be extended more than once.

3. Permits issued for work started prior to obtaining a building permit as required under section 104 shall be valid for a period not to exceed 30 days. If an inspection(s) are performed that can verify compliance with all code requirements at the current stage of construction, therein after the permit will be automatically extended per section 104.

Subsection 104.5 of Section 104 of Chapter 1, Division II of the California Plumbing Code, 2016 Edition is amended to read as follows:

104.5 Permit Fees. On buildings, structures, plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required in accordance with the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 104.3.2 of Section 104.3 of Chapter 1, Division II of the California Plumbing Code, 2016 Edition is amended to read as follows:

104.3.2 Plan Review Fees. When plans or other data are required to be submitted, a plan review fee shall be paid at the time of submitting plans and specifications for review. The plan review fees for mechanical work shall be as set forth in the City of Hemet, Building Division Schedule of Fees and Charges. Upon submittal construction documents, this fee shall be due and payable before the construction documents will be reviewed.

The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 10.5 and are in addition to the permit fees.

When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 104.5.2 of Section 104.5, of Chapter 1, Division II of the California Plumbing Code, 2016 Edition is amended to read as follows:

104.5.2 Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit shall be subject to a special investigation fee. This fee shall be in addition to the required permit fees. The special investigation fee shall be made before a permit may be issued for such work.

Subsection 104.5.1 of Section 104.5 of Chapter 1, Division II of the California Plumbing Code, 2016 Edition is amended to read as follows:

104.5.1 Fee. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be twice the amount of all permit fees, required by this code.

The minimum investigation fee shall be the same as the minimum fee set forth in the current City of Hemet, Building Division Schedule of Fees and Charges. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

Subsection 104.5.3 of Section 104.5 of Chapter 1, Division II of the California Plumbing Code, 2016 Edition is amended to read as follows:

104.5.3 Fee Refunds. The Building Official may authorize refunding of any fee paid hereunder in the following situations.

1. Wherein a fee was erroneously paid or collected.

2. The building official may authorize refunding of not more than 75 percent of the permit application fee when an application for a permit is withdrawn or canceled before any plan review is done.

3. The building official may authorize refunding of not more than 75 percent of the permit fee when an application for permit is withdrawn or canceled before any inspections are performed.

The building official shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment. Except for the refunding of fees paid in error no refund of permit or plan review fees shall be made where the permit or plan review fee paid is $100.00 or less.

Subsection 106.3 of Section 106 of Chapter 1, Division II of the California Plumbing Code, 2016 Edition is amended to read as follows:

106.3 Penalties. Any person, firm or corporation violating any of the provisions, regulations, requirements, additions, amendments and/or deletions of this code is guilty of a misdemeanor and the penalty for such a misdemeanor shall be as set forth in Chapter 1-8 of the Hemet Municipal Code.

Subsection 106.3 of Section 106 Chapter 1, Division II of the California Plumbing Code, 2016 Edition is amended by adding subsection 106.3.1 to read as follows:

106.3.1 In addition thereto, violation of this code is declared to be a public nuisance, and the city attorney may institute necessary legal procedures for the abatement, removal or the enjoinment thereof in the manner provided by law, or may take such other steps as he or she deems necessary to accommodate these ends.

Subsection 106.3 of Section 106 Chapter 1, Division II of the California Plumbing Code, 2016 Edition is amended by adding subsection 106.3.2 to read as follows:

106.3.2 Notice of Violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, enlargement, alteration, repair, moving, improving, removing, converting or demolishing, equipping, using, or maintaining mechanical systems or equipment in violation of this code, or in violation of a permit under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

Subsection 106.3 of Section 106 Chapter 1, Division II of the California Plumbing Code, 2016 Edition is amended by adding subsection 106.3.3 to read as follows:

106.8 Prosecution of violation. If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

Section 107 and subsection 107.1 are deleted in their entirety of Chapter 1, Division II of the California Mechanical Code, 2016 Edition is amended to read as follows:

107.0 Board of Appeals

107.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this Code, there shall be and is hereby created a Board of Appeals consisting of five members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The Building Official shall be an ex officio member and shall act as secretary to said Board, but shall have no vote upon any matter before the Board. The Board of Appeals shall be appointed by the City Council and shall hold office at its pleasure. The Board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

107.2 Limitations of Authority. The Board of Appeals shall have no authority relative to interpretation of administrative provisions of this Code, nor shall the Board be empowered to waive requirements of this Code.

107.3 Appeal hearing fee. A fee, as provided in the current City of Hemet, Building Division Schedule of Fees and Charges, shall accompany an application for a hearing before the Board of Appeals.

107.4 Special purposes members. For the purpose of appeals to the standards of Title 24 of the California Code of Regulations affecting accommodations for persons with disabilities, two (2) members shall be added who shall have a disability as defined by Section 202 of the California Building Code, 2016 Edition.

107.5 Notice of appeal. Within the limitations provided for below, a person aggrieved by any order, act or determination of the building official or his subordinates, may appeal therefrom to the board of appeals. The appeal shall be taken by filing a written notice of appeal within 15 days, exclusive of holidays, after the date of making the order or determination or performing the act and by paying the appeal hearing fee. The notice of appeal must be in writing on a form provided by the city, and the notice must be filed and the fee paid at the office of the building official. The notice of appeal shall be sufficient if it identifies the act, order or determination appealed from and stated wherein it is erroneous or invalid. The operation of the act, order, or determination appealed from is suspended by the filing of the notice of appeal and upon the determination of the appeal or termination of proceedings thereunder.

107.6. The chairman of said board shall fix the time and place of hearing the appeal. The date of hearing shall not be less than five days nor more than 15 days after the date of filing the notice of appeal, and the hearing must not be postponed for more than ten days without good and sufficient cause. The board shall give written notice of the time and place of such hearing to the appellant and the officer or head of the department or division whose act, order, or determination is appealed from. Witnesses may be sworn and examined and evidence produced by interested parties, who may appear in person

or by attorney. The board shall keep a record of each appeal and proceedings thereunder. At the conclusion of the hearing, the board shall prepare and file its written findings and decision. The affirmative vote of two-thirds of the board is necessary to modify or reverse the order, act or determination appealed from. The failure of the board to file its findings and decisions within five days after termination of the hearing shall result in the automatic confirmation of the order, act or determination appealed from.

107.7 Any person aggrieved or affected by a decision of the board may appeal to the city council from such decision at any time within ten days after the date upon which the board announces its decision or loses jurisdiction. An appeal to the city council shall be taken by filing a letter of appeal with the building division and by concurrently paying to such division an appeal hearing fee in the amount established by Table A. Such letter shall set forth the grounds upon which the appeal is based. Within 15 days after the receipt of the letter of appeal and the filing fee, the building division shall transmit to the city council the letter of appeal and the record of appeal at the board and the board's findings and decision. The city council may affirm, reverse, or modify the decision of the board.

107.8 In the event the board as established in Section 110.1 herein above should for any reason not be appointed by the city councilor cease to exist after such appointment, the city council may serve as the board of appeals.

Sec. 14-62 – 14-64. Reserved.

Division 8. California Energy Code

Sec. 14-65. Adoption.

The 2016 California Energy Code, codified in Part 6 of Title 24 of the California Code of Regulations, as such code may be amended from time to time, except as hereinafter amended by this Division, is adopted by reference as the energy code of the City.

Secs. 14-66 – 14-69. Reserved.

Division 9. California Historical Building Code

Sec. 14-70. Adoption.

The 2016 California Historical Building Code, codified in Part 8 of Title 24 of the California Code of Regulations and as such code may be amended from time to time, except as hereinafter amended by this division, is adopted by reference as the historical code of the city.

Secs. 14-71 – 14-74. Reserved.

Division 10. California Fire Code

Sec. 14-75. Adoption.

The 2016 California Fire Code, codified in Part 9 of Title 24 of the California Code of Regulations, including appendices B, BB, C, CC, D, E, F, I, and H as such code and appendices may be amended from time to time, except as hereinafter amended by this Division, is adopted by reference as the fire code of the City.

Sec. 14-76. Amendments.

Table B105.2 in Appendix B of the 2016 California Fire Code, should be amended to read as follows:

Table B105.2

Required Fire-Flow for Buildings Other Than One- and Two-Family Dwellings, Group R-3 and R-4 Buildings and Townhouses

AUTOMATIC SPRINKLER SYSTEM (Design Standard)	MINIMUM FIREFLOW (gallons per minute)	FLOW DURATION (hours)
No automatic sprinkler system	Value in Table B105.1(2)	Duration in Table B105.1(2)
Section 903.3.1.2 of the California Fire Code	50% of the value in Table B105.1(2)a	Duration in Table B105.1(2) at the reduced flow rate
Section 903.3.1.2 of the California Fire Code	50% of the value in Table B105.1(2)a	Duration in Table B105.1(2) at the reduced flow rate

For S1: 1 gallon per minute = 3.785 L/m.

a. The reduced fire-flow shall be not less than 1,500 gallons per minute.

Section 505 of Chapter 5, of the California Fire Code, 2016 Edition is deleted in its entirety and amended to read as follows:

505.1 Address identification. New and existing buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. The address identification shall be displayed in such a manner as to be continuously displayed, non-moving, and readily visible and legible to emergency vehicles approaching from either direction along the public street on which the address is assigned at all time. Non-continuous display signs, such as changing electronic or video displays are not permitted to be used as required address signs. Moving or non-fixed signs, such as flags are not permitted to be used as required address signs. In situations where there is a public entrance to a property, building, or complex in addition to the entrance from the public street the address is assigned, additional address number signs may be required to be displayed at those additional entrances. Buildings located on the property so that the required address displayed on the building is not visible from the public street fronting the property, additional address number signs will be required at the public street entrance to the property, driveway or private road, and at any intersecting points along the driveway or private road leading to the building. Address identification characters shall contrast with their background.

505.2 Address Number Assignment. Only address numbers or letters assigned and approved by the Building Division may be displayed on buildings; property and/or building owners are not allowed to display address numbers or letters which have not been approved by the Building Department.

505.3 Location. Address numbers or letters shall be displayed above the eve line of the building on the upper ¼ portion of the building or in a location on the building approved by the Fire Department. Required address signs on building shall be placed at a height and location of the building so as to be readily visible from the public street fronting the building at all times. Required address signs shall not be placed at a height or location on the building where the address sign is visually obstructed, confused or camouflaged by other structures or buildings, building structural or decorative features, windows, glazing, or by expected locations of parked or stopped vehicles, other signs, trees or other existing or potential obstruction. Obstruction which are installed or occur after a required address sign is approved and installed, the Fire Department may require the relocation of the required address sign, or the removal of the obstruction.

505.4 Illumination. All addresses required to be displayed on a building or other permanent structure shall be illuminated during all hours of darkness. The source of illumination shall be controlled by a photoelectric device which causes the address to be illuminated automatically during all hours of darkness. Timer based control devices are not allowed to be used for the purposes of controlling address illumination. The address may be illuminated by a light source placed behind, within, or near the address. Examples of acceptable light sources include self-contained illuminated signs, landscape lighting decorative exterior building lighting and advertising lighting.

The power source for illumination of the address identification must be under the control of the building or property owner. Illumination from other ambient or nearby sources, such as street lights, advertising signs on nearby buildings, or other sources not controlled by the building or property owner are not considered sufficient for the purpose of required address illumination. Exception: Addressing used to identify individual tenant spaces or suites at the interior entrance within, or rear exterior non-pubic access to commercial building need not be illuminated. Special temporary address signs at construction sites and undeveloped properties need not be illuminated.

505.5 Color. All required address signs shall be of a color combination where the numbers contrast with the background at all times. Address numbers placed on windows or other glazing may appear to have an acceptable contrasting background during daylight hours, but may have an unacceptable non-contrasting background during hours of darkness. Reflective signs are acceptable, provided that when illuminated by a light source the reflected light from the sign produces contrasting colors which distinguish the address identification from any other reflective material.

505.6 Size. All required address signs shall be of the minimum size required by this section or larger if required by the Fire Department.

506.5.1 Residential. 4-inch high building numbers with a ½-inch minimum stroke.

506.5.2 Commercial. Height of any numeral or letter must be 1/10 taller than the setback distance measured in feet, expressed in inches, but in no case smaller than 6 inches in height plus 2". Width or stroke of any portion of a number or letter must be 1/10 of its height but no less that .5-inch stroke. The width of any figure must be ½ its height. Suite numbers shall be a minimum 6-inch suite numbers, with a minimum .5 inch stroke, shall be located on the front and back doors.

506.5.3Multi-Family. 12-inch building numbers with a 2-inch minimum stroke. 6-inch directional numbers shall be visible from the walkway. Individual unit characters shall be a

minimum of 4-inch characters in height and a ½ inch stroke. Each individual unit shall have the unit identification, numbers or letters located at or near the primary entrance to the unit.

506.6 Format. All required address identification shall displayed in a horizontal format. When numbers are used as part of the address, the number shall be displayed by using numerical characters and not by using letters to spell the number(s). The style or font of the character used shall be of a style or font which provides characters which are clear and easily recognizable.

506.7 Complex Directory. For all properties where more than two (2) buildings exist, or otherwise required by the Fire Department, a map of the complex or facility shall be displayed at or near each entrance from the pubic street or roadway to serve as a directory to assist in rapid and safe response of emergency vehicles to locations within the complex or facility. The complex or facility map shall clearly show and identify all buildings on the property, including the primary services or functions within each building, all roadways, all access points to the facility from the public streets or roadways, all emergency vehicle access points, fire hydrants(s), fire department connection(s), fire alarm panel location(s), significant life safety hazards, pre-designated helicopter landing areas, and all other specific details as may be required by the Fire Department.

Exception: Properties which are primarily used for residential single family, duplex or triplex dwellings.

506.8 Notice to place numbers.
506.8.1 It shall be the duty of any owner/occupant of any premises, upon notice from the Fire Department or his or her designated representative, to cause the official number to be placed on any building so owned or occupied.
506.8.2 Such address identification shall be accomplished in the manner required within 20 days after service of such notice.

506.9 Renumbering. When a property address is reassigned, the new address identification shall be posted in compliance with this section within 20 days after notice is given.

506.10 Temporary Signs. At all new construction sites, a temporary sign shall be erected on the property indicating the assigned address of the structure(s).

506.11 Shopping Centers with monument signs or other identification markers. Shall contain the address range of the shopping center. The Anchor stores and towers of the shopping center shall have address identification as required by this section.

506.12 Materials. Materials used to display the address shall be made of a weather-resistant material such as wood or plastic.

Secs. 14-77 – 14-79. Reserved.

Division 11. California Existing Building Code

Sec. 14-80. Adoption.

The 2016 California Existing Building Code, codified in Part 10 of Title 24 of the California Code of Regulations, as such code may be amended from time to time, except as hereinafter amended by this Division, is adopted by reference as the existing building code of the City.

Sec. 14-81. Amendments.

Section A115.1. Compliance requirements is added to read as follows:

Section A115.1. Compliance requirements.

A115.1.1. The owner of each building within the scope of this chapter shall, upon service of an order and within the time limit set forth in this chapter, cause a structural analysis to be made of the building by an engineer or architect licensed by the state to practice as such and, if the building does not comply with earthquake standards specified in this chapter, the owner shall cause it to be structurally altered to conform to such standards or shall cause the building to be demolished.

A115.1.2. The owner of a building within the scope of this chapter shall comply with the requirements set forth above by submitting to the building official for review one of the following within the stated time limits:

1. Within one year after service of the order, a structural analysis, which is subject to approval by the building official which certifies the building meets the minimum requirements of this chapter; or

2. Within one year after service of the order, the structural analysis and plans for structural alteration of the building to comply with this chapter; or

3. Within one year after service of the order submit plans for the demolition of the building and obtain demolition permits. Demolition is required to be completed within 180 days from permit issuance.

A115.1.3. After plans are submitted and approved by the building official, the owner shall obtain a building permit and then commence and complete the required construction or demolition within the time limits set forth in Table No. A-1-H. These time limits shall begin to run from the date the order is served in accordance with Section A115.1.2, except that the time limit to commence structural alteration or demolition shall begin to run from the date the building permit is issued.

Section A115.2 Historical buildings is added to read as follows:

Section A115.2 Historical buildings.

Alterations or repairs to qualified historical buildings, as defined by Section 18955 of the Health and Safety Code of the State of California and as regulated by Sections 18950 to 18961 of that Code, as designated on official national, state, or local historical-registers of inventories shall comply with the State Historical Building Code (California Code of Regulations Title 24, Building Standards, Part 8), in addition to this chapter.

Section A115.3. Administration is added to read as follows:

Section A115.3. Administration.

A115.3.1. Order -- service.

1. The building official shall issue an order as provided in this section to the owner of each building within the scope of this chapter.

2. Prior to the service of an order, a bulletin may be issued to the owner as shown upon the last equalized assessment roll or the person in apparent charge. The bulletin may contain information the building official deems appropriate. The bulletin may be issued by mail or in person.

A115.3.2. Order -- priority of service.

Priorities for the service of the order for buildings within the scope of this chapter shall normally be based upon the occupant load of the building. The owners of the buildings housing the largest occupant loads shall be served first. The Building Official may, upon receipt of a written request from the owner, order such owner to bring his building into compliance with this chapter prior to the normal service date for such building set forth in this chapter.

A115.3.3. Order -- contents.

The order shall be in writing and shall be served either personally or by certified or registered mail upon the owner as shown on the last equalized assessment roll and upon the person, if any, in apparent charge or control of the building. The order shall specify that the building has been determined by the building official to be within the scope of this chapter and, therefore, is required to meet the minimum seismic standards of this chapter.

A115.3.4. Appeal from order.

The owner of the building may appeal the building official's initial determination that the building is within the scope of this chapter to the board of appeals established by Section 204 of the Uniform Administrative Code as adopted by the city. Such appeal shall be filed with the board within 60 days from the service date of the order described in Section A115.3.3. Any such appeal shall be decided by the board no later than 90 days after writing and the grounds thereof shall be stated clearly and concisely. Appeals or requests for modification from any other determinations, orders or actions by the building official pursuant to the chapter shall be made in accordance with the procedures established in Sections 105, 106 and 107 of the Uniform Administrative Code as adopted by the city.

A115.3.5. Recordation.

At the time that the building official serves the aforementioned order, the building official shall also file with the office of the county recorder a certificate stating that the subject building is within the scope of this chapter and is a potentially earthquake hazardous building. The certificate shall also state that the owner thereof has been ordered to structurally analyze the building and to structurally alter or demolish it where compliance with this chapter has not been demonstrated.

If the building is either demolished, found not to be within the scope of this chapter or is structurally capable of resisting minimum seismic forces required by this chapter as a result of structural alterations or an analysis, the building official shall file with the office of the county recorder a form terminating the status of the subject building as being classified within the scope of this chapter.

A115.3.6. Enforcement.

If the owner in charge or control of the subject building fails to comply with any order issued by the building official pursuant to this chapter within any of the time limits set forth in Section A115.1, the building official shall verify that the record owner of this building has been properly served. If the order has been served on the record owner, then the building official shall order that the entire building be vacated and that the building remain vacated until such order has been complied with. If compliance with such order has not been accomplished within 90 days after the date the building has been ordered vacated or such additional time as may have been granted by the board of appeals, the building official may order its demolition in accordance with the provisions of Section 203 of the Uniform Administrative Code as adopted by the city.

Table No. A-1-H is amended to read as follows:

TABLE NO. A-1-H -- TIME LIMITS FOR COMPLIANCE

TABLE INSET:

Required Action by Owner	Obtain Building Permit Within	Commence Construction Within	Complete Construction Within
Structural Alterations	1 year[2]	180 days[1]	3 years[1]

3 years[1]1 Measured from date of building permit issuance.

2 Measured from date of service of order.

Secs. 14-82 – 14-84. Reserved.

Division 12. California Green Building Code

Sec. 14-85. Adoption.

The 2016 California Green Building Code, codified in Part 11 of Title 24 of the California Code of Regulations and as such code may be amended from time to time, except as hereinafter amended by this division, is adopted by reference as the green building code of the city.

Secs. 14-86 – 14-89. Reserved.

Division 13. California Referenced Standards Code

Sec. 14-90. Adoption.

The 2016 California Referenced Standards Code, codified in Part 12 of Title 24 of the California Code of Regulations and as such code may be amended from time to time, except as hereinafter amended by this division, is adopted by reference as the elevator code of the city.

Secs. 14-91 – 14-94. Reserved.

Division 14. Uniform Housing Code

Sec. 14-95. Adoption.

There is hereby adopted by the city council for the purpose of prescribing minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the use and occupancy, location and maintenance of all residential buildings and structures within this jurisdiction; that certain code known as the Uniform Housing Code recommended by the International Conference of Building Officials being particularly the 1997 edition, as adopted by reference and amended by Title 25 of the California Code of Regulations, and the whole thereof save and except such portions as are hereinafter deleted, modified or amended by this division of which code at least one copy is now on file in the office of the clerk of the city and the same are hereby adopted and incorporated as fully as if set out at length herein, and from the date of which this division shall take effect, the provision thereof shall be controlling within the limits of the city.

Sec. 14-96. Amendments.

Section 203 of Chapter 2 of the Uniform Housing Code, 1997 Edition, is amended in its entirety to read as follows:

> Section 203 General. "Housing Advisory and Appeal Board" as used herein shall mean the Board of Appeals as set forth in Section 113 of the California Building Code, 2016 Edition. Appeals to the board shall be processed in accordance with the provisions contained in Section 1201 of this code.

Section 301 of Chapter 3 of the Uniform Housing Code, 1997 Edition, is amended in its entirety to read as follows:

> Section 301 General. No building or structure regulated by this code shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished unless a separate permit for each building or structure has first been obtained from the building official in the manner according to the applicable conditions prescribed in Chapter 1 of the California Building Code, 2016 Edition.

Section 302, of Chapter 3 of the Uniform Housing Code, 1997 Edition is amended by adding two new subsections 302.1 & 302.2 to read as follows:

> Section 302.1 Permits fees. When a building permit is required by Section 301 of this code, the appropriate fees shall be paid as specified in Section 109 of the California Building Code, 2016 Edition.
>
> Section 302.2 Code enforcement fees. The cost for enforcement of this code shall be assessed as lien against the property involved or shall become a personal obligation of the property owner.

Section 303, of Chapter 3 of the Uniform Housing Code, 1997 Edition is amended in its entirety to read as follows:

> Section 303 Inspections. Buildings or structures within the scope of this code and all construction or work for which a permit is required shall be subject to inspection by the building official in accordance with and in the manner provided by this code and Sections 111 and 1701 of the California Building Code, 2016 Edition.

Secs. 14-97 – 14-99. Reserved.

Division 15. Uniform Code for the Abatement of Dangerous Buildings

Sec. 14-100. Adoption.

There is hereby adopted by the city council, for the purpose of prescribing regulations governing all dangerous buildings as defined in this division, which are now in existence or which may hereafter become dangerous, that certain code known as the Uniform Code for the Abatement of Dangerous Buildings, recommended by the International Conference of Building Officials, being particularly the 1997 edition thereof, to include all appendices thereto, save and except such portions as are deleted, modified or amended by this division, of which code at least one copy is on file in the office of the city clerk, and such code is hereby adopted and incorporated as fully as if set out at length in this division, and, from the date on which this division shall take effect, the provisions thereof shall be controlling within the limits of the city.

Sec. 14-101. Amendments.

The Uniform Code for the Abatement of Dangerous Buildings, as adopted by this division, is amended in the following respects:

Section 205, of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, is amended to read as follows:

> 205 Board of appeals. "Board of appeals" as used herein shall mean the board of appeals as set forth in Section 113 of the California Building Code, 2016 Edition as adopted by the city. Appeals to the board shall be processed in accordance with the provisions contained in section 501 of this code.

Section 206, of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, is added to read as follows:

> 206 Summary Abatement.
>
> > 1.In addition to the procedures provided for abatement of dangerous buildings as set forth in chapter 4 of this code, the building official is hereby given summary power to secure from entry any structure or premises which in his discretion he determines to be immediately dangerous or immediately hazardous or in any other manner injurious to public health or safety.
> >
> > Such structures may be secured by the building official by securing boards over the doors and windows of such structure; however, he shall not be limited to only this method and may use other methods at his discretion to accomplish the same purpose which may be more appropriate under the circumstances. The building official shall also post a sign stating, in effect, "DANGEROUS BUILDING, DO NOT ENTER," or some other appropriate sign, upon the structure or premises, in at least one conspicuous place. The building official shall immediately upon such action send notice to the owners of the real property upon which the structure or condition is located, as shown on the last equalized assessment rolls. Such notice shall contain the following information:
> >
> > > a. That he has secured the structure or corrected the hazardous conditions.
> > >
> > > b. The cost incurred by the city thereby.
> > >
> > > c. That he has posted signs as provided by this section.
> > >
> > > d. The reasons why he has taken the action.

e. That an appeal may be made within ten days to the city council, as provided in this section.

f. That if his action is not annulled by the city council, the cost of securing the property shall become a lien upon the real property, unless the cost is paid to the city within 30 days of the mailing of the notice.

If any owner of property, or any person having any interest in property affected by the action of the building official in securing a structure or abating a hazardous condition as permitted by this section, is aggrieved by the action of the building official in securing the structure, such person or persons may appeal the action of the building official by filing a written notice of appeal with the city clerk within ten days after receipt of notice of action by the building official. The notice of appeal must be verified under penalty of perjury and must state the grounds upon which the action of the building official is appealed. The city council shall, upon receiving such notice of appeal, hear any evidence or other relevant matters presented by the appellant or the building official at its next regular meeting after the filing of the notice of appeal; provided, however, that, if the notice of appeal is filed less than ten days prior to the day of a regular meeting of the city council, the hearing shall not be held at the first regular meeting, but at the following regular meeting.

After hearing all evidence and other relevant matters presented at the hearing, or without hearing if no appeal is made upon the report of the building official, the city council may then confirm, amend or annul the action of the building official. If the action of the building official is annulled, the city, at its own expense, shall remove any and all instruments used to secure the structure, and shall remove any and all signs stating that the building is unsafe to enter.

If, however, the city council confirms the actions of the building official in securing the structure at the hearing on appeal, or, if no appeal is taken, at any other regular meeting or adjourned meeting, then the cost incurred by the city in securing the structure shall become a lien against the property, and a resolution of the city council confirming the action of the building official, including the imposition of a lien upon the property upon which the structure is located to pay for the cost of securing it, may be adopted upon receipt of a report from the building official. Such resolution may be filed with the county tax assessor, and the lien imposed thereby may be collected for the city by him, along with the next annual tax levy and assessment on the property.

2. The same procedure as provided in subsection 1 for abating through securing from entry any structure which is determined by the building official to be immediately dangerous or immediately hazardous may also be used by the building official in connection with the summary abatement of all other dangerous or hazardous conditions upon private property which the building official determines, at his discretion, as constituting an immediately dangerous or hazardous condition. The building official may then summarily abate such nuisance, at his discretion, in the most appropriate manner under the circumstances, which may include but shall not be limited to the following methods: fencing, draining water from swimming pools and filling with appropriate ballast, removing fire hazards, filling or covering open holes, and grading or strengthening land fills or excavations. Although the manner and method used by the building official shall be at his discretion, he shall, in making his determinations, seek the most economical method and endeavor not to place an undue economic hardship upon

the owner of the property, and only use those measures which will eliminate the dangerous and hazardous features.

Secs. 14-102 – 14-104. Reserved.

Division 16. Uniform Sign Code

Sec. 14-105. Adoption.

There is hereby adopted by the city council, for the purpose of providing minimum standards to safeguard life, health, property and public welfare by regulating and controlling the design, quality of materials, construction, location, electrification and maintenance of all signs and sign structures not located within a building, that certain code known as the Uniform Sign Code, recommended by the International Association of Plumbing and Mechanical Officials, being particularly the 1997 edition, save and except such portions as are deleted, modified or amended by this division, of which code at least one copy is on file in the office of city clerk, and such code is hereby adopted and incorporated as fully as if set out at length in this division, and, from the date on which this division shall take effect, the provisions thereof shall be controlling within the limits of the city.

Sec. 14-106. Amendments.

Section 103 of the Uniform Sign Code, Edition 1997, as adopted by this division, is amended to read as follows:

> 103 Board of Appeals. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this Code, there shall be and is hereby created a Board of Appeals as specified in Section 113 of the California Building Code, 2016 Edition. All appeals shall be processed in accordance with the provisions contained in Section 103 of the California Building Code, 2016 Edition.

Secs. 14-107 – 14-109. Reserved.

Division 17. Uniform Solar Energy Code

Sec. 14-110. Adoption.

There is hereby adopted by the city council, for the purpose of prescribing regulations governing the erection, installation, alteration, addition, repair, relocation, replacement, maintenance or use of any solar system, that certain code known as the Uniform Solar Energy Code, recommended by the International Association of Plumbing and Mechanical Officials, being particularly the 2009 Edition, to include all appendices thereto, save and except such portions as are deleted, modified or amended by this division, of which code at least one copy is on file in the office of the city clerk, and such code is hereby adopted and incorporated as fully as if set out at length in this division, and, from the date on which this division shall take effect, the provisions thereof shall be controlling within the limits of the city.

Sec. 14-111. Amendments.

Subsection 102.3.2 of Section 102.3 of Chapter 1 of the Uniform Solar Energy Code, Edition 2009 is amended to read as follows:

> 102.3.2 Penalties. Any person, firm or corporation violating any of the provisions, regulations, requirements, additions, amendments and/or deletions of this code is guilty

of a misdemeanor and the penalty for such a misdemeanor shall be as set forth in Chapter 1-8 of the Hemet Municipal Code.

102.3.2 of Section 102.3 of Chapter 1 of the Uniform Solar Energy Code, Edition 2009 is amended by adding subsection 102.3.2.1 to read as follows:

102.3.2.1 In addition thereto, violation of this code is declared to be a public nuisance, and the city attorney may institute necessary legal procedures for the abatement, removal or the enjoinment thereof in the manner provided by law, or may take such other steps as he or she deems necessary to accommodate these ends.

Section 102.3 of Chapter 1 of the Uniform Solar Energy Code, Edition 2009, is amended by adding a new subsection 102.3.3 to read as follows:

102.3.3 Notice of Violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, enlargement, alteration, repair, moving, improving, removing, converting or demolishing, equipping, using, or maintaining mechanical systems or equipment in violation of this code, or in violation of a permit under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

Section 102.3 of Chapter 1 of the Uniform Solar Energy Code, Edition 2009, is amended by adding subsection 102.3.4 to read as follows:

102.3.4 Prosecution of violation. If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

Subsection 103.4.1 of Section 103.4 of Chapter 1 of the Uniform Solar Energy Code, Edition 2009, is amended to read as follows:

103.4.1 Permit Fees. On buildings, structures, plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required in accordance with the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 103.4.2 of Section 103.4 of Chapter 1 of the Uniform Solar Energy Code, Edition 2009, is amended to read as follows:

103.4.2 Plan Review Fees. When plans or other data are required to be submitted by Section 103.2.2, a plan review fee shall be paid at the time of submitting plans and specifications for review. The plan review fees for mechanical work shall be as set forth in the City of Hemet, Building Division Schedule of Fees and Charges. Upon submittal construction documents, this fee shall be due and payable before the construction documents will be reviewed.

The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 103.4 and are in addition to the permit fees.

When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 103.4.4.1 of Section 103.4.4, of Chapter 1 of the Uniform Swimming Pool, Spa & Hot Tub Code, Edition 2009 is amended to read as follows:

> 103.4.4.1 Special Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit shall be subject to a special investigation fee. This fee shall be in addition to the required permit fees. The special investigation fee shall be made before a permit may be issued for such work.

Subsection 103.4.4.2 of Section 103.4, of Chapter 1 of the Uniform Solar Energy Code, Edition 2009, is added to read as follows:

> 103.4.4.2 Fees. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be twice the amount of all permit fees, required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in the current City of Hemet, Building Division Schedule of Fees and Charges. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

Section 103.4.5, of Chapter 1 of the Uniform Solar Energy Code, Edition 2009, is amended by deleting subsection 103.4.5.1, 103.4.5.2 and 103.4.5.3 and amended to read as follows:

> 103.4.5 Fee Refunds. The Building Official may authorize refunding of any fee paid hereunder in the following situations.
>
> 1. Wherein a fee was erroneously paid or collected.
>
> 2. The building official may authorize refunding of not more than 75 percent of the permit application fee when an application for a permit is withdrawn or canceled before any plan review is done.
>
> 3. The building official may authorize refunding of not more than 75 percent of the permit fee when an application for permit is withdrawn or canceled before any inspections are performed.
>
> The building official shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment. Except for the refunding of fees paid in error no refund of permit or plan review fees shall be made where the permit or plan review fee paid is $100.00 or less.

Chapter 1 of the Uniform Solar Energy Code, Edition 2009, is amended by adding section 104 Board of Appeals, to read as follows:

> 104.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this Code, there shall be and is hereby created a Board of Appeals consisting of five members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The Building Official shall be an ex officio member and shall act as secretary to said Board, but shall have no vote upon any matter before the Board. The Board of Appeals shall be appointed by the City Council and shall hold office at its pleasure. The Board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

104.2 Limitations of Authority. The Board of Appeals shall have no authority relative to interpretation of administrative provisions of this Code, nor shall the Board be empowered to waive requirements of this Code.

104.3 Appeal hearing fee. A fee, as provided in the current City of Hemet, Building Division Schedule of Fees and Charges, shall accompany an application for a hearing before the Board of Appeals.

104.4 Special purposes members. For the purpose of appeals to the standards of Title 24 of the California Code of Regulations affecting accommodations for persons with disabilities, two (2) members shall be added who shall have a disability as defined by Section 202 of the California Building Code, 2016 Edition.

104.5 Notice of appeal. Within the limitations provided for below, a person aggrieved by any order, act or determination of the building official or his subordinates, may appeal therefrom to the board of appeals. The appeal shall be taken by filing a written notice of appeal within 15 days, exclusive of holidays, after the date of making the order or determination or performing the act and by paying the appeal hearing fee. The notice of appeal must be in writing on a form provided by the city, and the notice must be filed and the fee paid at the office of the building official. The notice of appeal shall be sufficient if it identifies the act, order or determination appealed from and stated wherein it is erroneous or invalid. The operation of the act, order, or determination appealed from is suspended by the filing of the notice of appeal and upon the determination of the appeal or termination of proceedings thereunder.

104.6. The chairman of said board shall fix the time and place of hearing the appeal. The date of hearing shall not be less than five days nor more than 15 days after the date of filing the notice of appeal, and the hearing must not be postponed for more than ten days without good and sufficient cause. The board shall give written notice of the time and place of such hearing to the appellant and the officer or head of the department or division whose act, order, or determination is appealed from. Witnesses may be sworn and examined and evidence produced by interested parties, who may appear in person or by attorney. The board shall keep a record of each appeal and proceedings thereunder. At the conclusion of the hearing, the board shall prepare and file its written findings and decision. The affirmative vote of two-thirds of the board is necessary to modify or reverse the order, act or determination appealed from. The failure of the board to file its findings and decisions within five days after termination of the hearing shall result in the automatic confirmation of the order, act or determination appealed from.

104.7 Any person aggrieved or affected by a decision of the board may appeal to the city council from such decision at any time within ten days after the date upon which the board announces its decision or loses jurisdiction. An appeal to the city council shall be taken by filing a letter of appeal with the building division and by concurrently paying to such division an appeal hearing fee in the amount established by Table A. Such letter shall set forth the grounds upon which the appeal is based. Within 15 days after the receipt of the letter of appeal and the filing fee, the building division shall transmit to the city council the letter of appeal and the record of appeal at the board and the board's findings and decision. The city council may affirm, reverse, or modify the decision of the board.

104.8 In the event the board as established in Section 113.1 herein above should for any reason not be appointed by the city councilor cease to exist after such appointment, the city council may serve as the board of appeals.

Secs. 14-112 - 14-114. Reserved.

Division 18. Uniform Swimming Pool, Spa and Hot Tub Code

Sec. 14-115. Adoption.

There is hereby adopted by the city council, for the purpose of prescribing regulations governing the erection, installation, alteration, addition, re-pair, relocation, replacement, maintenance or use of any swimming pool, spa or hot tub plumbing system, that certain code known as the Uniform Swimming Pool, Spa and Hot Tub Code, recommended by the International Association of Plumbing and Mechanical Officials, being particularly the 2009 Edition, save and except such portions as are deleted, modified or amended by this division, of which code at least one copy is on file in the office of the city clerk, and such code is hereby adopted and incorporated as fully as if set out at length in this division, and, from the date on which this division shall take effect, the provisions thereof shall be controlling within the limits of the city.

Sec. 14-116. Amendment.

Subsection 102.3.2 of Section 102.3 of Chapter 1 of the Uniform Swimming Pool, Spa, & Hot Tub Code, Edition 2009 is amended to read as follows:

> 102.3.2 Penalties. Any person, firm or corporation violating any of the provisions, regulations, requirements, additions, amendments and/or deletions of this code is guilty of a misdemeanor and the penalty for such a misdemeanor shall be as set forth in Chapter 1-8 of the Hemet Municipal Code.

102.3.2 of Section 102.3 of Chapter 1 of the Uniform Swimming Pool, Spa, & Hot Tub Code, Edition 2009 is amended by adding subsection 102.3.2.1 to read as follows:

> 102.3.2.1 In addition thereto, violation of this code is declared to be a public nuisance, and the city attorney may institute necessary legal procedures for the abatement, removal or the enjoinment thereof in the manner provided by law, or may take such other steps as he or she deems necessary to accommodate these ends.

Section 102.3 of Chapter 1 of the Uniform Swimming Pool, Spa, & Hot Tub Code, Edition 2009 is amended by adding a new subsection 102.3.3 to read as follows:

> 102.3.3 Notice of Violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, enlargement, alteration, repair, moving, improving, removing, converting or demolishing, equipping, using, or maintaining mechanical systems or equipment in violation of this code, or in violation of a permit under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

Section 102.3 of Chapter 1 of the Uniform Swimming Pool, Spa, & Hot Tub Code, Edition 2009, is amended by adding subsection 102.3.4 to read as follows:

> 102.3.4 Prosecution of violation. If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

Subsection 103.4.1 of Section 103.4 of Chapter 1 the Uniform Swimming Pool, Spa & Hot Tub Code, Edition 2009 is amended to read as follows:

> 103.4.1 Permit Fees. On buildings, structures, plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required in accordance with the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 103.4.2 of Section 103.4 of Chapter 1 the Uniform Swimming Pool, Spa & Hot Tub Code, Edition 2009 is amended to read as follows:

> 103.4.2 Plan Review Fees. When plans or other data are required to be submitted by Section 103.2.2, a plan review fee shall be paid at the time of submitting plans and specifications for review. The plan review fees for mechanical work shall be as set forth in the City of Hemet, Building Division Schedule of Fees and Charges. Upon submittal construction documents, this fee shall be due and payable before the construction documents will be reviewed.
>
> The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 103.4 and are in addition to the permit fees.
>
> When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in the City of Hemet, Building Division Schedule of Fees and Charges.

Subsection 103.4.3 of Section 103.4, of Chapter 1 of the Uniform Swimming Pool, Spa & Hot Tub Code, Edition 2009 is amended to read as follows:

> 103.4.3.1 Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit shall be subject to a special investigation fee. This fee shall be in addition to the required permit fees. The special investigation fee shall be made before a permit may be issued for such work.

Subsection 103.4.3.2 of Section 103.4 of Chapter 1 of the Uniform Swimming Pool, Spa & Hot Tub Code, Edition 2009 is amended to read as follows:

> 103.4.3.2 Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be twice the amount of all permit fees, required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in the current City of Hemet, Building Division Schedule of Fees and Charges. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

Section 103.4.4, of Chapter 1 of the Uniform Swimming Pool, Spa & Hot Tub Code, Edition 2009 is amended by deleting subsection 103.4.4.1, 103.4.4.2 and 103.4.4.3 and amended to read as follows:

> 103.4.4 Fee Refunds. The Building Official may authorize refunding of any fee paid hereunder in the following situations.
>
> 1. Wherein a fee was erroneously paid or collected.

2. The building official may authorize refunding of not more than 75 percent of the permit application fee when an application for a permit is withdrawn or canceled before any plan review is done.

3. The building official may authorize refunding of not more than 75 percent of the permit fee when an application for permit is withdrawn or canceled before any inspections are performed.

The building official shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment. Except for the refunding of fees paid in error no refund of permit or plan review fees shall be made where the permit or plan review fee paid is $100.00 or less.

Chapter 1, of the Uniform Swimming Pool, Spa & Hot Tub Code, 2009 Edition is amended by adding section 104 Board of Appeals, to read as follows:

104.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this Code, there shall be and is hereby created a Board of Appeals consisting of five members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The Building Official shall be an ex officio member and shall act as secretary to said Board, but shall have no vote upon any matter before the Board. The Board of Appeals shall be appointed by the City Council and shall hold office at its pleasure. The Board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

104.2 Limitations of Authority. The Board of Appeals shall have no authority relative to interpretation of administrative provisions of this Code, nor shall the Board be empowered to waive requirements of this Code.

104.3 Appeal hearing fee. A fee, as provided in the current City of Hemet, Building Division Schedule of Fees and Charges, shall accompany an application for a hearing before the Board of Appeals.

104.4 Special purposes members. For the purpose of appeals to the standards of Title 24 of the California Code of Regulations affecting accommodations for persons with disabilities, two (2) members shall be added who shall have a disability as defined by Section 202 of the California Building Code, 2016 Edition.

104.5 Notice of appeal. Within the limitations provided for below, a person aggrieved by any order, act or determination of the building official or his subordinates, may appeal therefrom to the board of appeals. The appeal shall be taken by filing a written notice of appeal within 15 days, exclusive of holidays, after the date of making the order or determination or performing the act and by paying the appeal hearing fee. The notice of appeal must be in writing on a form provided by the city, and the notice must be filed and the fee paid at the office of the building official. The notice of appeal shall be sufficient if it identifies the act, order or determination appealed from and stated wherein it is erroneous or invalid. The operation of the act, order, or determination appealed from is suspended by the filing of the notice of appeal and upon the determination of the appeal or termination of proceedings thereunder.

104.6. The chairman of said board shall fix the time and place of hearing the appeal. The date of hearing shall not be less than five days nor more than 15 days after the date of filing the notice of appeal, and the hearing must not be postponed for more than ten

days without good and sufficient cause. The board shall give written notice of the time and place of such hearing to the appellant and the officer or head of the department or division whose act, order, or determination is appealed from. Witnesses may be sworn and examined and evidence produced by interested parties, who may appear in person or by attorney. The board shall keep a record of each appeal and proceedings thereunder. At the conclusion of the hearing, the board shall prepare and file its written findings and decision. The affirmative vote of two-thirds of the board is necessary to modify or reverse the order, act or determination appealed from. The failure of the board to file its findings and decisions within five days after termination of the hearing shall result in the automatic confirmation of the order, act or determination appealed from.

104.7 Any person aggrieved or affected by a decision of the board may appeal to the city council from such decision at any time within ten days after the date upon which the board announces its decision or loses jurisdiction. An appeal to the city council shall be taken by filing a letter of appeal with the building division and by concurrently paying to such division an appeal hearing fee in the amount established by Table A. Such letter shall set forth the grounds upon which the appeal is based. Within 15 days after the receipt of the letter of appeal and the filing fee, the building division shall transmit to the city council the letter of appeal and the record of appeal at the board and the board's findings and decision. The city council may affirm, reverse, or modify the decision of the board.

104.8 In the event the board as established in Section 113.1 herein above should for any reason not be appointed by the city councilor cease to exist after such appointment, the city council may serve as the board of appeals.

Section 203.0 of Chapter 2, of the Uniform Swimming Pool, Spa & Hot Tub Code, 2009 Edition is amended by adding the following definition(s).

Aboveground or on-ground pool. See definition of swimming pool.

Section 211.0 of Chapter 2, of the Uniform Swimming Pool, Spa & Hot Tub Code, 2009 Edition is amended by adding the following definition(s).

In-ground pool. See definition of swimming pool.

Section 220.0 of Chapter 2, of the Uniform Swimming Pool, Spa & Hot Tub Code, 2009 Edition is amended by adding the following definition(s).

Residential. That which is situated on the premises of a detached one-or two-family dwelling or a one-family townhouse not more than three stories in height.

Section 221.0 of Chapter 2, of the Uniform Swimming Pool, Spa & Hot Tub Code, 2009 Edition is amended by adding the following definition(s).

Spa, non-portable. See definition of swimming pool.

Spa, portable. A nonpermanent structure intended for recreational bathing, in which all controls, water heating and water circulating equipment are an integral part of the product and which is cord-connected (not permanently electrically wired).

Swimming pool, indoor. A swimming pool which is totally contained within a structure and surrounded on all four sides by walls of the structure.

Swimming pool, outdoor. Any swimming pool which is not an indoor pool.

Chapter 3, of the Uniform Swimming Pool, Spa & Hot Tub Code, 2009 Edition is amended by adding Section 324 Enclosures and Location, to read as follows:

324 Enclosures and location.

324.1 Application. The provisions of this section shall control the design of barriers for swimming pools, spas and hot tubs. These design controls are intended to provide protection against potential drowning and near-drowning by restricting access to swimming pools, spas and hot tubs.

324.2 Requirements for outdoor swimming pool. An outdoor swimming pool, including an in-ground, aboveground or on-ground pool, hot tub or spa shall be provided with a barrier which shall comply with the following:

1. The top of the barrier shall be at least 60 inches above grade measured on the side of the barrier which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be four inches measured on the side of the barrier which faces away from the swimming pool. Where the top of the pool structure is above grade, such as an aboveground pool, the barrier may be at ground level or mounted on top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum clearance between the top of the pool structure and the bottom of the barrier shall be four inches.

2. Openings in the barrier shall not allow passage of a four-inch diameter sphere.

3. Solid barriers which do not have openings, such as a masonry or stone wall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

4. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall not exceed 1 3/4 inches in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1 3/4 inches in width.

5. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches or more, spacing between vertical members shall not exceed four inches. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1 3/4 inches in width.

6. Maximum mesh size for chain link fences shall be a 1 3/4 inches square unless the fence is provided with slats fastened at the top or the bottom which reduce the openings to no more than 1 3/4 inches.

7. Where the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall be no more than 1 3/4 inches.

8. Gates or door openings through such barriers shall be equipped with self-closing and self-latching devices de-signed to keep, and capable of keeping, such door or gate securely closed at all times when not in actual use; however, the door of any dwelling occupied by human beings which forms any part of the enclosure herein required need not be so equipped. Required latching de- vices shall be located not less than sixty inches above the ground. The pool enclosure shall be in place and approved by the building official before water is placed in the pool.

324.3 Location. No pool shall be located within five feet of the property line of the parcel upon which the pool is located or within three feet of any building on such property. No mechanical pool pump or filter shall be located within three feet of the property line.

Secs. 14-117 – 14-170. Reserved.

AGENDA # 30

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Stephen McEwen, Assistant City Attorney

DATE: November 15, 2016

RE: INTERIM URGENCY ORDINANCE BILL NO. 16-095. An interim urgency ordinance imposing temporary restrictions and regulations on non-medical marijuana facilities and private marijuana cultivation in light of the passage of Proposition 64.

RECOMMENDATION:

That the City Council adopt Interim Urgency Ordinance Bill No. 16-095 under Government Code section 65858(a), establishing a 45-day moratorium on non-medical marijuana facilities and private marijuana cultivation, except for private indoor cultivation of six marijuana plants or less, which shall be subject to reasonable regulations. This interim urgency ordinance requires a four-fifths vote for adoption.

BACKGROUND:

On November 8, 2016, California voters approved Proposition 64, known as the "Control, Regulate and Tax Adult Use of Marijuana Act." Proposition 64 allows individuals to possess, use, and cultivate recreational marijuana in certain amounts. An individual may possess up to 28.5 grams of non-concentrated marijuana or 8 grams of marijuana in a concentrated form (e.g., marijuana edibles). In addition, an individual may cultivate up to six marijuana plants at his or her private residence provided that no more than six plants are being cultivated on the property at one time. Proposition 64 also establishes a regulatory system for commercial businesses that is very similar to the medical marijuana regulatory system that the state legislature created last year. Under Proposition 64, recreational marijuana cultivators, manufacturers, distributors, retailers, and testing laboratories may operate lawfully if they obtain a state license to operate and comply with local ordinances.

Proposition 64 does not limit local police power authority over commercial marijuana business and land uses. Cities may prohibit such businesses completely if they so choose. With regard to private cultivation, however, there is one important limitation on local police power. Cities may ban private outdoor marijuana cultivation,

but they may not completely ban private indoor cultivation of six marijuana plants or less. Proposition 64 provides that private indoor cultivation of six marijuana plants or less is lawful under both state and local law and is only subject to "reasonable" local regulations.

The California Department of Consumer Affairs, Department of Food and Agriculture, and Department of Public Health are responsible under Proposition 64 for issuing state licenses to commercial recreational marijuana businesses. No marijuana business can operate without a state license from one of these agencies, which are currently drafting regulations that will govern their respective areas of responsibility. Based on the latest information we have from the state, these agencies will not be ready to issue any state marijuana licenses until January 2018.

ANALYSIS:

Despite that lengthy timeframe for state marijuana licenses, there is a need for urgent action by the City Council. Municipal Code section 90-79 currently prohibits all medical marijuana businesses and all marijuana cultivation in the City, but the Municipal Code does not address recreational marijuana businesses in express terms. We anticipate that Proposition 64 will encourage the establishment of various recreational marijuana businesses in the City. While unlicensed marijuana businesses would be unlawful under state law and therefore prohibited under the City's general public nuisance standards, express regulations will make enforcement easier and minimize the potential for confusion regarding the City's marijuana policies. This will, in turn, decrease the potential for unnecessary nuisance abatement litigation. This is significant because many California cities have experienced negative secondary effects from medical marijuana businesses, including dispensaries, cultivation facilities, and delivery services, as demonstrated by the attached 2009 white paper from the California Police Chiefs Association (Attachment 1), the 2014 memorandum from the Santa Clara County District Attorney (Attachment 2), and various news stories from throughout the country (Attachment 3).

In addition, express Municipal Code regulations are necessary to provide clear guidance to the public regarding the scope of permissible private cultivation. Proposition 64 took effect immediately upon voter approval. We anticipate that many individuals will now begin to cultivate marijuana at their private residences. In light of Proposition 64, the City can no longer enforce its existing marijuana cultivation ban against private indoor cultivation of six marijuana plants or less. Such unregulated conduct could have significant adverse impacts for the City. As demonstrated in the attachments to this staff report, indoor marijuana cultivation sites are often associated with illegal construction, haphazard and unsafe electrical wiring, electricity theft, fires, mold and fungus problems, diversion of public water, pollution of waterways, and excessive water use.

Permanent regulations will take time. Based on existing case law, the City Council should treat the regulation of marijuana businesses and cultivation as a land

use issue. The City, therefore, must follow Government Code section 65853, which requires a noticed public hearing before the planning commission and a noticed public hearing before the city council. During the time it takes to complete this process, the City could experience significant adverse impacts from unlicensed recreational marijuana businesses and unregulated private marijuana cultivation.

For this reason, an interim urgency ordinance is appropriate. Government Code section 65858 authorizes the adoption of an interim urgency ordinance to protect the public health, safety, and welfare, and to prohibit land uses that may conflict with land use regulations that a city's legislative bodies are considering, studying, or intending to study within a reasonable time. Here, an interim urgency ordinance will allow the City to protect public health, safety and welfare while the City Council evaluates its options for permanent marijuana regulations. The proposed interim urgency ordinance imposes the following three temporary restrictions:

- All commercial non-medical marijuana businesses that require a license under Proposition 64 will be prohibited while the interim urgency ordinance is in effect. This temporary prohibition will apply to recreational marijuana cultivation, manufacturing, distribution, testing, and retail sales.

- All private marijuana cultivation will be prohibited except that an individual may cultivate no more than six living marijuana plants inside his or her private residence, or inside an accessory structure to his or her private residence located upon the grounds of that private residence that is fully enclosed and secured against unauthorized entry, provided that the owner of the property provides written consent expressly allowing the marijuana cultivation to occur, the person conducting the marijuana cultivation complies with all applicable Building Code requirements set forth in Chapter 14 of this code, there is no use of gas products (CO2, butane, propane, natural gas, etc.) on the property for purposes of marijuana cultivation, and the marijuana cultivation complies with Health and Safety Code section 11362.2(a)(3). Health and Safety Code section 11362.2(a)(3) provides that no more than six marijuana plants may be cultivated at or upon the grounds of a private residence at one time.

- Non-medical marijuana businesses, including nonprofit businesses, are prohibited from delivering marijuana to people in the City.

If approved by a four-fifths vote, the interim urgency ordinance will be effective for 45 days. After providing notice and holding a public hearing, the City Council, upon a four-fifths vote, may extend the interim urgency ordinance for 10 months and 15 days. The City Council may subsequently extend the interim urgency ordinance for an additional year. While the interim urgency ordinance is in effect, the City will undertake a comprehensive review of its policies and potential regulations regarding recreational marijuana businesses and private marijuana cultivation in light of Proposition 64.

CEQA:

The proposed interim urgency ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance maintains the status quo and prevents changes in the environment pending the completion of the contemplated municipal code review. Because there is no possibility that this ordinance may have a significant adverse effect on the environment, the adoption of this ordinance is exempt from CEQA.

FISCAL IMPACT:

The proposed interim urgency ordinance represents a continuation of existing enforcement policies regarding marijuana facilities, so there would be no change in the fiscal impact for the City.

Respectfully submitted,

Stephen A. McEwen, Assistant City Attorney

CITY OF HEMET
Hemet, California
ORDINANCE BILL NO. 16-095

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEMET, CALIFORNIA, ADOPTING A MORATORIUM PERTAINING TO PRIVATE MARIJUANA CULTIVATION AND NON-MEDICAL MARIJUANA FACILITIES

THE CITY COUNCIL OF THE CITY OF HEMET DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

A. As set forth in Municipal Code section 90-79, the City of Hemet prohibits all medical marijuana dispensaries, marijuana cultivation facilities, and commercial cannabis activities. Municipal Code section 90-79(c)(6) prohibits medical marijuana deliveries in the City unless the delivery is made by a Primary Caregiver to his or her Qualified Patient, as those terms are defined in Health and Safety Code sections 11362.5 and 11362.7.

B. On November 8, 2016, the voters of the State of California approved Proposition 64, entitled the "Control, Regulate and Tax Adult Use of Marijuana Act."

C. Proposition 64 legalizes and regulates recreational marijuana in California. Proposition 64 requires recreational marijuana businesses, including cultivators, manufacturers, distributors, retailers, and testing laboratories, to obtain a state license in order to operate lawfully. The state will not issue licenses if the proposed recreational marijuana business violates a local ordinance. The state anticipates that it will begin issuing licenses for recreational marijuana businesses on or about January 1, 2018.

D. Business and Professions Code section 26200, which is part of Proposition 64, expressly recognizes the ability of cities to completely prohibit all recreational marijuana businesses or to regulate such businesses.

E. Under Proposition 64, individuals may possess and use specified amounts of marijuana and may cultivate up to six marijuana plants per private residence. Under Health and Safety Code section 11362.2(b), cities may prohibit private outdoor marijuana cultivation, but may not prohibit completely private indoor cultivation of six marijuana plants or less. Cities, however, may reasonably regulate private indoor cultivation of six marijuana plants or less.

F. It is imperative that the City maintain local control over all marijuana land uses to the fullest extent allowed by law. Within the past six years, many marijuana businesses have opened illegally in the City despite the prohibition against such land uses in Municipal Code section 90-79. The City anticipates that Proposition 64 may encourage the establishment of various marijuana businesses within the City. The Municipal Code does not currently address recreational marijuana businesses. While no such business can operate in the City lawfully without a state license, express Municipal Code regulations regarding recreational marijuana dispensaries, cultivation facilities, manufacturing sites, transporters, distributors, testing laboratories, and microbusinesses are necessary to provide clear guidelines regarding the scope of prohibited conduct and minimize the potential for confusion regarding the City's policies.

G. Express Municipal Code regulations are also necessary to provide clear guidance regarding the scope of permissible private cultivation. The City anticipates that many individuals will begin to cultivate marijuana at their private residences following the passage of Proposition 64.

H. The adoption of a comprehensive marijuana ordinance that addresses both private cultivation and commercial recreational marijuana businesses will take time and careful consideration and will require input from various community stakeholders and the general public. Until that process is complete, an interim urgency ordinance under Government Code section 65858(a) is necessary to protect the public health, safety, and welfare.

I. Marijuana establishments and activities often present health, welfare, and public safety issues for cities. Several California cities and counties have experienced serious adverse impacts associated with and resulting from marijuana dispensaries, delivery services, and cultivation sites. According to these communities and according to news stories widely reported, marijuana land uses have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, and illegal sales and use of marijuana in the areas immediately surrounding such marijuana activities. There have also been large numbers of complaints of odors related to marijuana cultivation and storage. Marijuana cultivation sites are often associated with illegal construction, unsafe electrical wiring, excessive water use, and fire hazards.

J. A California Police Chiefs Association compilation of police reports, news stories, and statistical research regarding crimes involving medical marijuana businesses and their secondary impacts on the community is contained in a 2009 white paper report which is attached to the staff report presented to the City Council with this ordinance and on file with the City Clerk. The report details numerous violent crimes that occurred throughout the state in and around medical marijuana establishments.

K. The Santa Clara County District Attorney's Office issued a May 2014 memorandum entitled "Issues Surrounding Marijuana in Santa Clara County," which outlined many of the negative secondary effects resulting from marijuana cultivation; a copy of this memorandum is attached to the staff report presented to the City Council with this ordinance and on file with the City Clerk. According the memorandum, marijuana cultivation sites were often associated with illegal construction, haphazard electrical wiring, electricity theft, fires, mold and fungus problems, diversion of public water, pollution of waterways, firearm violations, crimes, and organized crime and street gang involvement.

L. Manufacturing of cannabis products can involve the use of chemicals and solvents and, as a result, carries a significant risk of explosion due to the distillation process utilized to extract tetrahydrocannabinol. Major burn treatment centers at two hospitals in Northern California reported in 2015 that nearly 10 percent of severe burn cases were attributed to butane hash oil explosions, which was more than burn cases from car accidents and house fires combined.

M. News stories regarding adverse impacts of marijuana businesses, including dispensaries, cultivation sites, and delivery services, are attached to the staff report presented to the City Council with this ordinance and on file with the City Clerk. As detailed in these stories, marijuana establishments and cultivation sites are frequent targets of violent crimes, including robberies and assaults, in part because banking institutions will not accept credit card payments for illegal drugs under federal law, forcing such businesses to be cash-only. There is also significant evidence that marijuana delivery services are targets of violent crime and pose a danger to the public.

N. Marijuana processing has led to explosions across the country because the processing of marijuana-related products, such as cannabis oils, often involves the use of butane gas flames.

O. In 2015, there reportedly were at least five-marijuana-related wildfires linked to marijuana growing operations.

P. In 2016, a New York firefighter died in an explosion at a residential marijuana cultivation site.

Q. It is reasonable to conclude that marijuana businesses and private cultivation under Proposition 64 would cause similar adverse impacts on the public health, safety, and welfare in Hemet.

R. In order to protect the public health, safety, and welfare, the City Council desires to amend the Hemet Zoning Code to address, in express terms, recreational marijuana businesses, marijuana deliveries, and private marijuana cultivation. The City Council hereby determines that the Municipal Code is in need of further review and possible revision to protect the public against potential negative health, safety, and welfare impacts and to address private marijuana cultivation and the new marijuana business models recognized under Proposition 64.

S. An initial period of 45 days will permit City staff to undertake an initial investigation of these matters and recommend a course of action to the City Council, while avoiding the potential adverse impacts of non-medical marijuana facilities and private marijuana cultivation that may arise as the City develops permanent regulations.

T. Government Code section 65858 authorizes the adoption of an interim urgency ordinance to protect the public health, safety, and welfare, and to prohibit land uses that may conflict with land use regulations that a city's legislative bodies are considering, studying, or intending to study within a reasonable time.

U. Failure to adopt this moratorium would impair the orderly and effective implementation of contemplated amendments to the Municipal Code.

V. The City Council further finds that this moratorium is a matter of local and City-wide importance and is not directed towards any particular person or entity that seeks to cultivate marijuana in Hemet.

SECTION 2. Environmental Findings. The City Council exercises its independent judgment and finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance maintains the status quo and prevents changes in the environment pending the completion of the contemplated municipal code review. Because there is no possibility that this ordinance may have a significant adverse effect on the environment, the adoption of this ordinance is exempt from CEQA.

SECTION 3. Imposition of Moratorium. In accordance with Government Code section 65858(a), and pursuant to the findings stated herein, the City Council hereby: (1) finds that there exists a current and immediate threat to the public health, safety, and welfare requiring this interim Urgency Ordinance; (2) finds that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety as set forth herein; and (3) declares and imposes a temporary moratorium for the immediate preservation of the public health, safety and welfare as set forth below:

A. For a period of 45 days from the date this ordinance is adopted:

1. Non-medical marijuana facilities are prohibited in all zoning districts in the City and shall not be established or operated anywhere in the City.

2. No person or entity may cultivate marijuana at any location in the City, except that a person may cultivate no more than six living marijuana plants inside his or her private residence, or inside an accessory structure to his or her private residence located upon the grounds of that private residence

that is fully enclosed and secured against unauthorized entry, provided that the owner of the property provides written consent expressly allowing the marijuana cultivation to occur, the person conducting the marijuana cultivation complies with all applicable Building Code requirements set forth in Chapter 14 of this code, there is no use of gas products (CO2, butane, propane, natural gas, etc.) on the property for purposes of marijuana cultivation, and the marijuana cultivation complies with Health and Safety Code section 11362.2(a)(3).

3. A non-medical marijuana facility may not deliver marijuana from any fixed or mobile location, either inside or outside the city, to any person in the City.

B. For purposes of this ordinance, the following definitions apply:

"Cultivate" means to plant, grow, harvest, dry, cure, grade, and/or trim marijuana.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

"Marijuana" shall have the meaning set forth in Health and Safety Code section 11018.

"Non-medical marijuana facility" means any building, property, business, establishment, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license or nonprofit license under Business and Professions Code sections 26000 and following, including but not limited to marijuana cultivation, marijuana distribution, marijuana transportation, marijuana storage, manufacturing of marijuana products, marijuana processing, the sale of any marijuana or marijuana products, and the operation of a marijuana microbusiness.

C. City staff is directed to study appropriate modifications to the City's ordinances regarding non-medical marijuana facilities and marijuana cultivation.

D. 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, such uses in the City may conflict with existing regulations or requirements.

E. This ordinance will take effect immediately upon adoption by a four-fifths vote of the City Council.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have

passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date and Duration. This ordinance is an urgency ordinance enacted under Government Code section 65858(a). This urgency ordinance is effective immediately and will extend for a period of 45 days at which time it will automatically expire unless extended by the City Council under Government Code section 65858.

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

SECTION 7. Study. Staff is directed to study and analyze issues related to the establishment or operation of recreational marijuana businesses and private marijuana cultivation within the City, including but not limited to, evaluating conflicts in state and federal law concerning the validity of the legislation, the potential impacts of such facilities or activities on public health, safety and welfare of the community, the desirability of such facilities or activities in various zones, and the extent of regulatory controls, if any, to impose on such facilities or activities.

SECTION 8. Report. Staff is directed to provide a written report to the City Council at least ten days prior to the expiration of this ordinance, describing the study conducted of the conditions that led to the adoption of this ordinance, in accordance with state law.

PASSED, APPROVED, AND ADOPTED this 15th day of November, 2016.

_____

Bonnie Wright, Mayor

ATTEST:

_____

Sarah McComas, City Clerk

APPROVED AS TO FORM:

_____

Eric S. Vail, City Attorney

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 adopted by the City Council of the City of Hemet and was passed at a regular meeting of the City Council on the 15th day of November, 2016 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sarah McComas, City Clerk

ATTACHMENT 1

ATTACHMENT 1

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES

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ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

George Anderson, California Department of Justice
Jacob Appelsmith, Office of the California Attorney General
John Avila, California Narcotics Officers Association
Phebe Chu, Office of San Bernardino County Counsel
Scott Collins, Los Angeles County District Attorney's Office
Cathy Coyne, California State Sheriffs' Association
Lorrac Craig, Trinity County Sheriff's Department
Jim Denney, California State Sheriffs' Association
Thomas Dewey, California State University—Humboldt Police Department
Dana Filkowski, Contra Costa County District Attorney's Office
John Gaines, California Department of Justice/Bureau of Narcotics Enforcement
Craig Gundlach, Modesto Police Department
John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

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Nate Johnson, California State University Police
Mike Kanalakis, Monterey County Sheriff's Office
Bob Kochly, Contra Costa County Office of District Attorney
Tommy LaNier, The National Marijuana Initiative, HIDTA
Carol Leveroni, California Peace Officers Association
Kevin McCarthy, Los Angeles Police Department
Randy Mendoza, Arcata Police Department
Mike Nivens, California Highway Patrol
Rick Oules, Office of the United States Attorney
Mark Pazin, Merced County Sheriff's Department
Michael Regan, El Cerrito Police Department
Melissa Reisinger, California Police Chiefs Association
Kimberly Rios, California Department of Justice, Conference Planning Unit
Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement
Crystal Spencer, California Department of Justice, Conference Planning Unit
Sam Spiegel, Folsom Police Department
Valerie Taylor, ONDCP
Thomas Toller, California District Attorneys Association
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

EXECUTIVE SUMMARY

INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

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CALIFORNIA LAW

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

PROBLEMS POSED BY MARIJUANA DISPENSARIES

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthful mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

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LOCAL GOVERNMENTAL RESPONSES

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

LIABILITY

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as "cooperatives" under California law, which would be a rare occurrence. Civil liability could also result.

ENFORCEMENT OF MARIJUANA LAWS

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a "hands off" attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These "patients" have most often turned out to be young adults who are not sick at all, but have secured a physician's written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often "medical marijuana" has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION

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INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) "The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail." (*Gonzales v. Raich, supra.*) Even more recently, the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich,* the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (*See Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as "medical" by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the "supreme law of the land" and shall be legally superior to any conflicting provision of a state constitution or law. [1] The Commerce Clause states that "the

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Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[2]

Gonzales v. Raich addressed the concerns of two California individuals growing and using marijuana under California's medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.[3] "Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment."[4] (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state's regulation, including California's. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.[5] California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.[6]

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.[7] The initiative added California Health and Safety code section 11362.5, which allows "seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician . . . ."[8] The codified section is known as the Compassionate Use Act of 1996.[9] Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.[10] This act expanded the definitions of "patient" and "primary caregiver"[11] and created guidelines for identification cards.[12] It defined the amount of marijuana that "patients," and "primary caregivers" can possess.[13] It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,[14] as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a "patient," a "primary caregiver," or as a member of a legally recognized "cooperative," as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a "dispensary" or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes' parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a "qualified patient," "primary caregiver," or a member of a "cooperative." Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

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Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute "individuals within the legal scope of California's Compassionate Use Act." Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California's medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a "cooperative"—than on the possession and use of marijuana upon the recommendation of a physician.

When California's medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to "individuals within the legal scope of" the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General's opinion nor the current California Attorney General's guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state's regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a "patient," "primary caregiver," or is a member of a legally recognized "cooperative," he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.[15] If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.[16]

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A "qualified patient" is an individual with a physician's recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief.*[17] A physician's recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A "person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves "cooperatives," but function like storefront dispensaries, suffer this same fate. In *People v. Mower,* the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.[18] He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he "**consistently** had assumed responsibility for either one's **housing, health, or safety**" before he could assert the defense.[19] (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient's health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient's health needs beyond just supplying him or her with marijuana.

A "primary caregiver" is an individual or facility that has "consistently assumed responsibility for the housing, health, or safety of a patient" over time. (Cal. H&S Code sec. 11362.5(e).) "Consistency" is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person's health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

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The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: "One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party 'who has consistently assumed responsibility for the housing, health, or safety' of that purchaser as section 11362.5(e) requires.")

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as "primary caregivers." Those included in the list clearly show the Legislature's intent to restrict the definition to one involving a significant and long-term commitment to the patient's health, safety, and welfare. The only facilities which the Legislature authorized to serve as "primary caregivers" are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

4. Cooperatives and Collectives

According to the California Attorney General's recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that "Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions" for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California's marijuana laws.

Further, the common dictionary definition of "collectives" is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess "the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members."[20] Marijuana businesses, of any kind, do not normally meet this legal definition.

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Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal **or** state law.

LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.[21]

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.[22] Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.[23] Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.[24] These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.[25] Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.[26] Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess "the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members."[27] Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have "consistently assumed responsibility for the housing, health, or safety" of a patient.[28] Clearly, it is doubtful that any of the storefront marijuana businesses currently

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existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.[29]

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their "primary caregiver" (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the "contribution" will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so "contributions" are made to reimburse the dispensary for its time and care in making "product" available. However, if a calculation is made based on the available evidence, it is clear that these "contributions" can easily add up to millions of dollars per year. That is a very large cash flow for a "non-profit" organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold $45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately $16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the "primary caregivers" of patients. This is a spurious claim. As discussed above, the term "primary caregiver" has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has "consistently assumed responsibility for the housing, health, or safety of a patient." [30] The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it "**consistently** had assumed responsibility for [a patient's] **housing, health, or safety**."[31] The key to being a primary caregiver is not simply that marijuana is provided for a patient's health: the responsibility for the patient's health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business's relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant "primary caregiver" relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient's act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

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consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILIARLY OPERATING COOPERATIVES

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.[32] And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because "medical marijuana is such a controversial issue." [33]

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man's throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.[34] And, on August 19, 2005, 18-year-old Demarco Lowrey was "shot in the stomach" and "bled to death" during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowery was hit by gunfire and "dumped outside the emergency entrance of Children's Hospital Oakland" after the shootout.[35] He did not survive.[36]

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over $250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.[37]

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane's home in Laytonville, California while yelling, "This is a raid." Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.[38] Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.[39]

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

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cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.[40]

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.[41]

B. BURGLARIES

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.[42] And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries "crime magnets" after a burglary occurred in one in Claremont, California.[43]

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.[44] Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.[45] After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was "prompted by incidents of armed burglary at some of the city's eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise . . . ."[46]

C. TRAFFIC, NOISE, AND DRUG DEALING

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,[47] as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.[48] Sharing just purchased marijuana outside dispensaries also regularly takes place.[49]

Rather than the "seriously ill," for whom medical marijuana was expressly intended,[50] "'perfectly healthy' young people frequenting dispensaries" are a much more common sight.[51] Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 "showed that 72 percent of patients were between 17 and 40 years old . . . ."[52] Said one admitted marijuana trafficker, "The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed."[53]

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.[54] And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.[55] It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

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dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.[56] The dispensaries or "pot clubs" are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.[57] Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise's storage facilities, federal officers also confiscated three firearms,[58] which seem to go hand in hand with medical marijuana cultivation and dispensaries.[59]

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.[60] The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.[61] Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.[62]

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.[63] Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,[64] and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.[65]

E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a "gift," and soon afterward felt dizzy and disoriented.[66] The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.[67]

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OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.[68]

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about $150 a pop."[69] Other individuals just make up their own phony doctor recommendations,[70] which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.[71] Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.[72]

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay $74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to "high priced McMansions . . . ."[73] Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.[74] In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.[75] Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the "THC-rich 'B.C. bud' strain" of marijuana originally produced in British Columbia "can be grown only in controlled indoor environments," and the Canadian market is now reportedly saturated with the product of "competing Canadian gangs," often Asian in composition or outlaw motorcycle gangs like the Hells Angels.[76] Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.[77] With a street value of $3,000 to $5,000 per pound" for high-potency marijuana, and such multiple harvests, "a successful grow house can bring in between $4.5 million and $10 million a year . . . ."[78] The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.[79]

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift "no code" electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from $1,000 to $3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, "Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord." Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.[80] Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, "We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints." House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.[81]

Chief Mendosa also observed that since marijuana has an illicit street value of up to $3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make $25,000 every three months by selling marijuana grown in the bedroom of his rented house.[82] Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.[83] To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.[84]

D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.[85] In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.[86]

E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.[87] Dispensaries also sell marijuana to minors.[88]

F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,[89] and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold, [90] all of which are dangerous to any children or adults who may be living in the residence,[91] although many grow houses are uninhabited.

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G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,[92] and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.[93]

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.[94]

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B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.[95] Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.[96]

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.[97] And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.[98] It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.[99] To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.[100]

C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

"Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
   a. Cultivation lighting shall not exceed 1200 watts;
   b. Gas products (CO_2, butane, etc.) for medical marijuana cultivation or processing is prohibited.
   c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
   d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
   e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
   f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
   g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
   h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator my approve up to 100 square foot:
   a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
   b. Include written permission from the property owner.
   c. City Building Official must inspect for California Building Code and Fire Code.
   d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
   e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
   a. A 300 foot radius from any existing residential zoning district,
   b. Within 500 feet of any other medical marijuana cooperative or collective.

c. Within 500 feet from any existing public park, playground, day care, or school.

7. Source of medical marijuana.
   a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
   b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
   c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
   a. Staff screening process including appropriate background checks.
   b. Operating hours.
   c. Site, floor plan of the facility.
   d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
   e. Screening, registration and validation process for qualified patients.
   f. Qualified patient records acquisition and retention procedures.
   g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
   h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
   i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
   a. No dispensing medical marijuana more than twice a day.
   b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
   c. Display the client rules and/or regulations at each building entrance.
   d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
   e. Persons under the age of eighteen (18) are precluded from entering the premises.
   f. No on-site display of marijuana plants.
   g. No distribution of live plants, starts and clones on through Use Permit.
   h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
   i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
   j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
   k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

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LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

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In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

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The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over $58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and $2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over $190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

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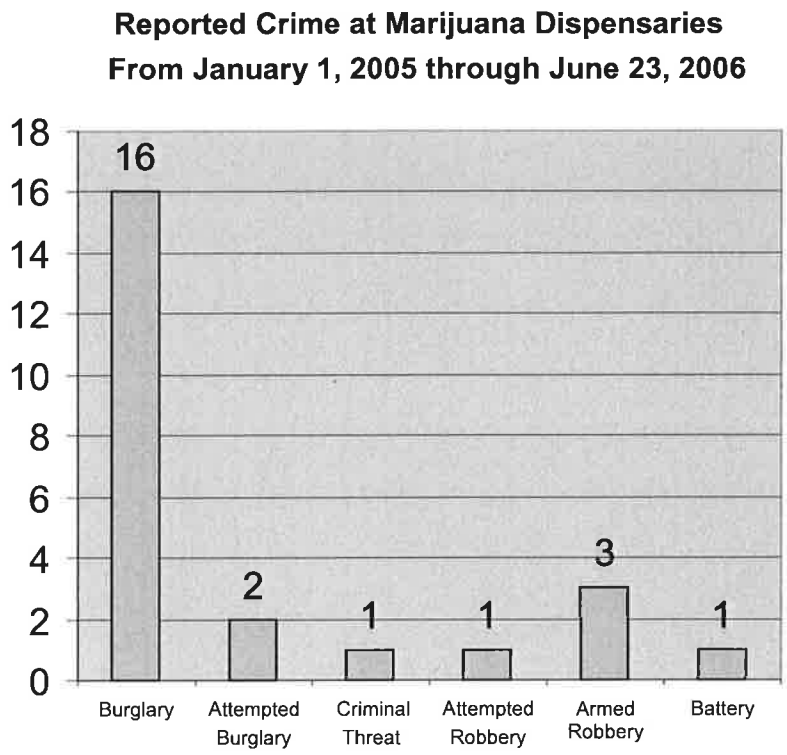
The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law **and** California law.

Press Materials:



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over $300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

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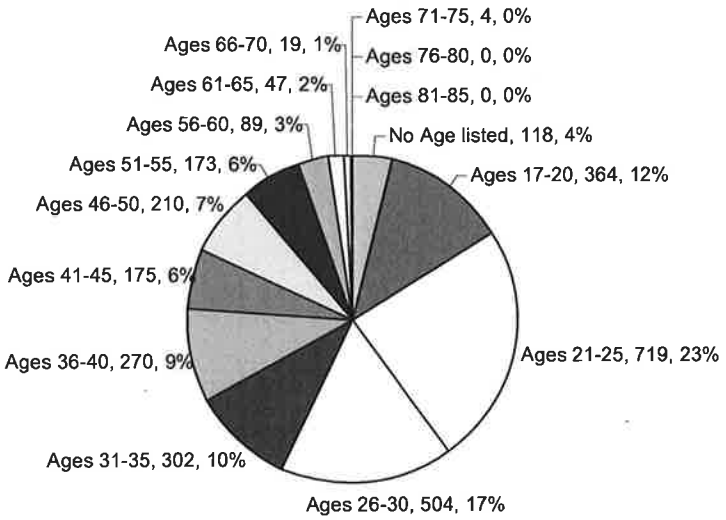
- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation

Dispensary Patients By Age



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

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are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

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Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. $4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be $16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than $200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

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and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a $250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich*, *supra,* 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

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real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars "as a joke." They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend "Brandon," who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a "blunt" (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician's recommendation for marijuana.

- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.

- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing "honey oil" for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special "honey oil" extractor tube. The butane extraction operation ***exploded*** with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the "honey oil" with marijuana and butane that they brought up from one of Estes' San Diego pot clubs after it was shut down by federal agents.

- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.

- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the "designated driver." When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

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smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and $12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About $3,000 to $4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.[101] A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

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PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

1. **Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83?**

ANSWER

1. **Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.[1] Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

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[1] As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added).)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."[2] If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.[3]

ANALYSIS

A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

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[2] A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

[3] Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

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ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See http://www.boe.ca.gov/news/pdf/medseller2007.pdf (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.[4]

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

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[4] Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

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B. *State Law*

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein*, *supra*.)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)[5] Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

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[5] Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

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they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.").) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.").) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.[6] [102]

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

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[6] Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006];"Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

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CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.[103] Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

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ENDNOTES

[1] U.S. Const.. art. VI, cl. 2.
[2] U.S. Const., art. I, sec. 8, cl. 3.
[3] *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
[4] *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
[5] *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
[6] Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at http://www.latimes.com/news/local/la-me-medpot19-2009mar19,0,4987571.story
[7] See *People v. Mower* (2002) 28 Cal.4th 457, 463.
[8] Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
[9] H&S Code sec. 11362.5(a).
[10] H&S Code sec. 11362.7 *et. seq.*
[11] H&S Code sec. 11362.7.
[12] H&S Code secs. 11362.71–11362.76.
[13] H&S Code sec. 11362.77.
[14] H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.
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ATTACHMENT 2

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District Attorney

Issues Surrounding Marijuana in Santa Clara County

By Patrick Vanier, Supervisor of Narcotics Prosecution Team

Business Practices that Epitomize the Problems with the Proliferation of Marijuana Dispensaries

In 2014, the Santa Clara County District Attorney's Office prosecuted a case involving the transportation and possession for sale of six pounds of dried marijuana and twelve pounds of concentrated cannabis. The defendant told investigators he was delivering marijuana from a vendor on behalf of his San Jose-based marijuana club.

During trial, the director of the marijuana club, described as a "marijuana dispensary," testified to the business practice and organization of the club. The club consists of approximately 14,000 members between 2 "stores" in San Jose. 50 "vendors" throughout California sourced this "dispensary" with marijuana. Within the marijuana industry, the term "vendor" refers to a person who supplies marijuana to dispensaries and receives compensation for the product. The director identified the 50 vendors as persons who have marijuana cultivation sites which he has neither visited nor inspected. This particular dispensary does not pay city or state sales tax, or any income tax.

The club generates approximately $1 million a year in annual sales involving approximately 100 pounds of dried marijuana bud, 30-40 pounds of wax (a form of concentrated cannabis) and varying quantities of cannabis products in other forms. The concentrated cannabis products are primarily manufactured using butane or other chemical solvents. This method of manufacturing is a crime under California Health and Safety Code section 11379.6 because of the hazards associated with production.

The business practices and organization of this club epitomize the many problems resulting from the proliferation of marijuana clubs in Santa Clara County. Illegal marijuana cultivation operations generate a significant number of collateral crimes on the supply side. For example, marijuana clubs and dispensaries self-monitor in the absence of government oversight. Therefore, there is no way to be sure how and from whom the clubs are acquiring their inventory of cannabis products. Law enforcement agencies have gathered valuable intelligence that some clubs are selling marijuana harvested by illegal cultivation operations. This intelligence has been documented through arrested individuals, "vendor" membership agreements or Prop 215 notices referencing local dispensaries, and subpoenaed club records.

Marijuana Case Trends

The District Attorney's Office observed the following trends based on recent cases prosecuted by the Office. The following statistics include only issued cases, not pending investigations. Between 2011 and 2013, the Office issued criminal charges against 172 illegal marijuana growing operations. Of these cases, 118 were

identified as "indoor grows" and 54 were classified as "outdoor grows." Once again, these numbers only reflect a representative sample of cultivation operations within Santa Clara County.

Indoor Grow Operations
While indoor marijuana grow operations can be found in a variety of settings, including warehouses, barns, and back rooms of business establishments, the most common locations were single family homes in residential neighborhoods. These are locations where entire rental properties or vacant foreclosed homes are converted into clandestine greenhouses. The interior rooms for these homes are typically modified without construction permits, without permission from the banks (usually involving squatters) or knowledge of the rental property owners. With no regard to safety, structural integrity or value to the property, these former residences are generally ransacked.

Often times the electricity to homes where cultivation operations are present have been haphazardly rewired or compromised in other forms to accommodate the equipment – e.g. grow lights, fans, irrigation pumps, timers. Electrical circuit boxes are modified to bypass electricity from the power company's meters (usually PG&E) resulting in the theft of millions of dollars in energy. House fires associated to residential marijuana gardens are frequently caused by the theft of power. Investigators also report tremendous amounts of moisture and standing water inside these indoor grows from leaking water sources, as well as humidity associated with the indoor process. Standing water is a breeding ground for caustic spores, black mold and fungus. Puddles of water combined with extension cords and exposed wiring create electrical hazards. First responders typically wear protective gear and respirators to avoid these dangers.

Of 118 indoor marijuana grows over the last three years:

- 76 involved converted homes,
- 2 involved converted warehouses, and
- 41 of these locations were identified as rental properties.

In at least 61 of these cases, electrical bypasses were observed where theft of power was deemed present and there were 5 house fires associated to indoor cultivations. The victim homeowners for these vandalized properties are by and large burdened with hundreds of thousands of dollars in clean up costs from indoor grows.

Outdoor Grow Operations
The other source of harvested marijuana comes from outdoor marijuana gardens. A large number of outdoor cultivation operations reviewed by the District Attorney's Office were investigated by the Santa Clara County Marijuana Eradication Team (MET). Over the last three years, the MET team reported the removal of 355,005 marijuana plants and the seizure of 1,838 pounds of processed marijuana bud derived mostly from outdoor grow locations. These outdoor grow sites were typically discovered by detectives in remote areas of unincorporated Santa Clara County – eastern foothills of Milpitas and San Jose, Gilroy and Morgan Hill foothills, the base of the Santa Cruz mountains and the eastern foothills of Los Gatos, Los Altos and Saratoga. Marijuana gardens have been found on public lands (e.g. Henry Coe State Park and Midpeninsula Regional Open Space District) and private property in varying sizes. These grows can have a few hundred plants over a small plot of land or tens of thousands of marijuana bushes spread over many acres.

The number of marijuana plants will determine the yield potential for an operation. Most law enforcement experts conservatively estimate that a single marijuana plant can produce about 1 to 2 pounds of marijuana valued at $1,500 to $3,000 per pound (wholesale pricing). During harvesting periods for outdoor cultivations, May through October, the number of individual harvests for a single location can also impact

the profitability of the enterprise. Experienced growers can get two or three harvests on a single plot of land each year. The same is true for indoor marijuana locations, however, such locations can obviously grow year round.

The level of sophistication of these outdoor grows can vary as well. Some outdoor operations have only one or two experienced cultivators, while others have teams of migrant farm workers tending to the crop. The single most important variable for any outdoor grow is a nearby water source. Many outdoor operations are set up near creeks, rivers or reservoirs. Water is diverted without regulatory permits or permission from landowners. There have been numerous instances of water diverted to illegal marijuana grows from nearby legitimate farms. Illegal outdoor marijuana cultivators pollute waterways with pesticides, rodent poisons, human feces, trash, and soil erosion. Wardens with the California Department of Fish and Wildlife assist MET detectives with these investigations and recommend the charging of environmental crimes associated with marijuana cultivation. Of the 54 outdoor marijuana gardens charged between 2011-2013, at least 24 of the grow sites were on private land and 11 were on public property/open space. Environmental crimes were charged in 21 of these cases.

Other Associated Crimes

In addition to the crimes and social impacts unique to the two styles of marijuana cultivation, other alarming trends have been noted. Within the sample size of the 172 cases referenced above, firearms were located in 36 investigations. Other controlled substances, e.g. methamphetamine, were found in 25 cultivation sites. Children were reported present in 10 instances. Serious or violent felony crimes, e.g. burglary, robbery or assaults using deadly weapons, were reported in 8 investigations. In 2012, one investigation of an outdoor marijuana garden resulted in an officer involved shooting when one of the marijuana growers pointed a loaded .22 caliber semi-automatic rifle at a Fish and Wildlife Warden.

Organized Crime

Probably one of the least talked about issues involving marijuana grows has been the influence of organized crime. Law enforcement has documented numerous instances of organized crime controlling the cultivation of marijuana. Conservatively, at least 8 documented instances of Mexican National Drug Cartels and/or criminal street gangs have been tied to marijuana grows. At one outdoor marijuana operation, investigators found written references to the Sinaloa Drug Cartel and a drawing of "Jesus Malverde," the patron saint of drug traffickers. At another indoor-marijuana grow, officers found a "Santa Muerte" statute, a Mexican cult figure associated with violence, criminality, and the illegal drug trade.

Within the last five years, the U.S. Drug Enforcement Administration (DEA) and the Santa Clara County Sheriff's Office Multi-Jurisdictional Methamphetamine Enforcement Team (CAL-MMET) have identified multiple cartel drug trafficking cells operating within the county. These organizations are poly drug traffickers distributing methamphetamine, cocaine, heroin and marijuana. Through a variety of investigative techniques, DEA and CAL-MMET have learned that both indoor and outdoor marijuana cultivation is just one of many lucrative businesses operated by cartels to supplement the trafficking of methamphetamine and cocaine from Mexico. Mexican drug distributors will engage in human trafficking to bring farm workers up from the territorial regions the cartels control – Sinaloa or Michoacan – to tend to the cultivations. DEA and CAL-MMET investigations have resulted in the arrest of several high ranking drug distributors who have described to investigators firsthand how marijuana cultivation is a significant component to their overall business.

Law enforcement has also seen the rise of multiple Vietnamese criminal street gangs distributing marijuana within Santa Clara County. In 2010, California Department of Justice, Bureau of Narcotics Enforcement, investigated the Insane Viet Thugs (IVT), a documented street gang distributing marijuana and other

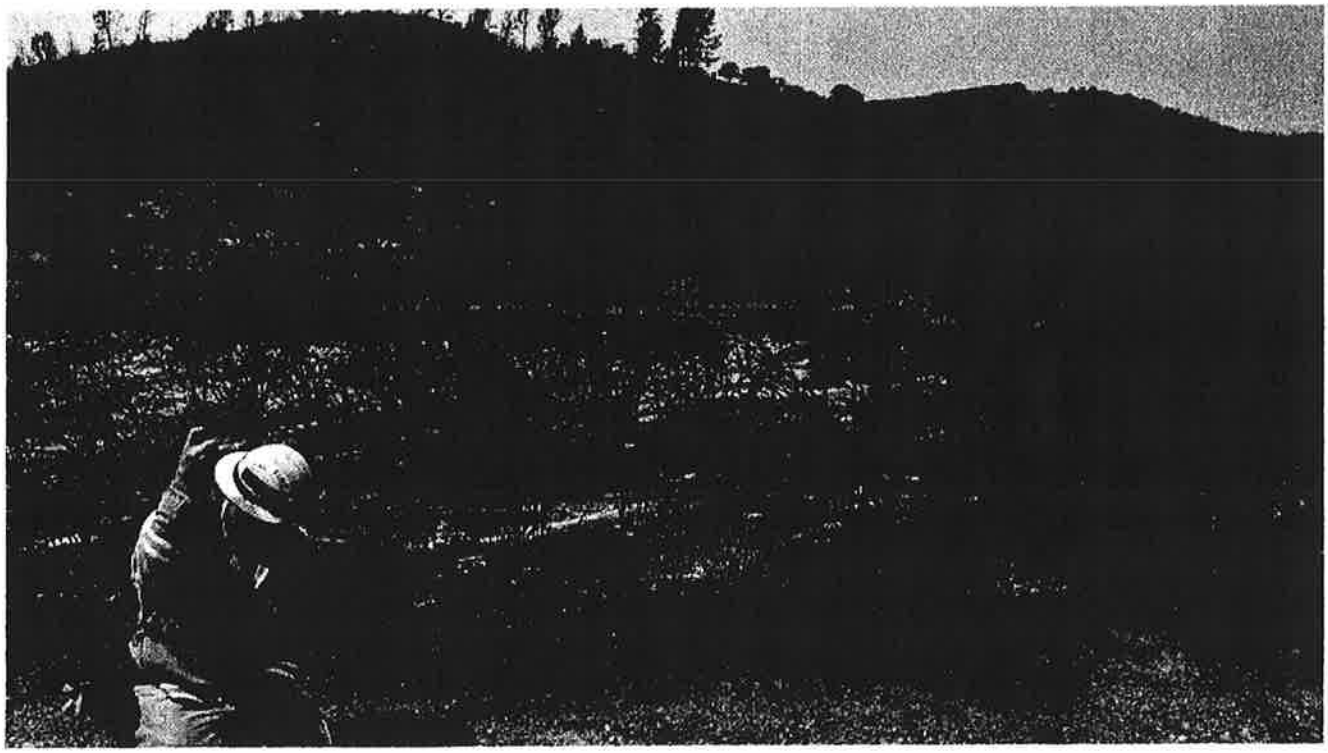
narcotics, as well as firearms. Agents learned through the investigation that IVT was managing a network of grow houses and distributing drugs throughout the Bay Area – San Jose to Vallejo. The investigation of IVT resulted in the service of 22 search warrants throughout the Bay Area and the prosecution of 22 validated or associate gang members, the seizure of approximately 1,500 marijuana plants from 5 indoor grow houses (a total of 7 grow houses were identified during the investigation) over 71 lbs of harvested marijuana, 16 firearms (including 3 assault weapons), over $110,000 in U.S. Currency and various quantities of heroin, cocaine, methamphetamine and ecstasy.

The information provided in this narrative demonstrates how the lack of any significant regulatory schemes to control the supply of marijuana to dispensaries is impacting public safety and quality of life within the county. DA Jeff Rosen supports Santa Clara County's efforts to establish comprehensive guidelines designed to prevent the dangerous and illegal activities from illegal cultivation and distribution of marijuana.

ATTACHMENT 3

ATTACHMENT 3

Fire that destroyed dozens of homes sparked by an illegal marijuana operation, officials say



Engineer David Irvine rests next to a fire-ravaged hillside along Water Trough Road in Lake County south of Clearlake on Aug. 5, 2015. (Genaro Molina / Los Angeles Times)

By **Associated Press**

AUGUST 17, 2016, 5:30 PM

A fire that destroyed 43 homes last year in a largely rural area north of San Francisco was sparked by an illegal marijuana-growing operation, officials said Wednesday, but the two suspects fled the country before they could be questioned.

The Rocky fire burned about 108 square miles in Lake, Yolo and Colusa counties, destroying 43 homes and 53 outbuildings before it was contained.

It began near where firefighters are now battling an unrelated fire that investigators say was caused by a serial arsonist.

Last year's fire was started by a faulty water heater near where about 100 marijuana plants were being grown east of Clearlake, said California Department of Forestry and Fire Protection spokeswoman Janet Upton.

"It was strapped to a tree. Quite inventive, and why it was not very safe," she said.

The fire was the second-most destructive in the Lake County area last year, behind the Valley fire that destroyed more than 1,300 homes. The cause of a third nearby fire that burned six houses remains under investigation.

In the current fire, Damin Pashilk, 40, of Clearlake, is charged with 17 counts of arson including setting the fire that has now burned a portion of the town of Lower Lake. But officials say he is not a suspect in any of last year's three big fires.

The Rocky fire was one of at least five marijuana-related wildfires in Northern California last year, with four more reported so far this year. Southern California's climate isn't as favorable for growing marijuana at the lower elevations overseen by CalFire, Upton noted.

Officials could not say whether the nine recent fires are an increase. But it's concerning enough that the department is considering breaking out such fires into a separate category when it revises its reporting system in 2018, Upton said.

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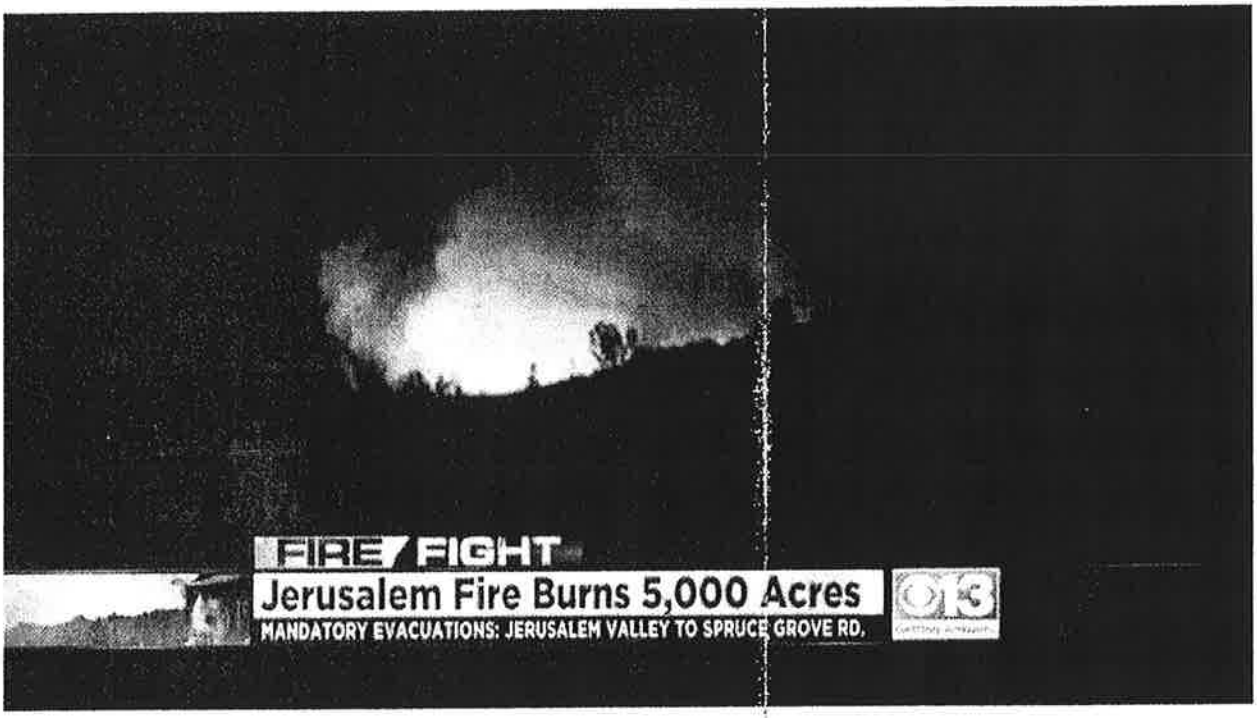
Man allegedly sets fire to protect marijuana plants from Jerusalem blaze



The fire is burning near the massive Rocky Fire.

By **Veronica Rocha**

AUGUST 11, 2015, 7:08 AM

On Sunday evening, firefighters were battling more than a dozen fires across Northern California, including a new one called the Jerusalem fire that was exploding north of Napa in Lake County.

Then they received reports of another fire nearby. Officials quickly determined this fire had been set intentionally by a man allegedly trying to protect his marijuana-growing operation.

Juan Ramos Silva, 49, of Lower Lake was taken into custody on suspicion of arson and setting a backfire, according to the California Department of Forestry and Fire Protection.

Silva started the large backfire at 5:43 p.m. Sunday, a couple of miles away from the Jerusalem fire in a rural, sparse area northeast of Middletown, said Lt. Steve Brooks of the Lake County Sheriff's Office.

Silva told deputies he started the blaze to prevent the Jerusalem fire from reaching his home. But officials concluded he set the fire behind the marijuana grow to "protect his plants, not his residence," Brooks said.

Silva told deputies he was a firefighter in Mexico years ago and "had attempted to conduct a controlled burn on the back of his property to protect it."

As some firefighters dealt with that blaze, a much larger force was evacuating residents and trying to control the Jerusalem fire, which burned 5,000 acres in less than a day, fueled by drought conditions and winds.

More than 10,000 firefighters are battling 18 fires in California. More than 50 fire engines from Arizona, Nevada and New Mexico were sent to California to bolster the army.

Silva is the fifth person arrested on suspicion of arson in the last two weeks, according to CalFire.

"Especially now with the dry conditions from the drought, we will absolutely not tolerate arson of any type and will track down those suspected of causing harm to our communities," CalFire Chief Ken Pimlott said in a statement.

CalFire spokeswoman Amy Head said 95% of all fires are started by people.

"If you live in California, you need to be prepared," she said.

Because of the drought, firefighters are experiencing unprecedented fire activity that is aggressive and explosive, Head said. Fires are usually fanned by winds. But that's not the case this year. Bone-dry woodlands are driving flames, and fires are becoming unpredictable.

The Jerusalem fire, she said, is the latest example of how dry brush and rugged terrain could be explosive.

Residents in Lake County are now dealing with two large wildfires consuming thousands of acres of woodlands north of Napa: the Jerusalem fire and the Rocky fire. The causes of the fires are under investigation.

The Jerusalem fire, named for its proximity to Jerusalem Road, came days after firefighters began to gain ground on the massive Rocky fire. The Jerusalem fire started at 3:42 p.m. Sunday, CalFire officials said.

Firefighters battled the blaze as flames moved northeast in dense brush and steep terrain, toward nearby communities. Crews and additional resources were pulled away from the Rocky fire to help several miles south in the firefight.

Residents living in the Jerusalem Valley area east of Spruce Grove Road are under mandatory evacuation orders.

Firefighters were still battling the 69,636-acre Rocky fire, which was 85% contained. The erratic blaze that burned across three counties destroyed 43 homes and 53 outbuildings; eight structures were damaged.

The Rocky fire is the largest burning in California.

Strong winds are expected across northeastern California and parts of the northern Sierra Nevada. Parts of Del Norte, Humboldt, Siskiyou and Trinity counties will be under a red flag warning and fire weather watch starting Monday afternoon because of gusty winds and possible dry lightning.

Veronica.rocha@latimes.com

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UPDATE

7 a.m., Aug. 11: This article was updated throughout.

1:52 p.m., Aug. 10: This story has been updated throughout with new details, including an arrest being made.

This story was originally published at 8:17 a.m.

This article is related to: Crime, Arson, Droughts and Heat Waves, Weather

Recordnet.com
News worth sharing *online*

Arrest made in cannabis robbery

Monday Posted
Oct 24, 2016 at 6:52 PM
Updated Oct 24, 2016 at 6:52 PM

By **Joe Goldeen**
Record Staff Writer
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SAN ANDREAS — Calaveras County sheriff's deputies arrested a man over the weekend wanted for a marijuana robbery and shooting that took place earlier last week.

Kevin Louis Cucuk was arrested about 7:45 p.m. Saturday hiding out in a residence on Pine Cone Lane in West Point. He was charged with suspicion of attempted homicide, robbery, kidnapping, false imprisonment, assault with a deadly weapon and being a felon in possession of a firearm, according to the Sheriff's Office.

Last Tuesday, Calaveras deputies responded to Bummerville Road near West Point on the report of a marijuana robbery at 2:50 a.m. A victim told the deputies that as he was trimming marijuana plants, a suspect appeared and pointed a gun at the victim's face, ordering him not to move.

The assailant ordered the victim to walk a short distance and sit down while he placed a large amount of marijuana onto a tarp. He then ordered the victim to bring him a motorcycle. The assailant then took the motorcycle, valued at $2,500, and the marijuana, valued at $5,000, according to the report.

At one point, the victim reportedly heard the assailant and an unknown person talking, but he could not see that other person.

Within one minute after the robbery, the owner of the marijuana arrived. He and the victim walked to the edge of the property where they saw someone on the motorcycle. Shots were fired from two different types of firearms in their direction, the Sheriff's Office reported.

One of the victims identified Cucuk as the robbery suspect as well as linked him to other crimes related to this case and investigation, according to the report.

The Sheriff's Office believes Cucuk has been involved in other robberies of marijuana in the area. If anyone has been the victim of a similar crime, contact the Investigations Division at (209) 754-6564 or (209) 754-6500.

— Contact reporter Joe Goldeen at (209) 546-8278 or jgoldeen@recordnet.com. Follow him at ..... and on Twitter @JoeGoldeen.

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Explosion unveils marijuana extraction lab in Murrieta (UPDATE)

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By ANNE MILLERBERND / STAFF WRITER

Published: Aug. 26, 2016 Updated: Aug. 27, 2016 6:16 p.m.

Updates with arrest, details

A honey oil lab exploded inside a Murrieta home on Friday, Aug. 26, damaging a home but causing no injuries.

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Anyone with information on this incident is asked to call the watch commander at 951-696-3615. Witnesses may also provide information anonymously through We Tip at 800-782-7463.

possession of marijuana for sale and arson, according to a news release from the Murrieta Police Department.

A shotgun was recovered, the release said, and the Police Department will ask that Delvecchio be charged with being a felon in possession of a firearm.

Detectives said they found 226 grams of marijuana wax (honey oil) with a street value of at least $9,040. Detectives also located 7,389 grams of marijuana with a street value of at least $184,725.

Cannabis oil, also called honey oil, is a name for the concentrated liquid extracted from marijuana. It tends to be a goldish yellow color. The process for making it -- using a butane gas flame -- can be dangerous. The fumes can ignite or explode, especially if the process is done indoors where the fumes collect instead of dissipate.

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In this case, detectives determined that the explosion occurred as a result of the honey oil being placed in the refrigerator for the purposes of cooling it, which is part of the manufacturing process. Traces of butane gas remain with the honey oil even after the process is completed.

Butane gas is heavier than air and will settle at the lowest point, police said. Before the explosion Friday, the butane gas emitted from the honey oil settled at the bottom of the refrigerator near the compressor. Once the compressor was activated, the butane gas reacted to this ignition source, which resulted in an explosion.

Anyone with information on this incident is asked to call the watch commander at 951-696-3615. Witnesses may also provide information anonymously through We Tip at 800-782-7463.

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Frightening Alleged Robbery of Marijuana Shop Ends Like 'Dumbest Criminals Video'

by Chris White | 12:11 pm, August 9th, 2016

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What began as a very dangerous armed robbery at a marijuana shop near Seattle on Sunday ended more like a scene from *America's Dumbest Criminals.*

According to *KOMONews.com*, police say two men, one of whom was armed, forced their way into the Have a Heart marijuana dispensary on Sunday night and tied up the store employees at gunpoint.

As the alleged robbery was in progress, store manager **Damon Martinez** said he happened to be monitoring a live feed of the store's surveillance camera system. Martinez said he immediately called the police and was able to provide the dispatcher with crucial details about the alleged perpetrators.

Martinez told *KOMONews.com*, "When I saw them open the door, they immediately put a gun on one of the staff's face, put them on the ground, and I immediately called 911."

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progress, police were able to set a secure perimeter around the building, according to Seattle police detective **Mark Jamieson**.

Meanwhile, the alleged robbers reportedly continued to go through the store, stuffing marijuana and cash into two duffle bags.

According to Jamieson, the two masked men eventually exited the building, only getting a few steps from the door before being told to stop by responding officers. The two suspects were immediately taken into custody without incident and booked into the King County Jail. Police say they recovered a handgun and two duffle bags from the alleged suspects.

"It was almost like the dumbest criminals videos," Martinez told the news station, speaking about how the incident ended.

The store employees were reportedly able to free themselves, and although still somewhat shaken up by the incident, none suffered any physical injuries.

Marijuana dispensaries in the Seattle area have seen an increase in attempted robberies lately, according to the report. Seattle area Congressman **Denny Heck** told the news station the increase in robbery attempts is a result of the fact that marijuana dispensaries are cash-only businesses. Banking institutions, essentially, do not want to run afoul of federal law by accepting credit card payments for marijuana, which, under federal law, is still considered to be an illegal drug.

"All cash. That is a magnet for crime," Congressman Heck told the reporter. "And we ought to do away with it and provide these legally constituted businesses access to banks."

Ryan Hunkel, a co-owner of Have A Heart, also said he he fears marijuana shops will remain a target until the banking laws change.

Although, he added, thieves seem to have the wrong idea about how much cash the dispensaries actually keep in the stores.

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Hash oil burns a growing problem for California hospitals

By - *Associated Press - Sunday, June 7, 2015*

SACRAMENTO, Calif. (AP) - Tracey Clark's two teenage sons landed in intensive care, enveloped in gauze and their faces raw and red from burns over 40 to 60 percent of their bodies suffered in a fire, which prosecutors say was caused by an illegal hash-oil lab at their uncle's duplex.

"I was scared they were going to die," said Clark.

Similar scenes have played out throughout California in recent years as intense fires from the illegal manufacture of butane hash oil - cheap and easy to make but extremely volatile - have exploded, the Sacramento Bee reported Sunday (http://bit.ly/1IvDmbj).

At two of Northern California's major burn treatment centers - UC Davis Medical Center in Sacramento and Shriners Hospitals for Children, Northern California - injuries from butane hash-oil explosions account for 8 to 10 percent of severe burn cases, a larger percentage than from car wrecks and house fires combined, said Dr. David Greenhalgh, chief burn surgeon at both hospitals.

"It's kind of an epidemic for us," Greenhalgh said. There have been times when half of the 12 beds in UC Davis' burn unit were filled with patients injured in hash-oil explosions, he said.

Between 2007 and 2014, 101 patients with suspected or confirmed burns from butane fires were admitted to the two hospitals, most of them in the past three years, according to Greenhalgh. Most were adults, but six of the admitted patients were under 18.

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Statewide, illegal manufacturing of hash oil has become a public health menace on a par with illegal methamphetamine labs in prior decades. While federal and state statistics on butane hash-oil explosions are not readily available, there are numerous reports of arrests and fires at the local level.

In Butte County, for instance, prosecutors said 31 illegal hash-oil operations were uncovered in 2014. "We're already on track to exceed that this year," District Attorney Michael Ramsey said. The numbers are similar to the annual count of meth labs the county was breaking up in the 1980s and '90s, he said.

Butane hash oil, a highly concentrated form of cannabis, is illegal to manufacture but is legal to sell under California's medical marijuana law, meaning dispensaries must get their supply from illicit operations, according to law enforcement officials.

Hash oil, made from discarded marijuana trimmings and used to make cookies and candies, sells for $800 to $1,300 per pound wholesale and can have a retail street value of $22,000 per pound.

The lucrative market is helping to drive hash-oil production, while the wide availability of online videos and inexpensive supplies is compounding the number of tragic fires, said law enforcement and medical professionals.

Lawmakers are looking at ways to regulate the sale of butane. A bill introduced in February would prohibit any individual from buying more than 400 milliliters of butane in a month and impose reporting requirements on retailers.

Similar limits on the cold medicine pseudoephedrine, a key ingredient of methamphetamine, are credited with curbing meth production in California in recent years.

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Marijuana labs spawn lethal explosions across the country

Firefighters and other emergency personnel at the scene of a house explosion in the Bronx borough of New York. Authorities believe that the house was the site of an indoor marijuana growing operation. (Mary Altaffer / Associated Press)

By **Verena Dobnik**

OCTOBER 1, 2016, 12:45 PM | REPORTING FROM NEW YORK

An explosion that destroyed a New York City home and killed a veteran firefighter has drawn attention to marijuana-making methods that are legal in many states — but can also be lethal.

A New York fire battalion chief died responding to the blast Tuesday in a Bronx home that authorities say had been converted into an indoor marijuana farm. They're investigating whether the alleged growers tampered with gas lines and mishandled other materials in ways that caused the explosion.

Indoor marijuana farmers can create potential fire hazards by using natural gas, propane or butane to power carbon dioxide generators that make the plants grow. In recent years across the country, similar methods used to produce more potent marijuana extracts have resulted in explosions and other catastrophes.

Indoor gas use "is a standard way to grow marijuana," says Michael O'Hare, a professor at UC Berkeley who is an expert in cannabis cultivation. "If you raise the CO_2 level, it'll grow faster."

Some growers rely on tanks of propane or butane gas because using large amounts of metered gas from a utility could draw the attention of authorities, O'Hare said. In those conditions, a gas leak could spell disaster, he said.

An hour before the explosion at about 7:30 a.m. on Tuesday in the Bronx, dozens of nearby residents said they could smell gas wafting over the neighborhood. The house had already been evacuated and fire personnel were on the scene when the blast sent debris flying, killing Chief Michael Fahy, a 17-year fire department veteran and father of three. His funeral was held Saturday.

Two suspects, Garivaldi Castillo and Julio Salcedo, were arrested and are being held on drug charges while authorities try to determine whether there is evidence that could result in more serious counts related to Fahy's death.

Prosecutors said in court this week that the two-story Bronx property was full of combustible items related to the pot operation, including grow lamps and vats of liquid fertilizer. Windows were sealed and other areas covered with extra insulation to retain heat. Plants the size of "small trees" were growing in bedrooms on the upper floor, prosecutors said.

Given that only about half of U.S. states have legalized marijuana, either for medical or recreational use, it's impossible to estimate how many such growth labs exist, O'Hare said.

In marijuana production-related accidents, more than 30 people were injured last year in Colorado from butane explosions involving hash oil — a concentrated form of marijuana extracted from the plant's leaves and flowers.

Last year, a marijuana dispensary in Santa Fe, N.M., was engulfed in flames after a blast that injured two workers. Fire department investigators said a butane leak met with an ignition source, causing an explosion powerful enough to separate the roof from the wall and melt fluorescent lights.

And in Washington state, federal prosecutors have brought charges in five cases involving explosions during hash oil production. The former mayor of Bellevue died while trying to escape a fire linked to such activity.

In the past year or so, an especially strong concentrate is appearing — "shatter," a form of cannabis wax derived from butane hash oil that is about five times more potent and faster-acting than unrefined smoked cannabis. It's legal for recreational use in states such as Colorado and Washington, and sold in medical marijuana dispensaries in other states.

Dobnik writes for Associated Press.

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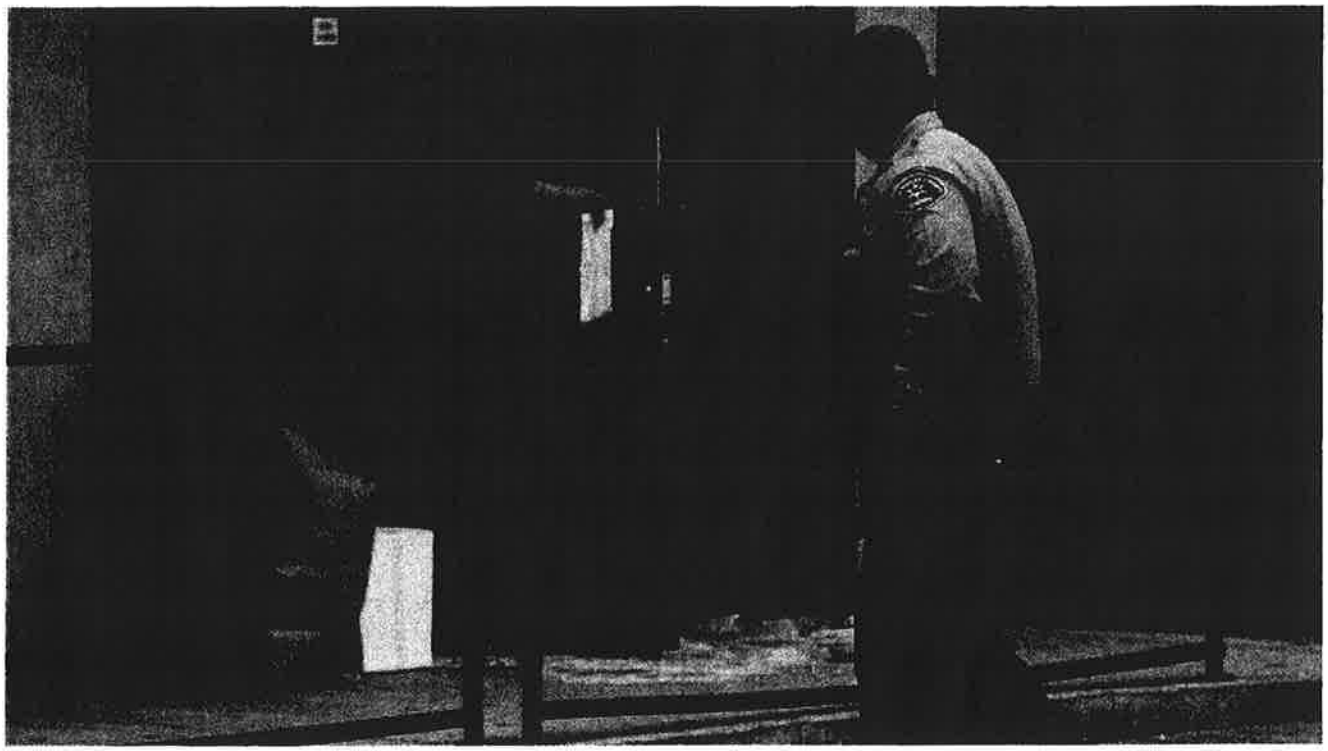
This article is related to: Homicide, Crime

Most pot dispensaries are forced to be cash-only. Now they're prime targets for violent robberies



Members of the Los Angeles County Sheriff's Department collect evidence at a marijuana dispensary in Walnut Park in June. The shop's owner shot and wounded two men trying to rob the store, authorities said. (Mark Boster / Los Angeles Times)

By **Rick Anderson**

JULY 11, 2016, 3:00 AM

The recent killing of a marijuana store security guard in Colorado and the wounding of another guard in San Bernardino are the latest examples of the crime lure posed by cash-only pot dispensaries, industry observers say.

But while those armed robbery attempts and a pot store shootout in Walnut Park in Los Angeles County were unfolding last month, Democratic-sponsored legislation that could have led to more dispensaries offering plastic and electronic payments in lieu of cash was blocked by House Republicans.

"Moments such as this," said security expert Michael Jerome of Blue Line Protection Group, referring to the recent killing of 24-year-old Colorado pot store guard Travis Mason, "remind us that the cash-based nature of the legal cannabis industry here in Colorado makes these dispensaries and cultivation facilities prime targets."

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A former Marine with a wife and three children, Mason was shot in the head on June 19 by two armed robbers at the Green Heart pot dispensary in Aurora, a Denver suburb. It was his second week on the job.

The would-be robbers, who fled without any money, are still being sought. Rewards totaling $12,000 have been offered for their capture.

"This incredibly sad situation underscores the public safety risk faced by our industry due to the fact that we don't have access to banking," Michael Elliott, executive director of the Marijuana Industry Group, told the Aurora Sentinel.

That risk was underscored on June 8 when a Walnut Park medical marijuana dispensary owner survived a shootout with two would-be robbers. On his security camera, the owner spotted the two men arriving with masks and armored vests, according to a Los Angeles County sheriff's spokesman. One was carrying an assault rifle. The owner drew his own gun and wounded the two as they entered. The owner escaped unharmed.

Santa Ana police recently announced a $100,000 reward for information leading to the arrest of a suspect in the shooting of another marijuana dispensary owner, Derek Worden, 48, who survived two bullet wounds outside his store in November.

Police said anonymous donors provided the reward money after the investigation stalled. Worden's dispensary had been open for just four months. The shooter ran off without any money, officials said.

Crime statistics concerning legal dispensaries are hard to come by as the industry expands, and, understandably, operators are reluctant to talk about how much cash they can have on hand. But in a late-night Seattle dispensary break-in last year, for example, thieves got away with $100,000 in cash, police said.

Recreational use of marijuana is dominated by Western states – it's legal in Colorado, Washington, Oregon, Alaska and Washington, D.C. Altogether, 25 states and the District of Columbia allow some form of recreational or medical marijuana use.

California, Nevada and six other states could make marijuana legal in a majority of U.S. states in November when they vote on legalization measures. Marijuana Business Daily reports that potential ballot measures loom in another six states, and predicts that legal pot could become an $8-billion industry in the U.S. by 2018.

But marijuana use remains illegal under federal law, causing most banks to steer clear of the industry. As a result, most dispensaries must deal in cash.

The Senate recently approved legislation to protect banks against repercussions if they do business with marijuana dispensaries, but a Republican-controlled committee blocked a similar amendment in the House.

One of the co-sponsors, Rep. Dennis Heck (D-Wash.), mentioned slain Colorado pot store guard Travis Mason after the GOP action. Heck told the National Journal that "every single member who opposed allowing this amendment ought to have that young man's name tattooed on their body to remind them."

More banks are opening their vaults to pot entrepreneurs, the Associated Press reports. In March, 300 financial institutions were working with marijuana companies, based on federal data. That compares to 51 in March 2014.

But cash-only remains a business hazard. Four days after Mason's killing in Colorado, a 35-year-old San Bernardino medical marijuana dispensary guard was shot in the head. He survived but remains in critical condition. Three armed robbers got away with a haul of cash.

That was similar to a robbery last year at a San Bernardino dispensary, except in that case, the guard, Anthony Victor Pineda, 25, died from his wounds, police said. The robbers fled with the cash.

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Criminals target medical marijuana

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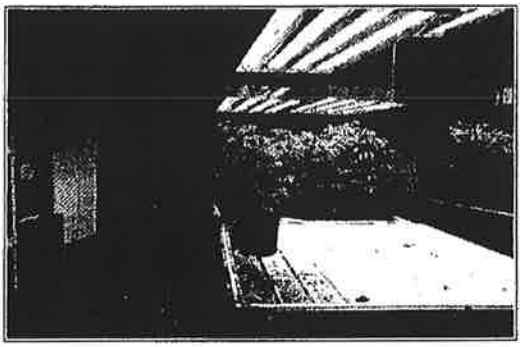
Wash. shootout involving activist highlights risk to growers

Associated Press
updated 3/18/2010 9:05:04 PM ET

SAN FRANCISCO — Patients, growers and clinics in some of the 14 states that allow medical marijuana are falling victim to robberies, home invasions, shootings and even murders at the hands of pot thieves.



Steve Sarich stands in a room used to grow medical marijuana in his home in Kirkland, Wash. Poli investigated a shootout between Sarich and a robber in his home on Monday. Sarich says he uses

There have been dozens of cases in recent months alone. The issue received more attention this week after a prominent medical marijuana activist in Washington state nearly killed a robber in a shootout — the eighth time thieves had targeted his pot-growing operation.

Critics say the heists and holdups prove that marijuana and crime are inseparable, though marijuana advocates contend that further legalization is the answer. News of crimes related to medical marijuana comes at an awkward time for California and Washington advocates who are pushing to pass ballot measures to allow all adults, not just the seriously ill, to possess the drug.

"Whenever you are dealing with drugs and money, there is going to be crime. If people think otherwise, they are very naive," said Scott Kirkland, the police chief in El Cerrito, Calif., and a vocal critic of his state's voter-approved medical marijuana law.

"People think if we decriminalize it, the Mexican cartels and Asian gangs are going to walk away. That's not the world I live in," Kirkland said.

Unwanted attention

Activists and law enforcement officials say it is difficult to get an accurate picture of crimes linked to medical marijuana because many drug users don't report the crimes to police for fear of arousing unwanted attention from the authorities. But the California Police Chiefs Association used press clippings to compile 52 medical marijuana-related crimes — including seven homicides — from April 2008 to March 2009.

There also is plenty of anecdotal evidence:

- A man in Washington state was beaten to death last week with what is believed to be a crowbar after confronting an intruder on the rural property where he was growing cannabis to treat painful back problems.
- Medical marijuana activist Steve Sarich exchanged gunfire with intruders in his Kirkland, Wash., home near Seattle on Monday, shooting and critically injuring one of them.
- In California, a boy was shot to death while allegedly trying to steal a cancer patient's pot plants from his home garden.
- A respected magazine editor was killed in 2007 by robbers who targeted his Northern California home for marijuana and money after hearing that his teenage son was growing pot with a doctor's approval.
- Robbers killed a security guard at a Los Angeles medical marijuana dispensary in 2008.

Police and marijuana opponents say the violence is further proof that the proliferation of medical marijuana is a problem that will worsen if the drug is legalized or decriminalized.

Pot activists say the opposite: that prohibition breeds crime and legalization would solve the problem. They also say the robberies have exposed the need for more regulation of medical marijuana laws in states like California, Washington and Colorado.

"The potential for people to get ripped off and for people to use guns to have to defend themselves against robbers is very real," said Keith Stroup, founder and chief legal counsel for the National Organization for the Reform of Marijuana Laws. "But it's nothing to do with medical marijuana. It is to do with the failure of states to regulate this."

Marijuana advocates say there is adequate regulation in New Mexico, where officials say there have been no violent medical marijuana robberies.

Medical cannabis is primarily grown by a small number of regularly inspected nonprofits in New Mexico, and the state keeps their names and locations confidential. The law includes extensive requirements covering security, quality control, staff training and education about the use of the drug.

Vague rules

Most medical marijuana states have only vague rules for caregivers or dispensaries participating in a business with products that can fetch $600 an ounce. Some states, including California and Colorado, can only guess how many pot dispensaries they have because the businesses don't have to register with the state.

"This is ridiculous, in my opinion, to have medical marijuana and no regulation," Stroup said. "A jewelry store wouldn't open without security, and if it did, a scuzzy person's going to break in and steal all their diamonds."

Stephen Gutwillig, California director of the pro-pot Drug Policy Alliance, said that while the robberies are disturbing, there is no way to conclude that legalized marijuana breeds any more crime than convenience stores, banks or homes stocked with expensive jewelry and electronics.

In fact, Denver police said the 25 robberies and burglaries targeting medical marijuana in the city in the last half of 2009 amounted to a lower crime rate than what banks or liquor stores there suffered.

"I think what we are seeing is a spate of crime that reflects the novelty of medical marijuana cultivation and distribution through unregulated means," Gutwillig said.

Marijuana is still illegal under federal law, but the Obama administration loosened its guidelines for prosecutions of medical pot last year. The Justice Department told federal prosecutors that targeting people who use or provide medical marijuana in strict compliance with state laws was not a good use of their time.

The decision energized the medical marijuana movement and came as Washington state and California are trying to get pot legalization measures on the ballot. Activists are still gathering signatures, and it's not yet known if the measures will qualify for the ballot.

Meanwhile, California cities have been trying to rein in the drug in response to a medical marijuana law that is the nation's most liberal.

Detective Robert Palacios of the Los Angeles Police Department said he has investigated a half-dozen dispensary robberies in the last year, but he has seen the number of such crimes drop in recent weeks after the City Council moved to close many stores.

In all the cases he's investigated, armed robbers have stolen marijuana, cash and other items. They often resell the drug on the street.

"They are going into a business and using a threat of force," Palacios said. "Even though they are in an establishment that itself is questionably legal, it's our duty to investigate."

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CRIME

Marijuana Deliveryman Robbed in Richmond

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$1,000 and one pound of pot missing

by Shoshana Walter — May 28, 2010, 12:08 a.m. 0

A San Francisco State student who delivers medical marijuana door-to-door was robbed at gunpoint just after midnight Thursday in Richmond. The assailants took $1,000 in cash and a pound of pot.

Aaron Chandler, 33, runs Alternative Rx Solutions, a business he describes as a mobile medical marijuana dispensary catering to lower-income, ill and disabled patients.

Chandler, reached later by telephone, said he received a delivery order through his website around 9 p.m. Wednesday for a pound of marijuana from a Richmond man. He traveled from San Francisco to an address on the 4800 block of Cutting Boulevard to deliver it. When he arrived at about 12:15 a.m., police say he and two friends were robbed at gunpoint of the product and their cash.

To become a member of Chandler's collective, a patient must register using a medical marijuana identification number or upload a scan of a doctor's recommendation. Chandler said he also asks for proof of identification upon delivery.

He said he never got that opportunity

Chandler said he usually closes shop at about 7 p.m., but when he talked to the man on the phone, his story seemed credible.

"He claimed to have his own collective and said he had patients that were disabled and that he wanted to try to see me, but he had his daughter with him and his daughter was asleep and he had to leave early in the morning to meet a sick patient," Chandler recalled. "He sounded really sincere, like a really good guy. I didn't think it would be a problem to go help him out."

Chandler said he, his girlfriend and a friend hopped into Chandler's truck with the pound of marijuana the man had requested.

About the Author

Shoshana Walter
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stole money from Chandler's girlfriend and the friend. Chandler said the man rifled through his pockets and told him he wouldn't be able to find him because the medical marijuana ID number he'd used to place the order was stolen.

"And then they kind of surrounded me. They were just like, 'Welcome to Richmond,' and somebody hit me one more time across the back of my head and they took off running across the street."

Having written about conducting safe transactions on his blog, Chandler said the robbery hurt his sense of trust more than his business.

Richmond police said the incident could have been avoided with common sense.

"We would dissuade people from trying to do these types of transactions, even if they're legal," said Lt. Mark Gagan of the Richmond Police Department.

"At face value, it's a very serious crime that these people are victims of. But if this was any type of transaction on eBay, you wouldn't be buying an antique at midnight under a carport."

Gagan said robberies at storefront dispensaries are not uncommon, but mobile dispensaries are particularly vulnerable to crime.

Chandler said he won't make the same mistake again. "I really like to help people and I kind of get blinded by that sometimes."

The San Francisco State student has already outlined new security measures.

"There are some places we just won't go. Don't do anything after dark unless you're already familiar with the patient in your collective and only deal with patients in your collective," he said.

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Places with More Marijuana Dispensaries Have More Marijuana-Related Hospitalizations

PITTSBURGH, Aug. 10, 2015 – People who live in areas of California with a higher density of marijuana dispensaries experience a greater number of hospitalizations involving marijuana abuse and dependence, a University of Pittsburgh Graduate School of Public Health analysis discovered.

The National Institutes of Health-funded research, published online and scheduled for the Sept. 1 issue of the scientific journal *Drug and Alcohol Dependence*, could be informative as more states consider legalizing marijuana for medical and recreational use. It is the first analysis of the statewide impact of marijuana dispensaries on abuse and dependence, as well as the first look at population characteristics associated with marijuana-related hospitalization rates.

"As marijuana is approved for medical or recreational use, we need to carefully consider where we allow dispensaries to be placed," said lead author Christina Mair, Ph.D., assistant professor in Pitt Public Health's Department of Behavioral and Community Health Sciences. "Our study indicates that there are real problems associated with a higher density of marijuana dispensaries in neighborhoods. More study and monitoring, coupled with thoughtful legislation and community discussion, will be prudent to ensure that marijuana laws have the fewest negative consequences for vulnerable populations."

In 1996, California was the first state to legalize medical marijuana, allowing physicians to prescribe the drug for medical purposes. Since then, 22 states and Washington, D.C., have enacted similar laws, and four of those states also have legalized recreational use. Pennsylvania doesn't allow either, though it is considering permitting medical marijuana.

Dr. Mair and her team looked at data on California hospital discharges that had either a primary or secondary medical code for marijuana dependence or abuse with at least one overnight hospital stay. The research covered 2001 through 2012, the most recent years for which consistent data were available.

Hospitalizations with marijuana abuse or dependence codes increased from 17,469 in 2001 to 68,408 in 2012. More than 85

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percent of marijuana-related hospitalizations were coded as abuse, rather than dependence, and 99.2 percent were secondary codes, meaning the person was primarily hospitalized for something other than marijuana.

When the research team mapped the location of marijuana dispensaries and cross-referenced it with the ZIP code of each patient's home, they found that each additional dispensary per square mile in a ZIP code was associated with a 6.8 percent increase in the number of hospitalizations linked to marijuana abuse and dependence.

In addition, Dr. Mair and her team found that marijuana dispensaries and hospitalizations were more likely to be located in areas with lower household incomes and lower educational attainment.

"It's unclear if the marijuana dispensaries are simply locating in neighborhoods that tend to be more disadvantaged and already have underlying problems with marijuana abuse, or if the presence of the dispensaries is causing an increase in abuse and hospitalizations," said Dr. Mair. "It could be a combination of both factors."

Dr. Mair noted that research on the location of marijuana dispensaries has a parallel precedent in the location of liquor stores. This gives policymakers and public health practitioners the opportunity to learn from previous studies on the health effects of density and location of liquor stores in order to design studies that can provide similar data on marijuana dispensaries.

"Once dispensaries open, it is much harder to go back and create regulations to guide their location and density," said Dr. Mair. "Passage of laws permitting marijuana use and sale is likely to continue, so it is critical that we continue to research the impact of dispensaries on the health of local communities to provide guidance on regulations and public health outreach to prevent abuse."

Additional researchers on this project include senior author Bridget Freisthler, Ph.D., of UCLA's Luskin School of Public Affairs. Co-authors are Andrew Gaidus, M.E.M., and William R. Ponicki, M.A., of the Prevention Research Center in Oakland, California.

This research was funded by the NIH's National Institute on Drug Abuse grant R01-DA-032715.

http://www.upmc.com/media/NewsReleases/2015/Pages/mair-marijuana.aspx

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Regulating marijuana delivery services — not just dispensaries — could help address recreational use

Banning medical marijuana dispensaries or regulating their number and density in a given city may not be sufficient to lower marijuana use if delivery services open in their place, according to UCLA research.

The new study, led by UCLA social welfare professor Bridget Freisthler and co-authored by Paul Gruenewald of the Pacific Institute for Research and Evaluation, compares self-reported marijuana use by almost 9,000 people in 50 California cities where medical marijuana is available through storefront dispensaries and delivery services. The study's authors say the results can help lawmakers understand how regulatory practices affect marijuana use across cities.

A key finding from the study was that people in cities with greater availability of medical marijuana — as measured by the density of dispensaries and delivery services — reported more current marijuana use and more frequent use. In addition, the number of storefront dispensaries in a community was more closely related to frequency of marijuana use than the availability of delivery services was.California allows marijuana use for medicinal purposes but gives regulatory control of dispensaries to local jurisdictions. But, Freisthler said, despite heightened interest from public health

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researchers and an emerging understanding of statewide policies, little is known about how access to marijuana through dispensaries corresponds to patterns of use on a city-by-city basis — and whether marijuana legalization is actually leading to greater use.

"The relationship between the physical availability of marijuana and the number of medical and recreational users could suggest a supply-and-demand relationship in which dispensaries and delivery services are opening in locations with higher demand," said Freisthler, a faculty member at the UCLA Luskin School of Public Affairs.

"In terms of future policy, this could mean that banning storefront dispensaries or regulating the number and density of dispensaries may not be sufficient ways to reduce marijuana use if delivery services open in their place," she said. "The implication is that regulating delivery services needs to occur along with the regulation of storefront dispensaries."

Researchers also found that 18- to 29-year-olds were more likely to use marijuana currently and frequently than any other age group, which suggests that that concerns about young people's access to marijuana may be warranted.

The study was published Sept. 2 in Drug and Alcohol Dependence. It was funded by the National Institute on Drug Abuse.

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Medical Marijuana Deliveryman Robbed by Baton-Wielding 'Ninja Warriors'

Submitted by IWB, on March 26th, 2012

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WEST COVINA (CBS) — A medical marijuana deliveryman was still shaken up on Monday after what he described as a robbery by two men allegedly dressed as ninja warriors.

KNX 1070?s John Brook reports the robbers used the martial arts getup to conceal their identity as they got away with a big bag of marijuana.

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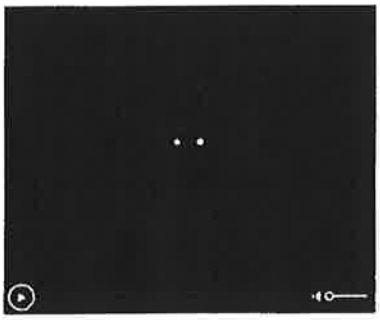
The assailants were reported dressed in all black with masks over their faces and wielded martial arts batons — known as *tong fa* — to intimidate the deliveryman around 10 p.m. last Friday at an apartment house along the 800 block of South Sunset Avenue in West Covina, police said.

"After he made his delivery, he was walking back to his vehicle and was approached by two males in their 20s wearing ninja costumes and holding white batons," said Sgt. Travis Tibbets.

The victim dropped the bag of marijuana and fled the scene, said Tibbets.

The deliveryman was not hurt in the reported robbery, which took place just a short distance from the police station.

Police said the suspects are in their 20s, approximately 5'8? in height, and thin in stature. Anyone with information on the robbery is asked to call West Covina police at (626) 939-8557.



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Marijuana deliveryman robbed in Santa Maria

January 17, 2013

A man robbed a medical marijuana delivery man at gunpoint Wednesday evening in Santa Maria. [Noozhawk]

An employee of the Go Green Compassionate Care Collective was delivering medical marijuana to a patient when the robber approached him with a handgun in the 500 block of East Cook Street around 7:30 p.m.

"The suspect demanded two cases full of marijuana products the victim was attempting to deliver to a patient," said Santa Maria Police Sgt. Russ Mengel.

No injuries occurred. The suspect, who was in his early 20s, fled by foot and remained at large.

Subjects: Medical Marijuana Robbery Santa Maria Police Department

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01/17/2013 at 3:00 pm

CommonSenseMama says: The robber must have either known the patient, or the delivery driver. How else would he know what was in the cases? Either that or he has a skunky sense of smell.

(5) 5 Total Votes - 5 up - 0 down

01/17/2013 at 1:22 pm

bummerforu says: Now let me get this straight? In the previous article a man working for a collective gets arrested after being pulled over while deliving? Then in this article the police ar elooking for a robber who stole probably the same amount of herb from the cops took from Chance at Ebotanica. What a crock of shit I tell you!! Crock of Shit this world!!

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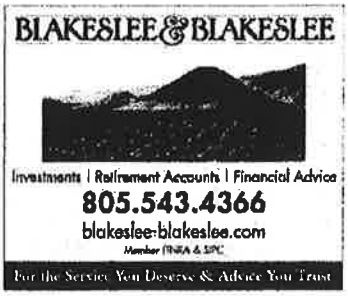

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Search for 2 men who robbed medical marijuana delivery drivers

Posted: Jan 22, 2013 9:34 AM PST
Updated: Jan 22, 2013 2:09 PM PST

IMPERIAL BEACH (CNS) - Authorities were on the hunt Tuesday for two men who robbed medical marijuana delivery drivers at gunpoint in Imperial Beach.

The drivers were attempting to deliver medical marijuana at 371 Caspian Way just before 5 p.m. Monday when two men approached on foot, according to San Diego County sheriff's Sgt. Joel Stranger. One of the men threatened the drivers with a black semi-automatic handgun and took a backpack containing eight ounces of marijuana, the sergeant said in a statement.

The suspects then fled on foot, leaving the drivers unharmed, Stranger said.

Authorities described one of the suspects as black, 5 feet 10 and 150 pounds, with a thin mustache and goatee. He said his name was "Aaron" and he wore a baggy grey San Diego State sweatshirt, baggy blue jeans and a black baseball cap, according to the sergeant.

His accomplice was described as black, 6 feet tall and 220 pounds, last seen wearing a red T-shirt and dark jeans.

Anyone with information on the robbers was asked to call the Sheriff's Department's Imperial Beach substation at (619) 498-2400.

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Medical marijuana delivery person held up in High Desert robbery

By Beatriz E. Valenzuela, Staff Writer

Posted: 04/12/13, 12:01 AM PDT |

0 Comments

HESPERIA -- A man suspected of holding up a medical marijuana delivery man Thursday night in Hesperia is behind bars today.

Christopher Street, 27, of Montrose is being held at the Victor Valley Jail on suspicion of robbery, according to San Bernardino County Sheriff's booking information.

Deputies received a 911 call from a man who said he had just been robbed at gunpoint by a man, later identified as Street, at a home in the 14700 block of Live Oak Street around 6:30 p.m., according to sheriff's officials.

Initial dispatch reports indicate the man was delivering medical marijuana to the Live Oak Street home.

The man reported he was invited into the home to make the delivery when Street reportedly pulled a rifle out and pointed at him, officials said.

Frightened, the delivery man dropped the marijuana and managed to escape through a bedroom window then called deputies. The man was not injured in the incident.

Deputies went to the home and were able to identify Street, according to Sue Rose, spokeswoman for the Hesperia station. Investigators also managed to locate the rifle and the marijuana dropped by the delivery man.

Street was arrested without incident.

Street is scheduled to be in Victorville Superior court on Monday.

One Dead After Failed Robbery At San Diego Medical Marijuana Dispensary

Friday, April 25, 2014

By City News Service

An attempted holdup at a North Park medical marijuana dispensary erupted in gunfire Friday, leaving a security guard wounded and a suspected robber dead, authorities reported.

The shootout at the shop near the intersection of 30th Street and University Avenue occurred shortly before 12:30 p.m., according to San Diego police.

One of three suspected thieves died at the scene, a dispatcher said. The other two ran off and sped out of the area in a white sedan.

Medics took the wounded security officer to Scripps Mercy Hospital, SDPD public-affairs Officer Mark Herring said. The victim's condition was not immediately available.

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Comments

JeanMarc | April 25, 2014 at 3:14 p.m. — 1 year, 6 months ago

Thank you security guard, get well soon. Only guns can stop armed thugs who decide to take things from other people instead of working and earning them on their own.

muckapoo1 | April 26, 2014 at 11:26 a.m. — 1 year, 6 months ago

Congratulation on the kill shot. Get well soon.

sdreefer21 | April 26, 2014 at 11:53 a.m. — 1 year, 6 months ago

For some weed really.....Some people need to be cleansed from the earth.

muckapoo1 | April 26, 2014 at 12:53 p.m. — 1 year, 6 months ago

One was. Lock and load for the rest.

LOCAL / L.A. Now

1 killed in botched robbery at medical marijuana shop near LAX

Ruben Vives · Contact Reporter

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Attempted robbery at medical pot shop near LAX leaves 1 man dead; another sought by police

JUNE 25, 2014, 3:20 PM

One man was killed and another was being sought Wednesday after an attempted robbery of a medical marijuana dispensary near Los Angeles International Airport.

The two men entered the Nature's Cure Inc. dispensary at 5300 W. Century Blvd. about 12:18 p.m. and were involved in an exchange of gunfire with the security guard, according to the Los Angeles Police Department.

One of the men was struck in the stomach during the incident and was later pronounced dead, police said.

The second man, wearing a beige shirt, green pants and a brown baseball cap, fled in a black BMW, according to authorities. Police were searching for him.

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2 killed in robbery of California marijuana grow

AP August 8, 2014 12:06 AM

FRESNO, Calif. (AP) — The robbery of a Central California house with a marijuana-growing operation triggered a fierce gunbattle in which two suspects were killed and a 15-year-old girl was used as a human shield by fleeing robbers, authorities said Thursday.

Two suspects were arrested and three remained at large after the pre-dawn violence south of Fresno, Fresno County Sheriff Margaret Mims said.

"We have several children who were terrorized in their own home," Mims said. "The teenage girl was used as a human shield as the suspects were leaving the residence, and they kidnapped her, putting her in the car."

Seven armed men posed as law enforcement officers and forced their way into the house around 4 a.m., she said. During the home

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invasion, a man in the house was pistol-whipped and the robbers and victims exchanged gunfire.

Deputies who responded to calls of the robbery saw two cars speed away. They were only able to stop one of the vehicles when it pulled up to a hospital with a wounded man in a ski mask. The deputies gave him CPR, but he died a short time later inside the hospital, Mims said.

Two other men in the vehicle were taken into custody.

Suspects in the other car took the girl hostage and took her a dangerous ride topping 100 mph before dropping her off unharmed near downtown Fresno. Investigators found several shotguns and handguns tossed out of the getaway vehicles, Mims said.

Another robber found near the house later died of gunshot wounds.

The house had three marijuana plots and 150 plants, Mims said.

Investigators were trying to determine whether the homeowner had medical-marijuana permits.

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Sheriff: 2 Injured In Medical Marijuana Shop Robbery Shooting occurred on Campo Road in Spring Valley

Tuesday, December 9, 2014

By City News Service

A holdup at an unlicensed East County medical marijuana shop erupted in gunfire Tuesday, wounding a good Samaritan and an alleged robber, who later was arrested along with a suspected accomplice.

The shooting in the 9000 block of Campo Road in Spring Valley was reported about 11 a.m., according to sheriff's officials. Deputies arrived to find a 32-year-old man suffering from a gunshot wound to the leg, Lt. Chris May said.

The victim, a worker at a smoke shop next door, was shot while coming to the aid of the people being robbed, May said.

A short time later, a deputy pulled over two suspects on a nearby street. The passenger, identified as 29-year-old James Crutcher, jumped out and escaped on foot, despite having been shot several times during the robbery, May said.

The driver, 30-year-old Frank Daley, resisted arrest, according to Mays, but was eventually taken into custody after the patrolman sicced a service dog on him.

Deputies eventually caught up with Crutcher in the 4100 block of Camino Paz and took him into custody. Both suspects were taken to a hospital.

Sheriff's officials did not immediately disclose who fired the shots that wounded Crutcher and the smoke-shop employee.

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Posted Jan 29, 2015 8:49 AM PST
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Video Report By Angie Lee, Reporter Connect

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SAN DIEGO (CNS) - A security guard feared for his life when he fatally shot one of two robbers during an armed holdup at a North Park marijuana dispensary, a San Diego police detective testified Wednesday.

Detective Jana Beard said guard Henry Smith told her that he shot the alleged robber, identified as 18-year-old Marion Thomas, after Thomas and another robber threatened to kill him and the dispensary owner during the armed holdup.

"He (the guard) thought he was going to die," Beard testified during a preliminary hearing for suspects Kurese Bell and Atiim Smith. "He was scared ... petrified." The security guard was shot in his pelvis and survived.

Bell, 18, is charged with first-degree murder, attempted murder and robbery in the holdup and fatal shooting that occurred about 12:30 p.m. April 25, 2014, in the 3800 block of Ray Street.

Smith, 22, is charged with attempted murder and felony robbery. His fingerprints were found in a car impounded by police after the robbery, a latent print examiner testified.

Another person, 21-year-old Jonathan Vincent Collins, pleaded guilty to a robbery charge with a gang allegation.

Bell – who was 17 at the time -- is also charged in the robbery of a smoke shop on El Cajon Boulevard four days before the dispensary robbery.

He was arrested in May at a Los Angeles-area motel and charged as an adult in the case.

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Following the conclusion of the preliminary hearing tomorrow, Judge Jay Bloom will decide if enough evidence was presented for Bell and Smith to stand trial.

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BY STEPHEN WALL / CONTRIBUTING WRITER

Armed suspects robbed an Upland marijuana dispensary Friday night, Jan. 30, and barricaded themselves inside an apartment before surrendering to police about 12 hours later, officials said.

Officers got a call about 11 p.m. Friday of a robbery at a medical marijuana dispensary in the 700 block of Mountain Avenue, said Upland police Lt. Cliff Mathews.

Two adults and two teens – three of them armed with handguns – approached three male employees in the parking lot of the business and shot one of the workers in the leg, he said.

The suspects forced the employees inside the dispensary at gunpoint. They tied up their hands and feet, then stole marijuana, cash and a car belonging to one of the workers, Mathews said.

They fled in a dark gray Lexus, which was later recovered. A victim managed to untie himself and call police.

Officers received information leading them to an apartment in the 1300 block of Randy Street less than a mile away.

They arrived about 4:40 a.m. and determined the men had barricaded themselves inside the apartment. They gave commands but were unsuccessful in getting them to come out, Mathews said.

A San Bernardino County sheriff's SWAT team responded and continued communicating with the suspects. At about 11 a.m., the three men walked out and were taken into custody. They were unarmed when they left the apartment, Mathews said.

About an hour later, Upland police learned that a fourth suspect was hiding in an upstairs apartment next door. Officers entered and took the man out in handcuffs at 12:15 p.m.

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No one was injured in the standoff. The man who was shot in the leg was taken to a hospital. His injuries are not considered life threatening, Mathews said.

Police arrested Christopher Baca, 30, of Covina, and Diego Sanchez, 19, of Upland. Two 15-year-old boys were taken to a San Bernardino County juvenile detention facility, Mathews said.

Baca and Sanchez face charges of robbery, assault with a deadly weapon and kidnapping, he said.

Mathews said he didn't know if any guns, marijuana or cash was recovered.

Police has earlier evacuated residents near the crime scene to a shelter set up by the American Red Cross at Magnolia Recreation Center in Upland. They were allowed to return to their homes about 12:30 p.m.

Stephanie Monroy, 13, lives in an apartment next to where the three suspects barricaded themselves. She said she was asleep when she heard officers order them to come out.

Police arrived and told her family to go out the back door, Monroy said.

"I felt so scared," she said. "Society is crazy today. Thank God nobody got hurt."

Monroy said a man who lived in the apartment next door seemed like a friendly person.

Police say they don't know if the suspects lived in the apartment.

Upland prohibits medical marijuana dispensaries, and the business where the robbery occurred will be shut down, Mathews said.

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IE SWAT Standoff Ends in Arrests After Marijuana Dispensary Ambush Robbery: Police

Three people were zip-tied during the robbery ambush and one shot, said police, who tracked some of the suspects to a nearby Upland residence

By Asher Klein and Jane Yamamoto

An hours-long standoff ended in the arrests of two men and two boys in the Inland Empire, where a medical marijuana dispensary was robbed. Jane Yamamoto reports for the NBC4 News at 6 p.m. on Saturday, Jan. 31, 2015. (Published Saturday, Jan. 31, 2015)

An hours-long standoff between a SWAT team and men believed to have violently robbed three other men at a nearby Inland Empire medical marijuana dispensary ended in four arrests Saturday morning.

Two men and two boys were arrested after police used a claw device to rip open the facade of the Upland apartment where the suspects were holed up.

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"I saw cops, guns, rifles. I saw guys on the roofs, which I think were the sharpshooters," a witness said.

Three were arrested in that house, while the fourth suspect was found and taken into custody at a nearby apartment complex, Upland police said. The four suspects allegedly had five handguns in their possession.

Earlier, police said five men in hoods took money and a car from the marijuana dispensary, but they later revised that number to four.

The four suspects face charges of robbery, assault with a deadly weapon and kidnapping, police said.

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The suspects are believed to have shot one of three men they tied up at the dispensary, in the 700 block of North Mountain Avenue, at about 10 p.m. Friday. The dispensary was about three miles from the apartment complex where the standoff took place.

The men were able to break free from zip ties and spoke to police.

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A SWAT team arrived at the house in the 1400 block of Randy Street about 4:40 a.m. as police evacuated nearly 75 residents of the neighborhood. The long standoff ended at around 11 a.m.

Diego Sanchez, 19, of Upland, and Christopher Baca, 30, of Covina, were arrested along with two boys who haven't been named because of their ages, police said. It wasn't clear what their relationship was.

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Police responded to Cal Med Express, located at 759 North Mountain Avenue, in Upland, just after 11 p.m. for a robbery call, Lt. Alan Ansara said. They found the three victims who had been tied up by the robbers, Ansara said.

The three men were leaving the medical marijuana dispensary about 10 p.m. Friday, when they were approached by males wearing gloves and hoods over their faces, police said. The victims were forced back into the business and were immediately zip-tied.

One of the victims suffered a non-life threatening gunshot wound to his leg and was later transported to Arrowhead Regional Medical Center, Ansara said. Another victim was pistol whipped during the incident but did not need any medical treatment.

The suspects allegedly took off in one of the victims' 2007 dark grey Lexus IS 250 with cash and marijuana, police said.

The shop was not zoned to sell medical marijuana, police said.

NBC4 editor Oleevia Woo contributed to this report.

Published at 6:12 AM PST on Jan 31, 2015

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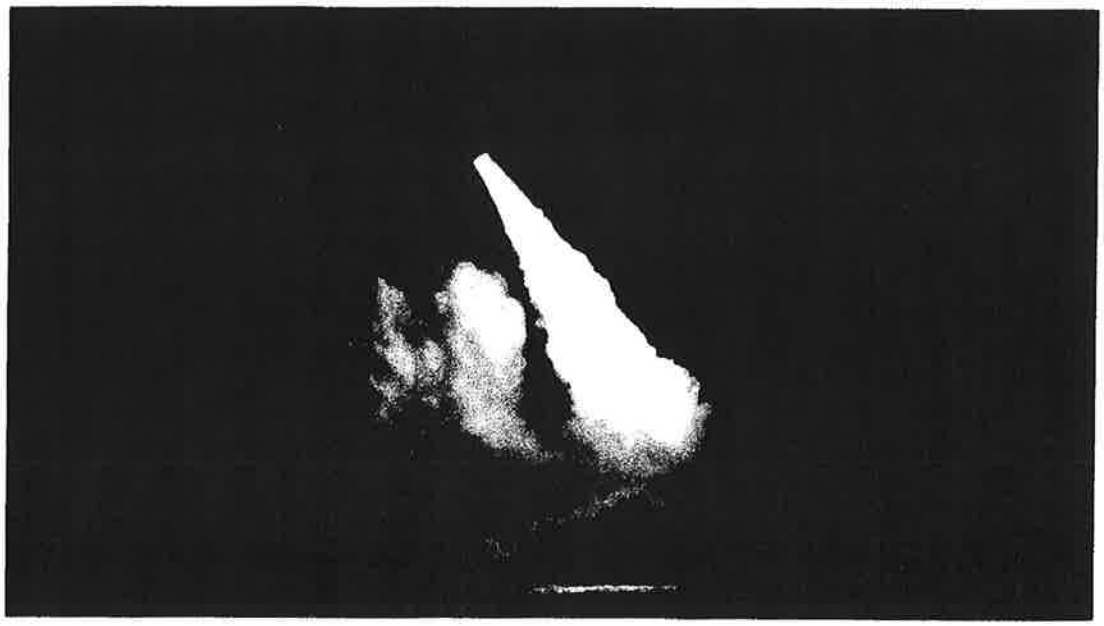

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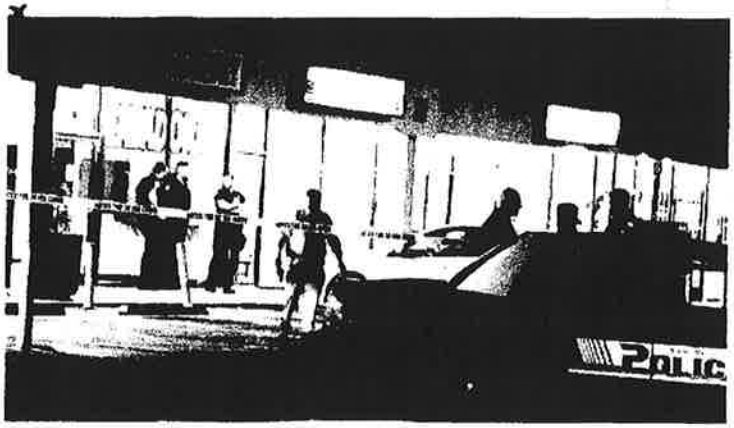

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SAN BERNADINO, CA — A security guard at a California medical marijuana dispensary was shot and killed Monday night during a botched robbery attempt.

The shooting happened around 10 p.m. at an unnamed pot shop in the Star World Plaza strip mall on the 2800 block of West Rialto Avenue in San Bernadino.

According to witnesses, two men were attempting to rob the dispensary when shots were fired. According to police, one of the men forced his way into a back room and started shooting at the security guard, who returned fire.

The security guard, 25-year-old Anthony Victor Pineda, was pronounced dead at the scene. He may have shot one of the suspects before he died,

25 year old security guard Anthony Victor Pineda was shot and killed during a botched robbery attempt of a medical marijuana dispensary operating illegally in San San Bernardino.

according to officials who report a large pool of blood was discovered outside the business.

Police believed the wounded suspect, who remains at large, may have been critically injured. Local hospitals have been alerted to look for someone suffering from a gunshot wound.

According to police, the suspects fled the scene following the shooting. It was not immediately known if the suspects got away with any cash or marijuana from the dispensary.

It's unclear who else was in the building at the time of the shooting. Police say the employees and owners of the dispensary have not been cooperating with the investigation, and the mortally wounded security guard was locked inside the building after being shot.

"Somebody actually locked the business. We actually had to force entry to get to the victim and check his status," said San Bernardino police Lt. Rich Lawhead.

Police say employees of the business — who described themselves as "volunteers" — have been uncooperative with the investigation.

"We could do our job a lot better if everybody would be cooperative with us and just give us the information," Lawhead said.

Detectives want to access security footage from the dispensary, but store employees are not cooperating.

"We're hoping that the video gives us a lot more information," Lt. Lawhead added. "It's very frustrating. I mean I just think if it was your loved one in there."

Medical marijuana dispensaries are not allowed in San Bernardino, and it was not clear how long the unnamed dispensary had been operating.

Monday's shooting was the second to occur in that strip mall in the past year. A man was fatally shot in the parking lot last July, and police have not made an arrest in that case.

TJ Baker (http://www.thedailychronic.net/author/tjbaker/)

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Robbers at a Pot Dispensary Shoot Employee in Leg

The suspects flashed firearms and made off with marijuana, but it's unclear if they stole any money.

Highland Park-Mount Washington, CA

By MIRNA ALFONSO (Patch Staff)
May 25, 2015

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A medical marijuana dispensary employee was shot in the leg as three men robbed the mid-Wilshire area business, police said Sunday, May 24.

At about 7 p.m., the three suspects entered the store in the 5800 block of Pico Boulevard, Los Angeles police Lt. Lonnie Tiano said.

The suspects flashed firearms and made off with marijuana, but it's unclear if they stole any money, Tiano said.

As they left, they fired one shot that struck an employee in a leg, he said. The victim was taken to an area hospital for treatment.

The suspects were described as black males in their 20s.

--City News Service

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7 Men, 1 Woman Accused of Numerous Graffiti Attacks on Metro

The crew allegedly tagged public conveyances and property all over Los Angeles County.

Have You Seen Him? Young Man Missing Since September

Dmitri Andrew Wilson was last seen about 1 p.m. Sept. 12 on Fifth Street south of Grand Avenue.

OFFICIALS: Los Angeles Children

125%

ORANGE COUNTY REGISTER

Armed men rob closed medical marijuana dispensary in Santa Ana

BY LOUIS CASIANO JR.
2015-07-02 19:17:23

A shuttered medical marijuana dispensary in Santa Ana with two people inside was robbed by two armed men Thursday afternoon, authorities said.

At 2:45 p.m., two men with handguns broke into a building in the 1800 block of East Garry Avenue, where they found two people inside, said Cpl. Anthony Bertagna of the Santa Ana Police Department.

The people inside were tied up with duct tape and the suspects took an undisclosed amount of cash, marijuna, and personal items from the victims.

The suspects fled in a vehicle, and no one was injured.

No description of the suspects was available.

The business that operated in the building was closed in June after undercover police officers purchased marijuana there, Bertagna said.

It was not clear how the suspect got inside the building or if the dispensary was still operating inside, Bertagna said.

"I do know they had marijuana and money at the location, but I don't know if they were operating or not," he said.

In November, voters approved a measure to repal the ban on medical marijuana dispensaries in the city.

Twenty applicants selected from a public lottery were chosen in Febuary to move on to the next phase in opening a medical marijuna collective. All other facilities in Santa Ana are operating illegally, Bertagna said.

Contact the writer: 714-796-2478 or lcasiano@ocregister.com

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Four wanted in connection with pot shop robbery

By The Bakersfield Californian

WEDNESDAY, AUG 19, 2015 4:24 PM

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Eric J. Hoagen
Experienced Criminal Defense

Four people are wanted in connection with the armed robbery of a medical marijuana dispensary Wednesday just south of downtown Bakersfield.

Police said two men armed with handguns entered the CNE Collective at 1206 California Ave. and stole money and marijuana. No injuries were reported.

Two other suspects were in a red Chevrolet extended cab pickup the men entered after the robbery.

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WEDNESDAY, AUG 19, 2015 4:24 PM

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(661) 327-1369
• Kyle J. Humphrey and Jared M. Thompson are both certified criminal law specialists.
• Kyle J. Humphrey - over 30 years criminal law experience

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Police said two men armed with handguns entered the CNE Collective at 1206 California Ave. and stole money and marijuana. No injuries were reported.

Two other suspects were in a red Chevrolet extended cab pickup the men entered after the robbery.

Police said the suspects in the store were each described as black men, one in his early 30s, the other about 25. The suspect in his early 30s is bald, has a beard and was wearing a red and white polo shirt.

The other suspect was wearing a black baseball cap, a black shirt and shorts. The two suspects in the pickup were described only as black males.

Anyone with information regarding this case is asked to call the Bakersfield Police Department at 327-7111.

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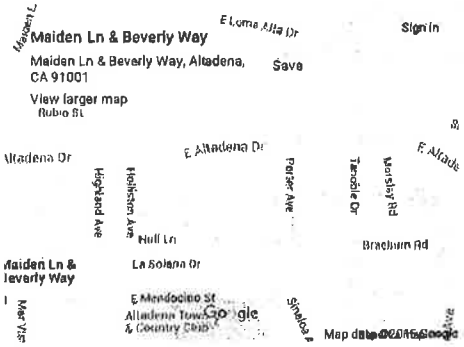
Marijuana delivery man robbed in Altadena

Posted on **September 26, 2015** by **Brian Day**



ALTADENA >> A man claiming to be delivering medical marijuana for a dispensary was robbed of both cannabis and cash early Thursday in a residential Altadena neighborhood, authorities said.

The crime was reported just before 2 a.m. at Beverly Way and Maiden Lane, Los Angeles County sheriff's Lt. Cruz Solis said.

Deputies first responded to the neighborhood after residents reported a man knocking on doors, apparently in some sort of distress, the lieutenant said.

The victim, a 26-year-old Pasadena man, told police he was delivering for a legal medical marijuana dispensary when a man grabbed him, threatened him and robbed him of marijuana, cash and his car keys, Solis said.

They keys turned up in some nearby bushes the following day, he said.

The amount of money and marijuana stolen was not available. A detailed suspect description was not available.

This entry was posted in **211, Altadena, marijuana** by **Brian Day**. Bookmark the **permalink [http://www.insidesocal.com/sgvcrime/2015/09/26/marijuana-delivery-man-robbed-in-altadena/]** .

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Police Arrest Suspect In Armed Robbery Of Medical Marijuana Delivery Driver

September 28, 2015 10:19 AM

Filed Under: Armed robbery, Arrest, Delivery Driver, Medical marijuana, Monterey

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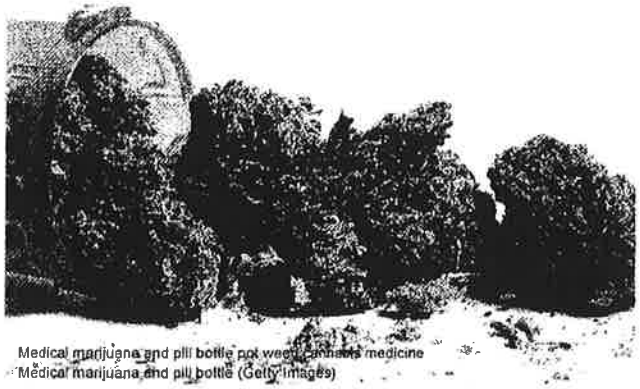


Medical marijuana and pill bottle not weed, cannabis medicine
Medical marijuana and pill bottle (Getty Images)

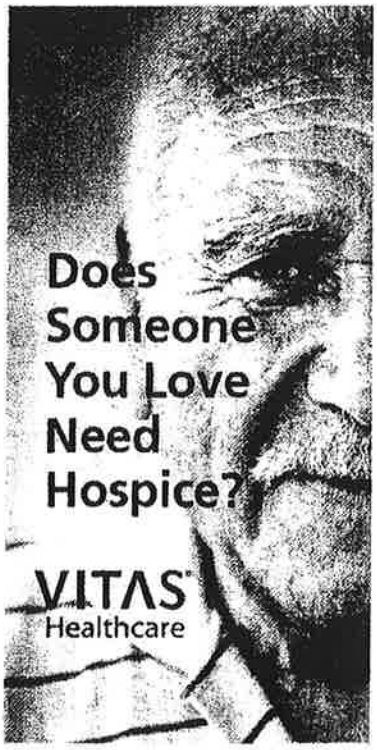
MONTEREY (CBS SF) — A man was arrested Friday on suspicion of robbing a medical marijuana delivery service driver at gunpoint last month in Monterey, according to the Peninsula Regional Violence and Narcotics Team.

Detectives with the regional task force arrested 25-year-old Juan Alvarez when they served a search warrant at a home in the 1400 block of North First Street in Salinas.

2

Alvarez was arrested on suspicion of armed robbery, possession of a firearm as a prohibited person, possession of marijuana for sale, possession of a firearm while selling drugs and violation of a restraining order, according to the task force.

Officers with the Marina and Carmel police departments assisted task force detectives with the arrest.



Around 5:45 p.m. on Aug. 20, Monterey police had responded to a report of an armed robbery in the 400 block of Del Rosa Avenue. When officers arrived, they learned the suspect had robbed a medical marijuana delivery service driver at gunpoint. The suspect then fled on foot with marijuana and cash, according to the task force.

Alvarez was booked into Monterey County Jail following his arrest Friday and his bail was set at $40,000.

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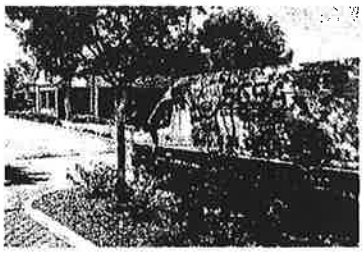
ORANGE COUNTY REGISTER

Man shot near Santa Ana medical marijuana dispensary

By LOUIS CASIANO Jr.
2015-11-02 16:19:06



A man was hospitalized Monday after he was shot near a medical marijuana dispensary in Santa Ana, police said.

Santa Ana police officers responded at 3:35 p.m. to reports of shots fired in a parking lot of the South Coast Safe Access marijuana dispensary in the 1900 block of East Warner Avenue, Cpl. Anthony Bertagna said.

When they arrived, they found a man in his late 40s with a gunshot wound to his stomach. He was taken to a hospital and is expected to survive.

It is unclear how many times the man was wounded but multiple shots were fired, Bertagna said.

Officers and an Orange County Sheriff's Department helicopter were searching for one suspect. Authorities originally reported they were searching for two suspects.

At the scene, Randall Longwith, an attorney for the dispensary, appeared frustrated by the events. He said there were multiple employees inside the store and one guard who, much to his disappointment, was unarmed.

Safe Coast Safe Access was the first dispensary to open of the 20 that were chosen to apply for licenses from the city.

"Theoretically we anticipated that this was going to happen," Longwith said. He claims to have asked the city to allow the store to have an armed guard but was denied. He believes that the store's inventory and money make it a target.

"This is essentially a cash business ... we have a lot of cash on hand."

He said he plans to approach the city once again to let the store have an armed guard.

The name of victim was not released.

Contact the writer: 714-796-2478 or lcasiano@ocregister.com

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AGENDA # 31

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Alexander P. Meyerhoff, City Manager
Jessica A. Hurst, Deputy City Manager/Administrative Services

DATE: November 15, 2016

RE: Review of CalPERS Unfunded Liability and Cost Reduction Options

RECOMMENDATION:

It is recommended that the City Council:

1. Conduct a review of CalPERS unfunded liability cost reduction options.
2. Provide direction to staff regarding next steps, if any.

BACKGROUND:

The California Public Employees' Retirement System (CalPERS) is the agency the City of Hemet contracts with to provide for employee pensions as the City of Hemet does not participate in the federal Social Security program. The City of Hemet has contracted with CalPERS since 1969, with several contract amendments to modify benefits and contributions being made since that time.

In January 2013, the California Public Employees' Pension Reform Act (PEPRA) took effect, changing CalPERS retirement and health benefits, and placing compensation limits on members. PEPRA also requires that employers pay the normal cost of benefits (the annual cost associated with one year of service accrual) for each active employee. Given this change, future increases to unfunded liabilities should be minimal, primarily subject to investment market fluctuations.

While the PEPRA legislation goes a long way in managing the City of Hemet's pension liabilities ongoing, there continues to be costs associated with benefits already promised to past and current employees. As of the August 2016 CalPERS valuation report, the City of Hemet has a combined $79 million unfunded liability for its Safety and Miscellaneous Plans. This unfunded liability is a result of benefit changes, investment losses and assumption changes over time.

Currently, the CalPERS unfunded liability is generally amortized over a 30 year period. This lengthy amortization period results in a greater amount owed due to the accrual of interest. The result of 30 years of interest on unpaid liabilities totals approximately $12.5 million.

One way in which the City of Hemet can reduce its overall unfunded liability cost (base plus interest) is to reduce the amortization base to fewer than 30 years, referred to as a "fresh start" amortization schedule. This "fresh start" requires that the number of years used as the amortization base be less than the current 30-year schedule and cannot be increased once changed (but can be further decreased). Any reduction in the amortization schedule would result in interest savings due to the accelerated payoff of liabilities.

The most recent CalPERS valuation reports include an analysis of the City of Hemet's 30-year amortization schedule and alternative, reduced period schedules. Each alternative schedule increases the annual payment amount by 3%, compared to a more uneven payment amount change in the current schedule. (See Exhibit A)

Any reduction in the City of Hemet's amortization schedule for CalPERS unfunded liabilities will result in interest cost savings. Additionally, the predictable payment increase of 3% per year is more easily budgeted than the current schedule provides.

FISCAL IMPACT:

Savings from the change in the amortization schedule for CalPERS unfunded liabilities is estimated to be approximately $12.5 million, using a 20-year amortization period.

Respectfully submitted,

Jessica A. Hurst

Jessica A. Hurst
Deputy City Manager/Administrative Services

Attachments: Exhibit A

Exhibit A

CalPERS Amortization Analysis

All Plans

Based on August 2016 Annual Valuation Report

	30-year Schedule		20-year Schedule		
Fiscal Year	Annual Payment*	% Change**	Annual Payment	% Change	Incr/(decr)
2016/2017	5,838,805		6,160,358		321,553
2017/2018	6,163,570	6%	6,345,168	3%	181,598
2018/2019	6,977,513	13%	6,535,523	3%	(441,990)
2019/2020	7,200,318	3%	6,731,589	3%	(468,729)
2020/2021	7,620,712	6%	6,933,537	3%	(687,175)
2021/2022	7,734,336	1%	7,141,542	3%	(592,794)
2022/2023	7,971,815	3%	7,355,789	3%	(616,026)
2023/2024	8,210,967	3%	7,576,462	3%	(634,505)
2024/2025	7,688,477	-6%	7,803,756	3%	115,279
2025/2026	6,947,845	-10%	8,037,869	3%	1,090,024
2026/2027	7,156,280	3%	8,279,005	3%	1,122,725
2027/2028	7,370,968	3%	8,527,375	3%	1,156,407
2028/2029	7,592,097	3%	8,783,196	3%	1,191,099
2029/2030	7,819,861	3%	9,046,692	3%	1,226,831
2030/2031	7,326,415	-6%	9,318,093	3%	1,991,678
2031/2032	7,191,841	-2%	9,597,636	3%	2,405,795
2032/2033	6,108,853	-15%	9,885,565	3%	3,776,712
2033/2034	5,916,173	-3%	10,182,131	3%	4,265,958
2034/2035	5,706,435	-4%	10,487,595	3%	4,781,160
2035/2036	5,478,785	-4%	10,802,223	3%	5,323,438
2036/2037	5,643,148	3%	-		(5,643,148)
2037/2038	5,812,442	3%	-		(5,812,442)
2038/2039	5,986,815	3%	-		(5,986,815)
2039/2040	6,166,419	3%	-		(6,166,419)
2040/2041	4,525,667	-27%	-		(4,525,667)
2041/2042	4,255,869	-6%	-		(4,255,869)
2042/2043	3,856,318	-9%	-		(3,856,318)
2043/2044	1,015,325	-74%	-		(1,015,325)
2044/2045	368,120	-64%	-		(368,120)
2045/2046	441,844	20%	-		(441,844)
Totals:	178,094,033		165,531,104		(12,562,929)
					Savings

Notes:

* Annual Payment is the payment of the unfunded liability portion only;

** % Change is the percentage increase/decrease of the annual payment from the previous year

AGENDA # 32

Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Alexander P. Meyerhoff, City Manager
Kristen Jensen, Public Works Director
Jessica A. Hurst, Deputy City Manager/Administrative Services

DATE: November 15, 2016

RE: Water Capital Improvement Project Funding Options

RECOMMENDATION:

It is respectfully recommended that the City Council:

1. Review options for funding Water Department Capital Improvement Projects; and
2. Provide direction to staff for next steps, if any.

BACKGROUND:

The City of Hemet Water Department is an enterprise fund that is supported by rates and fees collected from customers based on their use of water services. In September, 2015, the City Council adopted updated water rates which were phased in over a 5 year period, and addressed capital needs for the then-adopted Capital Improvement Plan (CIP) for FY15/16 – FY19/20. At that time, water rates had not been reviewed since 2007. Prior to the 2015 rate adoption, staff and Council publicly reviewed options for funding much needed water infrastructure capital improvements. Options discussed included a pay-as-you-go approach, seeking alternative funding through grants, and issuance of bonds. Ultimately, Council approved water rates that assumed funding of FY15/16 capital projects with available reserves, and funding of future year projects through the issuance of revenue bonds. As the Water Department looks to begin work on FY16/17 capital projects, a discussion with Council is necessary to confirm the funding approach and timing of bond issuance to move forward.

PREVIOUS ANALYSIS

A number of water projects have been successfully completed over the course of the last 10 years, the majority of which have been solely supported by drawing from fund balance in Water Fund No. 571. Lack of regular water rate adjustments between 2007 and 2015 has hindered the department's ability to address many large-scale improvement projects and resulted in deferral of critical system maintenance projects. Through the water rate study conducted in 2015, various approaches were considered for funding deferred maintenance and capital projects. The projects and their respective funding requirements are identified in the City of Hemet CIP FY2015/2016 - FY2019/20. The total estimated costs of water projects over that five year CIP was $25,445,000. The funding approaches considered are described below:

Pay-as-you-go

This approach would have fully funded projects through the five-year rate cycle by increasing the rates to support the full estimated CIP costs of $25,445,000 over the five-year period. After much discussion, this option was not pursued as the majority of the City of Hemet Water customer base consists of low income and fixed income residential customers. The pay-as-you-go approach

created concerns regarding the ability for the customer base to bear the full upfront costs of funding needed to implement the capital projects. Additionally, as water infrastructure improvements constructed in the next five years will provide a long-term benefit for current and future customers, it was concluded that placing the full funding burden on current customers was not the most equitable approach for funding improvements.

Grants

Staff is continually reviewing options for obtaining grant and alternative funding for Water Department projects. The department has been successful in securing rebates and incentive funding on small scale energy efficiency upgrades, but has experienced challenges in securing large project funding through current State and Federal offerings. Grant programs that offer large project support require that a water provider be 1) designated as a severely disadvantaged community, and 2.) considered a small water system (less than 3,000 system service connections). Though the Water Department has completed the application process for a number of grant solicitations, and the City is designated as a severely disadvantaged community, the size of the system (over 9,000 service connections) has been a hindrance in meeting grants eligibility guidelines. The application processes completed have resulted in the option for the City to obtain *loan* financing for projects, however, the City has been found ineligible for grant funding by all opportunities pursued to this point.

The grant acquisition process requires staff resources to prepare detailed information on a project by project basis. Should a project be awarded grant funding, the program requirements call for years of continued reporting. Staff has reviewed the loan option outcomes of grant applications with the Grant AdHoc Committee and the City Manager. Given the current challenges with eligibility for actual grants, the Committee has discussed the merits of bonding as a funding approach that would fund multiple projects simultaneously and expeditiously, while minimizing the draw on staff time for required application submission and ongoing reporting on each project separately. At this time the Committee recognizes and supports the urgent need to expedite progress on funding water improvements through non-grant options, with the understanding the staff will continue to seek alternative funding into the future with the goal of offsetting future planned projects.

Bonding

Staff has spent a considerable amount of time analyzing the funding mechanisms above.
Through this discussion item, staff now looks to provide additional information to Council regarding the option of issuing revenue bonds as a funding source for projects that are critical to sustain the maintenance and performance of the water system. Through this discussion, staff will review the bonding process in detail to provide Council with a clearer understanding of the option. Upon conclusion of the discussion, staff is seeking Council direction, if any, in moving forward with bond issuance as a funding approach for CIP projects in the Water Department.

FISCAL IMPACT:

No General Fund Impact. Funding for debt repayment related to bond issuance was previously incorporated into the 2015 water rates.

Respectfully submitted,

Kristen Jensen
Public Works Director

Lorena Rocha for Jessica Hurst

Jessica A. Hurst
Deputy City Manager/Administrative Services