

- **Board of Directors**
Executive Committee

February 10, 2004 Board Meeting

9-3

Subject

Authorize entering into a pre-annexation development agreement between Metropolitan and the city of Hemet [Conference with real property negotiators; property is land owned by Metropolitan near Diamond Valley Lake, as shown in Attachment 1 to the board letter; agency negotiator: Les Barrett; negotiating parties: Metropolitan and city of Hemet; under negotiation: terms of payment; to be heard in closed session pursuant to Gov. Code § 54956.8]

Description

Diamond Valley Lake and its surrounding lands owned by Metropolitan are located within Riverside County and the city of Hemet. Existing city of Hemet boundaries incorporate Metropolitan's McSweeny Ranch parcel north of Domenigoni Parkway and west of State Street (the Northern Area), as well as the majority of the East Recreation Area. Riverside County incorporates Diamond Valley Lake's surface area, the East and West Marinas, the West Recreation Area, property holdings south of the West Recreation Area and certain property holdings adjacent to Domenigoni Parkway west of Sanderson Avenue.

The city of Hemet proposes to amend its sphere of influence and annex the remaining portions of the East Recreation Area. Additionally, the city of Hemet proposes to annex the East Marina facility consistent with its jurisdiction on the surrounding lands and the East Marina access road. The proposed city boundary at the East Marina is limited to the highest lake elevation, so that the entire lake surface remains within Riverside County consistent with a comprehensive lake recreation operations plan. The county of Riverside has indicated that it does not object to the proposed annexation.

The primary benefits of the proposed annexation include the consolidation of jurisdictional boundaries around specific planning areas, and the execution of a pre-annexation development agreement between Metropolitan and the city of Hemet. See [Attachment 1](#) for a copy of the pre-annexation development agreement that includes copies of the maps referenced above. A hard copy will also be available for review at the Executive Secretary's office.

A development agreement is a statutorily authorized, voluntary, negotiated agreement related to proposed development projects. The proposed pre-annexation development agreement does not obligate Metropolitan to undertake development, but ensures that future development will be completed in accordance with stated conditions. The more significant details of the proposed agreement include the following:

- Identifies Metropolitan lands subject to the benefits of the agreement;
- Within the East Recreation Area and East Marina, waives processing and development impact fees, subject to limited provisions, except for School Fees and other fees imposed by jurisdictional governmental entities other than the city;
- Within the North Area, waives specific plan processing fees and defers development impact fees, subject to limited provisions;
- Provides Metropolitan a measure of certainty that Hemet's regulatory environment will not change as the program is implemented;
- Maintains beneficial land use density, size and height requirements included in previously adopted specific plans; and

- Acknowledges that the benefits to Metropolitan described herein are intended to facilitate continued recreation development.

Policy

Metropolitan Administrative Code § 8115: Negotiated Contracts

California Environmental Quality Act (CEQA)

The proposed development agreement (Proposed Agreement) does not commit Metropolitan to any specific project or development-related action with respect to the properties covered by the agreement. However, it would vest Metropolitan with certain rights to develop such properties in accordance with certain standards and conditions.

First, the Proposed Agreement would permit Metropolitan to develop any properties covered by the McSweeney Ranch Specific Plan (SP 88-19), as well as any portions of the East Recreation Area covered by the Diamond Valley Lake Park Specific Plan (SP 02-1), in accordance with the standards and conditions imposed by those specific plans. An Environmental Impact Report (EIR) was prepared and certified by the Hemet City Council for the McSweeney Ranch Specific Plan on June 25, 1991. Similarly, a Mitigated Negative Declaration (MND) for the Diamond Valley Lake Park Specific Plan was prepared by Metropolitan and approved by the city on September 21, 2002. Accordingly, no additional CEQA review or documentation is required for development of these properties under the Proposed Agreement.

Second, for those portions of the East Recreation Area that fall outside the boundaries of SP 02-1, as well as lands adjacent to the boundaries of SP 88-19, the Proposed Agreement grants certain waivers for subsequent development processing fees on these properties, but does not provide authority to develop these properties inconsistent with existing land use designations and entitlements. Therefore, no additional CEQA review or documentation is required to support the Proposed Agreement as it applies to these properties.

Finally, the Proposed Agreement provides for pre-zoning of land currently within the boundaries of the county of Riverside that is being considered for annexation to the city. The Proposed Agreement stipulates that the land use designations for this property will be consistent with the newly adopted Riverside County Integrated Plan. The county of Riverside certified an EIR (RCIP EIR) for the Integrated Plan in October 2003. The city is relying on the RCIP EIR for CEQA compliance in support of the pre-zoning of this property prior to annexation. Since the Proposed Agreement only establishes land use designations that do not constitute approval for any specific development action, appropriate CEQA review and documentation will be completed if and when specific development of these properties is proposed.

Board Options/Fiscal Impacts

Option #1

Authorize the Chief Executive Officer to enter into a pre-annexation development agreement between Metropolitan and the city of Hemet.

Fiscal Impact: Unknown

Option #2

Decline at this time the execution of a pre-annexation development agreement with the city of Hemet, but do consent to annexation of certain properties adjacent to the east end of Diamond Valley Lake

Fiscal Impact: Unknown

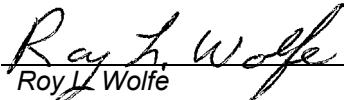
Option #3

Decline at this time the execution of a pre-annexation development agreement with the city of Hemet and do not consent to annexation of certain properties adjacent to the east end of Diamond Valley Lake

Fiscal Impact: Unknown

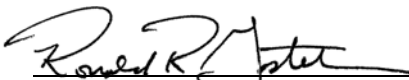
Staff Recommendation

Option #1



Roy L. Wolfe
Manager, Corporate Resources

1/20/2004
Date



Ronald R. Gastelum
Chief Executive Officer

1/20/2004
Date

Attachment 1 – Pre-Annexation Development Agreement

BLA #2511

Development Agreement

[No. 03-2]

“Diamond Valley Lake Recreation Area”

By and Between

the

CITY OF HEMET

and

METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

Dated _____, 2004
[For reference only]

DEVELOPMENT AGREEMENT
[No. 03-2]
“Diamond Valley Lake Recreation Area”

This Development Agreement No. 03-2 (the "Agreement"), dated for reference purposes as first indicated on the cover page, is entered into by and between the CITY OF HEMET, a California general law municipal corporation ("City") and the METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a public agency of the State of California, organized and existing under the Metropolitan Water District Act of the State of California, ("Owner") as follows:

RECITALS

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

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

C. Owner is the fee owner of an approximately 1967 acres of undeveloped and partially developed land located within the City and the City's sphere of influence, hereinafter referred to as the "Property" and as more particularly described herein. The Property consists of three largely contiguous sub-areas: (i) the Northern Area of approximately 734 acres, (ii) the Eastern Recreation Area of approximately 1136 acres; and (iii) the East Marina Area of approximately 97 acres. Each of these sub-areas is defined in this Agreement and, along with the Property, is more particularly described in the legal

description and depicted on the map attached hereto and incorporated herein by reference respectively as Attachments "1" [legal descriptions] and Attachment "2" [maps]. Owner has requested that the City consider entering into this Agreement for the Project as more particularly described herein, in order to create an environment in which the Owner may be certain of, and vested with, its rights to develop the Project.

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

(1) In 1991, the Owner certified a Final Environmental Impact Report for its large reservoir project. The description of the reservoir project in the FEIR provides in part that:

"Large recreation areas would be developed at the base of both main embankments, and would be linked by a trail system along the hills which form the reservoir's southern boundary. Recreation facilities could include a marina, boat launching ramps, small fishing lakes and camping facilities." (FEIR, pg. 5-8.)

(2) On _____, 1991, after a duly noticed public hearing, the City's Planning Commission considered the McSweeney Ranch Specific Plan -- SP 88-19, together with the accompanying Environmental Impact Report, dated June 1988, and Supplemental EIR, dated January 1991 and voted to recommend its approval by the City.

(3) On June 25, 1991, after a duly noticed public hearing, the City Council considered and adopted, Ordinance No. 1419 approving the McSweeney Ranch Specific Plan -- SP 88-19, ("MRSP 88-19") and corresponding Environmental Impact Report, dated June 1988, and Supplemental EIR dated January 1991. Portions of the property lying within the boundary of MRSP 88-19 have been developed into public facilities, roads and improvements.

(4) Beginning in 1991, Owner commenced a series of workshops and meetings with interested agencies, including the City, the County and members of the public to discuss a Recreation Areas Plan covering areas that would eventually be included within the Project. No action was taken on the Recreation Areas Plan by the City.

(5) In November 1997, the Owner's Board of Directors approved a Draft Recreation Plan that included many of the facilities ultimately approved in the Diamond Valley Lake Park Specific Plan.

(6) In February 1998, the City, the County and the Owner entered into an agreement regarding the processing of a subsequent environmental impact report for modifications to the MWD's recreation plan acknowledging the Owner's role as Lead Agency for CEQA environmental review for that project.

(7) On October 15, 2002, after a duly noticed public hearing, the City's Planning Commission considered the Diamond Valley Lake Park Specific Plan -- SP 02-1, together with the accompanying Mitigated Negative Declaration and voted to recommend its approval by the City Council.

(8) On December 10, 2002, after a duly noticed public hearing, the City Council considered and adopted Ordinance No. 1677, approving the Diamond Valley Lake Park Specific Plan -- SP 02-1 ("DVLSP 02-1") on a 538¹ acre Site generally located south of Domenigoni Parkway and west of State Street. The approval of DVLSP 02-1 acknowledged Owner's desire to obtain the land use entitlements necessary to develop the Project and to install the public facilities and improvements as set forth in DVLSP 02-1, Article IV, entitled "Project Wide Development Standards," pages IV-1 through IV-21, inclusive. This list of public facilities and improvements is hereby attached hereto and incorporated herein by reference as Attachment "3".

(9) The City has filed an application, as amended, with LAFCO for the Annexation of the Annexation Area to the City of Hemet.

(10) On November 17, 2003, after a duly noticed public hearing, the City's Planning Commission considered this Development Agreement 03-2 and voted to recommend its approval by the City.

(11) On January 13, 2004, after a duly noticed public hearing, the City Council considered and adopted Ordinance No. 03-132 approving this Development Agreement 03-2 and authorizing its Mayor to execute Development Agreement 03-2 and the Memorandum of Agreement.

(12) On _____, 200_, after a duly noticed public hearing, the Board of Directors for the Metropolitan Water District considered and approved this Development Agreement and authorized the Executive Officer of the Board to execute Development Agreement 03-2 and the Memorandum of Agreement.

(13) Through 2003, the County of Riverside considered the East Marina

¹ DVLSP 02-1 includes a portion of Parcel B of the Annexation Area. However, for purposes of this Agreement, the DVLSP Area is deemed not to include the portion of Parcel B of the Annexation Area. This is why the acreage for DVLSP 02-1 is different than the acreage of the DVLSP Area.

development exempt from permitting, but duly reviewed and commented on design plans and issued fire department clearances for occupancy and operations within the East Marina Area.

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

F. In adopting this Agreement, City has determined that the Property, being one of the most significant projects to be undertaken within and near the City, is likely to result in the development of a comprehensive mix of public recreational, residential and commercial facilities. This development will lead to, a substantial increase in sales tax revenues to the City, provide additional employment opportunity to City residents, and contribute to efficient traffic circulation thereby reducing air pollution in the community. City acknowledges the benefit such results will provide to the community and desires to encourage the undertaking and completion of the Project and to provide a greater level of development certainty for the Owner by entering into this Agreement.

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

OPERATIVE PROVISIONS

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

1.0 DEFINITIONS

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

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

"Annexation" shall mean Local Agency Formation Commission (LAFCO) 1997-07-3 (as amended) —Reorganization To Include Annexation 97-140 To The City Of Hemet And Concurrent Detachment From County Service Area 152 And The Riverside County Waste Resources Management District.

"Annexation Area" shall mean those certain parcels of real property commonly known as Parcels A, B and C, consisting of approximately 653 acres that are the subject of the Annexation (LAFCO 1997-07-3 as amended). The Annexation Area is more particularly described in the legal description and depicted in the map attached hereto and incorporated herein by reference respectively as Attachment "1-C" and Attachment "2-C."

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

"County" shall mean the County of Riverside.

"Development Costs" shall mean all the costs and expenses which must necessarily be incurred in the design, development, construction and completion of the Project, including but not limited to: pre-development costs; Owner's overhead and related costs; design and engineering costs; development costs; construction costs; fees payable to accountants, appraisers, architects, attorneys, biologists, construction managers, engineers, geologists, hydrologists, inspectors, planners, testing facilities, and other consultants. Costs for obtaining permits and approvals; taxes; assessments; costs related to testing for and remediation of Hazardous Substances; utility connection fees and other utility related charges; costs relating to financing including principal, interest, points, fees and other lender charges; escrow fees and closing costs; recording fees; court costs; costs relating to insurance; costs relating to title insurance; costs relating to bonds; and all other costs and expenses of Owner related to the development of the Property..

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

"Development Impact Fee" shall mean those development impact fees imposed and levied by the City to recover the cost of planned public facilities and to mitigate impacts of projects on the City, examples of which are as follows:

- Traffic Control Facility Fee (Transportation-Signals Fee)
- Road and/or Bridge Facility Fee (Transportation - Roads, Bridge Fee)
- General Facility & Equipment Fee
- Solid Waste Facility & Equipment Fee
- Storm Drainage Facilities Fee
- Water Holding & Distribution Fee
- Streets & Thoroughfares Fee

Fire Protection Facilities & Equipment Fee (Fire Mitigation Fee)
Development Impact Fee Administrative Program Processing Fee
Law Enforcement Facilities Fee
Archeological Resource Mitigation Fee
Park, Regional Parks, and/or Open Space Mitigation Fee
Public Facilities Fee

“Diamond Valley Lake Park Specific Plan Area” or **“DVLSP Area”** shall mean those certain parcels of real property consisting of approximately 500 acres within the boundary of the Diamond Valley Lake Park Specific Plan -- 02-1, excepting therefrom that part of Parcel B of the Annexation Area which is within the boundary of DVLSP – 02-1. The DVLSP-02-1 Area is more particularly described in the legal description and depicted in the map attached hereto and incorporated herein by reference respectively as Attachment “1-D” and Attachment “2-D.”

“East Marina Area” shall mean that portion of the Property consisting of approximately ninety-seven (97) acres at the northeast corner of Diamond Valley Lake at the terminus of Marina Road. The East Marina Area is generally depicted, for illustration purposes only, on Attachment “1-E” and Attachment “2-E”. This area to include any and all areas associated with the development of a secondary access road and shoreline fishing.

“East Recreation Area” shall mean that portion of the Property consisting of approximately 1136 acres south of Domenigoni Parkway, west of State Street, and generally north of Newport Road comprised of the following areas: (i) the DVLSP Area; and (ii) the Other MWD Parcels. The sub-areas are more particularly described in the legal description and depicted in the map attached hereto and incorporated herein by reference respectively as Attachment “1-B” and Attachment “2-B.”

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

“Existing Development Approval(s)” shall mean those certain land use development permits and approvals issued, approved, and/or certified by the City Council or the City's Planning Commission for the Project, specifically including the MRSP 88-19 and accompanying Environmental Impact Reports, the DVLSP 02-1 and accompanying Mitigation Negative Declaration, and any land use or building permit and approval issued, approved, and/or certified as of the Effective Date of this Agreement by the City Council, City's Planning Commission, Planning Director or Building Official for the Project as is permitted under the existing Hemet Municipal Code in effect as of the Effective Date of this Agreement with respect to the Property and the Project. In addition to the foregoing, upon

completion of the Annexation, the permits and approvals issued by the County of Riverside as identified in Recital D (13) shall be considered to be "Existing Development Approvals."

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

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

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

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

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

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

"High-water Road" shall mean that access road running along the high-water level along the northern shore of Diamond Valley Lake generally located higher than elevation 1756 Mean Sea Level connecting to the East Marina Area.

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

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

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

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

“McSweeney Ranch Specific Plan Area” or **“MRSP Area”** shall mean those certain parcels of real property consisting of approximately 767 acres within the boundary of the McSweeney Ranch Specific Plan -- 88-19, lying generally north of Domenigoni Parkway. The MRSP Area is more particularly described in the legal description and depicted in the map attached hereto and incorporated herein by reference respectively as Attachment “1-H” and Attachment “2-H.”

“Northern Area” shall mean that portion of the Property, consisting of approximately 734 acres north of Domenigoni Parkway and west of State Street substantially equivalent to the MRSP Area. The Northern Area is more particularly described in the legal description and depicted in the map attached hereto and incorporated herein by reference respectively as Attachment “1-A” and Attachment “2-A.”

“Other MWD Parcels” shall mean those certain parcels of real property consisting of approximately 600 acres within the East Recreation Area, but which are not otherwise covered by the DVLSP Area, Annexation Area or the Northern Area. The Other MWD Parcels are more generally described as the difference between the East recreation Area and the DVLSP-02-1 Area as referenced in legal descriptions and depicted in maps attached hereto and incorporated herein by reference respectively as Attachment “1-B and 1-D” and Attachment “2-B and 2-D.”

“Owner” shall mean the METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a public agency of the State of California, organized and existing under the Metropolitan Water District Act of the State of California. As of the Effective Date of this Agreement, Owner owns fee title to the Property. The term "Owner" shall also include all assignees, to the extent permitted under this Agreement, of the rights and obligations of Owner under this Agreement, and any successor-in-interest to Owner having a legal and/or equitable interest in the Property.

“Processing Fees” shall mean those fees and charges imposed by the City: (i) upon the filing of applications for permits and approvals, (ii) for the processing of applications for permits and approvals; (iii) charges for City staff time to review environmental documents, but expressly excepting therefrom the cost or charge for the preparation of initial studies, negative declarations, mitigated negative declarations, environmental impact reports, and other documents required under the California Environmental Quality Act, the California Endangered Species Act, or any federal counterpart or equivalent to such acts; and (iv) plan check fees; (v) building permit fees, but expressly excepting therefrom applicable Development Exactions and Development Impact Fees payable at the time the building permit is issued, the levy of which is permitted by specific provisions of this Agreement, and fees collected by the City, but levied by other non-city governmental such as school and water districts; and (vi) building inspection fees.

"Project" shall mean that certain mixed-use, residential, commercial and recreation development including, together with landscaping and on and off-site improvements, as permitted, under and consistent with this Agreement and/or the Existing Development Approvals, as they may be amended from time to time as provided hereunder.

"Property" shall mean those certain parcels of real property as more particularly described in the legal descriptions attached hereto and incorporated herein by reference as Attachment "1." Generally, the Property consists of approximately 1967 acres, a portion of which is located south of Chambers Street and west of State Street within the City of Hemet, County of Riverside, State of California, and another portion of which is located within the unincorporated territory of Riverside County, State of California. The configuration of the Property is more particularly depicted in the map attached hereto and incorporated herein by reference as Attachment "2-G." The Property is comprised of three separate but contiguous sub-areas that are further defined in this Agreement as the Northern Area, the East Recreation Area, and the East Marina Area. The Northern Area consists of approximately 734 acres largely equivalent to the McSweeney Ranch Specific Plan Area. The East Recreation Area consists of approximately 1136 acres and includes the Diamond Valley Lake Park Specific Plan Area, a portion of the Annexation Area, and the Other MWD Parcels. The East Marina Area consists of approximately 97 acres and is a portion of the Annexation Area. These sub-areas are also depicted on the map in Attachment "2-G."

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

"Subsequent Development Approvals" shall mean any land use development permit and/or approval obtained after the Effective Date of this Agreement that substantially modifies the Project as provided for under the Existing Development Approvals, or that seeks to, or will have the legal effect of, substantially amending any one or more of the Existing Development Approvals, or this Agreement.

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

"Third Party Developers" shall mean any person or entity to whom Owner, or Owner's successors, or assigns, has provided some right to develop part of the Project on the Property, but to whom Owner, or Owner's successors or assigns have not sold,

transferred, or assigned any part of the Property or any of the rights or obligations created under this Agreement.

“Transportation Uniform Mitigation Fee” or “TUMF” shall mean the development impact fee imposed and levied under City of Hemet Ordinance No. 1683 approving the City of Hemet’s participation in the “Transportation Uniform Mitigation Fee Program” and imposing and authorizing the levy of the Transportation Uniform Mitigation Fee (“TUMF”). The purpose of the TUMF is to mitigate the traffic impacts of local development on, and to provide funds for the improvement and expansion of, existing and planned regional transportation and circulation facilities (including, but not limited to, regionally significant state, county, and local, arterials, highways, and freeways) within Riverside County or such other sub-region of Riverside County, the boundaries of which exceed the boundaries of the City of Hemet as they exist on the Effective Date of this Agreement and as they may hereafter be expanded by approved annexation. In addition to any right of Owner to claim that the Project is exempt from TUMF as a Public Agency under section 58-70(ii) of the Hemet Municipal Code, it is the intent of the parties that the Project, to the extent developed on portions of the Property currently within the City’s boundaries or that may in the future come within the City’s boundaries by virtue of the Annexation, and to the extent that the Metropolitan Water District remains the owner of the property upon which the Project is developed and is and remains the operator of resulting facilities, be expressly made exempt from the levy and payment of the TUMF. Notwithstanding the foregoing, TUMF Fees shall be levied, paid, and collected on development of the Project in the Northern Area, as a condition to the issuance of certificates of occupancy, to the extent that payment of TUMF Fees would otherwise be required under Hemet Ordinance No. 1683.

2.0 SCOPE OF DEVELOPMENT

2.1 Scope of Development. During the Term of this Agreement, Owner shall be entitled to, and vested with the right to, develop the Project on the Property, subject to the terms and conditions of this Agreement and in accordance with the following provisions of this Article 2.0.

2.2 Proposal. Owner hereby proposes to facilitate construction and operate portions of the Project during the Term, as a residential, commercial and mixed-use recreation development, together with all associated parking, landscaping, and public improvements, on the Property as permitted under the Existing Development Approvals and as more particularly specified in, and subject to the terms and conditions of, this Agreement.

2.3 Term. The term of this Agreement shall commence on the Effective Date of this Agreement and shall extend for a period of fifteen (15) years from and after the Effective Date of the Agreement, unless terminated, modified, or extended (if allowed by law) by circumstances set forth in this Agreement or by mutual consent of the parties hereto, provided however, that this Agreement shall have no force or effect, create no rights, and impose no burdens with regard to that portion of the Property described herein as the Annexation Area unless and until the Annexation is approved and successfully completed. This Agreement shall terminate and be of no force and effect upon the occurrence of:

2.3.1 The entry of a final judgment or issuance of a final order after exhaustion of any appeals directed against the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval by the City Council of City of this Agreement.

2.3.2 The owner shall have the right to terminate the Agreement in the event of litigation being filed, before the expiration of the applicable statute of limitations, against the City to set aside, withdraw or abrogate the ordinance adopted by the City approving this Agreement.

2.4 Maximum Density (Intensity of Use). The maximum density of residential structures permitted on the Northern Area of the Property shall be that which is permitted under MRSP 88-19, after applying to the Project the requirements stated therein pertaining to minimum lot sizes, parking, landscaping, and setbacks stated in the Existing Development Approvals. The maximum density of structures permitted on the East Recreation Area and East Marina Area of the Property shall be that which is permitted under DVLSP 02-1, after applying to the Project the requirements stated therein pertaining to minimum lot sizes, parking, landscaping, and setbacks stated in the Existing Development Approvals.

2.5 Maximum Building Height. The maximum height of any building or other structure on the Northern Area of the Property shall be that which is permitted under MRSP 88-19. The maximum height of any building or other structure on the East Recreation Area and East Marina Area of the Property shall be that which is permitted under DVLSP 02-1.

2.6 Maximum Building Size. The maximum size of any building or other structure on the Northern Area of the Property shall be that which is permitted under MRSP 88-19. The maximum size of any building or other structure on the East Recreation Area and East Marina Area of the Property area shall be that which is permitted under DVLSP 02-1.

2.7 Development Costs. Except as may be expressly provided to the contrary in this Agreement, Owner shall be solely responsible for payment of all Development Costs

incurred in connection with development of the Project on the Property. Nothing in this Section 2.7 is intended to abrogate or diminish the obligations and responsibilities assumed by the City to undertake certain Public Improvements benefitting the Project as is expressly provided for in Article 3.0 [Public Benefits and Improvements] of this Agreement.

2.8 Dedication of Rights-of-Way for Public Improvements. Concurrent with the completion of the improvement requiring dedication of property for public improvements, Owner shall give and dedicate such rights-of-way, easements, agreements, licenses, and other grants of rights ("Dedications") to the City as are reasonably required to accomplish the survey, design, construction, inspection, testing, operation, maintenance and repair of the Public Improvements. It is understood, acknowledged, and agreed by Owner that such Dedications may include, but are not limited to, fee parcels, and permanent or temporary rights-of-way or easements for public purposes (including street and utility use, slope, drainage, maintenance, construction, entry and/or access, and encroachment permits). Owner agrees that the making of such Dedications are part of the consideration provided by Owner for this Agreement, that Owner shall not seek, nor have a right to seek, any compensation from City for such Dedications, and that Owner shall not pursue any legal action for compensation, including inverse condemnation or eminent domain, with regard to such Dedications. City agrees not to require additional land dedication and/or preservation beyond what Owner has already provided under the Existing Development Approvals.

2.9 Schedule of Performance. Owner proposes, in good faith, to use reasonable efforts to undertake, commence, and thereafter diligently pursue to completion, construction of the Project, subject to the following provisions:

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

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

2.10.1 Title and Possession. Owner owns fee title to the Property, and all other persons holding legal or equitable interests in the Property shall be bound by this Agreement.

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

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

2.11 Legal Costs. Each party to this Agreement shall be responsible for its own Attorneys' Fees incurred in the preparation, adoption and enforcement of this Agreement.

2.12 Cooperation. City agrees that it shall accept for processing and promptly take action on all applications for Implementing Approvals, provided they are in a proper form and acceptable for required processing in accordance with the provisions of this Agreement and/or Existing Development Approvals and shall waive Processing Fees as defined in this Agreement to the extent provided in Section 3.7 [Waiver of Processing Fees]. City agrees to establish, in conjunction with Owner, a "fast-tracking" procedure for implementation of the Project on the Property. City shall cooperate with Owner in providing expeditious review of any such Implementing Approvals and, upon request and payment of any costs and/or extra fees associated therewith by Owner, City shall assign to such applications, planner(s), building inspector(s), and/or other staff personnel as the City deems reasonably necessary to facilitate the timely processing and approval of such Implementing Approvals and inspection of the Project.

2.13 Mitigation of Surrounding Development. City and Owner will work cooperatively to require reasonable mitigation, to the extent mitigation is feasible, of significant environmental impacts resulting from surrounding developments.

2.14 Groundwater Resources. Owner proposes to implement groundwater management on the Property in accordance with the Hemet /San Jacinto Ground Water Management Plan. However, it is understood that Owner may have certain rights to make use of water on and/or under the Property, that such water may be put to reasonable and beneficial uses as is allowed by law, and that Metropolitan Water District, its successors

and/or assigns, shall not export ground water for sale from the Property in its implementation of the Project.

2.15 No Protest to Annexation. Owner, its successors and assigns, will not protest the Annexation, as defined herein, pending before LAFCO. It is the intent of the parties that the Development Agreement shall survive and remain in full force and effect on all parties regardless of the outcome of the Annexation, provided however, that this Agreement shall have no force or effect, create no rights, and impose no burdens with regard to that portion of the Property described herein as the Annexation Area unless and until the Annexation is approved and successfully completed.

3.0 PUBLIC BENEFITS & IMPROVEMENTS

3.1 Public Benefit. The parties acknowledge and agree that this Agreement confers public benefit to the City and regional community. To help augment the cost of the provision of such public benefits, the Owner proposes, and the City seeks to support, that any private benefits resulting from the development of the Property may be used to supplement the development costs of these public benefits.

3.2 Public Improvements. Owner shall, at its sole cost and expense, unless expressly provided to the contrary herein, design, install, and construct the Public Improvements relating to the Project provided under the Existing Development Approvals. City agrees to require no additional Public Improvements for the Project beyond those provided under the Existing Development Approvals. Notwithstanding the foregoing, the parties agree that the City may impose new and additional requirements for Public Improvements as conditions of approval on any subsequent amendment of MRSP 88-19. In addition, this Section 3.2 in no way limits or restricts the authority of the City to require the funding and/or construction of additional Public Improvements as conditions of approval on Subsequent Development Approvals.

3.3 Clarification Items. Owner and City have agreed to clarify specific aspects of the rights and obligations pertaining to certain Public Improvements, and infrastructure items as follows:

3.3.1 **Secondary Access Road**. The City agrees to accept the High-water Road as secondary access to the East Marina Area, excluding any future hotel facilities. In addition to its obligations under DVLSP 02-1, Owner proposes to utilize and/or improve Newport Road as a secondary access road into the East Recreation Area. The access will connect State Street to the southerly extension of internal roadways within the East Recreation Area. Additionally, Owner may also construct or cause to be constructed a

further access connection to State Street potentially opposite the proposed entrance to the separate McSweeney Farms development on the east side of State Street. These secondary access roads shall be constructed consistent with the standards set forth in DVLSP 02-1. Road alignment, design, construction and the utility component is subject to approval by the City.

3.3.2 Drainage System. Owner shall, as a condition of approval on any development within the Northern Area, install or cause to be installed at Owner's sole cost and expense, a drainage system of sufficient capacity to drain the Northern Area into the Salt Creek Channel. The system will be designed, subject to City approval, to maximize utilization of the Northern Area for residential and/or commercial development. The City, as part of the State Street widening project, shall install, at no cost to Owner, flood control dissipation structures at all State Street culvert crossings. The City will also cooperate and assist, at no cost to City, Owner in Owner's efforts to connect the designed drainage system to the existing Salt Creek Channel. The City will also cooperate and assist, at no cost to City, Owner in obtaining a revised Federal Emergency Management Agency (FEMA) map so as to remove Property from the 100-year flood plain with the intent to maximize utilization of the Property for residential, commercial and/or recreational development.

3.3.3 Gas Line. City will, as part of the State Street widening project or other public project in the vicinity, make a trench available for the Gas Company to install or cause to be installed, a gas line of sufficient size to provide natural gas service to the Northern Area and the East Recreation Area. Owner has provided a permanent easement, on the eastern boundary of its Northern Area, at no cost to the City, to accommodate the State Street widening project and associated utility installations.

3.3.4 Underground Power Lines. City shall, as of the Effective Date and during the term of this Agreement, use its reasonable efforts to encourage Southern California Edison or its successor entity to underground power lines and electrical facilities located or to be located on the Property and within an area within one quarter mile of the Project boundaries. City will condition future development within this area, as may be legally permissible, on having underground power lines.

3.3.5 Emergency Access Road. City agrees to accept existing High-water Road as the secondary access road for emergency purposes ("Emergency Road") to the East Marina Area for the development of the Project at the East Marina Area, provided however, that such development does not include residential dwelling units, and Owner, at its sole cost and expense, keeps and maintains the Emergency Road in good order and repair. Alternatively, if the City does not accept the existing High-water Road as the Emergency Road, then City agrees to construct or cause to be constructed a suitable Emergency Road into the East Marina Area, provided that City's rejection of the existing

High-water Road as the Emergency Road was not due to Owner's development of the residential dwelling units as part of the Marina Facilities, and Owner, at its sole cost and expense, keeps and maintains the Emergency Road in good order and repair. The City and Owner shall cooperate on the alignment, design, and construction any such Emergency Road.

3.4 Credits and Reimbursements. Notwithstanding the foregoing, it is the intent of the parties that where Development Impact Fees are attributable to parties other than the owner, such parties shall remain eligible to obtain credits against Development Impact Fees paid and/or to obtain reimbursement of costs incurred in designing and constructing Public Improvements to the extent such party would otherwise qualify under the existing Land Use Regulations, including, but not limited to, Hemet Municipal Code § 58-64, 58-65, and/or 58-66.

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

3.6. Amendment of Specific Plans. In the event that Owner seeks to amend either MRSP 88-19 or DVLSP 02-1 to effectuate the Project as contemplated in this Agreement, then City will waive the Processing Fee applicable to such amendment(s). However, Owner shall remain responsible for the cost of preparing the necessary documents required under the California Environmental Quality Act, the California Endangered Species Act, and their federal counterparts or equivalents, and shall execute the City's standard three-party agreement for preparation of such documents.

3.7 Waiver of Processing Fees. City of Hemet shall waive the payment of Processing Fees for construction of all infrastructure improvements described in Attachment "3" [List of Public Facilities and Improvements] and such other improvements as roads, traffic signals, grading, launch ramp area improvements, recreation lake and recreation support buildings, within and supporting the East Recreation Area and the East Marina Area. Processing Fees are not waived for hotel, water park, museums and other similar facilities owned and operated by persons or entities other than the Metropolitan Water District.

3.8 Public Services. City will provide the same or higher benefits and service levels to the Project and the Property as to any properties currently within and annexed to the City in the future.

3.8.1 Fire And Emergency Medical Services. City shall provide fire suppression and emergency medical service to the Project and the Property in the same manner and at the same cost as provided to current Hemet properties. The Parties acknowledge that this Agreement does not create any legal claim or right of action on the part of Owner to any specific service or response time and that all decisions relative to service are subject to the City Council's authority.

3.8.2 Law Enforcement Services. City shall provide law enforcement services to the Project and the Property in the same manner and cost as that service is provided to current Hemet properties and businesses. The Parties acknowledge that this Agreement does not create any legal claim or right of action on the part of Owner to any specific law enforcement service or response time and that all decisions relative to service are subject to the City Council's authority. The City recognizes that the Riverside County Sheriff will provide lake patrol under contract to the Owner.

3.9 Compliance Prevailing Wages Statutes. Owner acknowledges and agrees that construction of the Public Improvements is now or may become subject to certain state and federal laws and regulations, including without limitation, the provisions of California Labor Code Section 1720 et seq., or the federal Davis-Bacon Act (collectively, the "Prevailing Wage Statutes"). Notwithstanding the foregoing, City and Owner do not intend for the terms of this Agreement to make Owner's or a Third Party Developer's construction of buildings, facilities, and improvements, which are not Public Improvements, subject to the provisions of the Prevailing Wage Statutes. If the Owner reasonably determines that any provision of this Agreement is interpreted, or may reasonably be interpreted, by the California Department of Labor or similar federal agency to make such construction of such non-Public Improvement buildings, facilities, and improvements, subject to the Prevailing Wage Statutes, then at Owner's option, notwithstanding the requirements of Section 5.5.2. [Review by City Council], but after prior written notice to City, Owner may elect to reform or delete such provision from this Agreement effective as of the Effective Date (so long as such reformation or deletion does not adversely affect the City or otherwise nullify or abrogate rights created for the City under this Agreement) in order to cause such construction to no longer be subject to the Prevailing Wage Statutes.

4.0 OPERATION AND MAINTENANCE

4.1 Operation. Owner, and its successors and assigns, shall operate and manage the Project or cause the Project to be operated and managed, in a reasonable manner using best management practices.

4.2 Maintenance. During the operation of the Project, Owner shall keep and maintain the Property in a clean, sanitary and orderly condition free from debris, graffiti and waste materials and in good order, repair and safe condition consistent with comparable

mixed-use recreation projects located in Southern California. In addition, Owner shall observe and comply with all Governmental Requirements, as that term is defined in Section 4.4. [Compliance with Laws] hereof, provided, however, that Owner does not waive its right to challenge the validity of applicability of any such Governmental Requirements.

4.3 Business/Employment Opportunities. The Owner is committed to creating an environment that affords all individuals and businesses open access to the business opportunities available within the regional service area in a manner that reflects the diversity of its service area. It is the policy of the Owner to solicit participation in the performance of all construction, professional services, procurement contracts, supplies, and equipment procured by Owner by all individuals and businesses, including but not limited to small businesses, locally owned businesses, women, minorities and economically disadvantaged enterprises. City will impose no employment requirements, either on or off-site for the Project or Property.

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

4.5 Effect and Duration of Covenants. The covenants established in this Agreement shall, without regard to technical classification and designation, benefit and burden the Property and run with the land, and shall be binding upon Owner and its successors and assigns and any person claiming an interest in the Property by or through them and, as may be provided expressly herein, upon the City. The covenants are for the benefit and in favor of Owner, the Project, and the City. The City shall have the right, but not the obligation, to enforce any or all of the covenants provided herein. The Owner shall have the right, but not the obligation, to enforce all covenants made by City as provided herein.. Each of the covenants shall be binding and valid for the duration of the term of this Agreement. In the event of the early termination of this agreement, a written instrument executed by City and owner evidencing such termination shall be promptly recorded with the recorder for the County of Riverside. Upon such recordation all covenants shall cease to be binding and be of no further force or effect.

4.6 Covenants Do Not Bar Subdivision. The requirements of this Section 4.6 do not, and shall not be construed to, prohibit Owner from subsequently subdividing the

Property and selling the individual parcels. However, with the exception of residential parcels, each such parcel created and sold shall be conveyed subject to covenants incorporating each of the obligations set forth in this Article 4.0.

4.7 Affordable Housing. Recognizing that the primary purpose of the Project in the East Recreation Area and East Marina Area is for public recreation and natural preservation, the City agrees that Owner shall not accrue any obligation to construct or fund affordable housing by virtue of development within the East Recreation Area or East Marina Area, and shall not be required to otherwise allow the location of affordable housing within the East Recreation Area or East Marina Area. Notwithstanding the foregoing, the exception provided in this Section to the East Recreation Area, is not applicable to any residential project for which the Owner may later seek and obtain approval from the City. Nothing in this Section 4.7 shall restrict the City's ability to require the construction and/or funding of affordable housing units within the Northern Area as may be provided for, or required by law.

5.0 VESTING AND RESERVATION OF AUTHORITY

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

5.2 Effect of Agreement.

5.2.1 **Applicable Land Use Regulations**. Except as may otherwise be expressly provided to the contrary in this Agreement, pursuant to Government Code § 65865.4 and § 65866, the rules, regulations, and official policies governing permitted uses of the Property, the maximum density and intensity of use, the maximum height and size of proposed buildings, the design, improvement and construction standards and specifications applicable to the Project, and provisions for reservation and dedication of land for public purposes, shall be those set forth in the Existing Development Approvals, Existing Land Use Regulations, and this Agreement. As such, this Agreement shall remain enforceable by either party notwithstanding any subsequent change in the Land Use Regulations, including, but not limited to, the City's General Plan, Zoning Ordinance, Subdivision

Ordinance, development standards or guidelines. However, development of the Project shall be subject to the Implementing Approvals and Subsequent Development Approvals, if any, as provided for below.

5.2.2 Zoning. Government Code § 65859 and Section 90-9 of the Hemet Municipal Code allow rezoning of unincorporated territory in order to determine the zoning to be established in the event of subsequent annexation to the city. Such zoning shall become effective on the effective date of the annexation. Prior to completion of the Annexation, the City shall establish rezoning for the Annexation Area consistent with that adopted by the County through the Riverside County Integrated Plan process. Upon completion of the Annexation, the City will amend its General Plan to make the Plan's land use designation consistent with the zoning.

5.2.3 Applicable Development Impact Fees - East Recreation Area/ East Marina Area. Certain components of the Project within the East Recreation Area and the Annexation Area shall be exempt from the levy and payment of the City's existing and future Development Impact Fees including TUMF that would otherwise be levied upon the Project. The exemption provided in this Section 5.2.3 shall not exempt payment of school fees (Government Code Section 69570 et. seq.) and other fees imposed by governmental entities other than the City having jurisdiction over the Property. The components of the Project that shall be exempt from the levy of Development Impact Fees, including TUMF, are campgrounds, golf courses, water parks, lakes, the Center for Water Education, the Western Center, the ValleyWide Park Facility and other similar major recreational uses. In addition, Owner shall not be required to construct additional infrastructure or Public Improvements for the development of the Project within the East Recreation Area and East Marina Area beyond those required under the existing development approvals.

5.2.4 Applicable Development Impact Fees -- Northern Area. Development of the Project within the Northern Area by Owner, its successors, or assigns or by Third Party Developers shall be subject to the levy and payment of the City's Development Impact Fees and TUMF in effect at the time of application for permit or approval by the City. The City recognizes it may be the intent of Owner to pass payment of such fees on to assignees or Third Party Developers. In addition, City will cooperate in the deferral of payment of Processing Fees until issuance of a certificate of occupancy.

5.2.5 Moratoria. It is the intention of the parties in adopting this Agreement that no moratorium, whether enacted by initiative or otherwise, affecting any subject matter arising from or related to the subject matter of this Agreement, shall apply to the development of the Project, to the extent such moratorium is inconsistent or in conflict with this Agreement. Further, it is specifically the intent of the parties that the schedule or rate of development shall be determined as provided in Section 2.9 [Schedule of Performance] of this Agreement and shall not be affected by any initiative measure establishing growth

control and that the rule of *Pardee Construction Company v. City of Camarillo* (1984) 37 Cal. 3d 465, shall have no effect on Owner's discretion to schedule the rate of development.

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

5.3.1 **Processing Fees**. Except as is expressly provided in Sections 3.6 [Amendment of Specific Plans], 3.7 [Waiver of Processing Fees], 5.2.3 [Applicable Development Impact Fees - East Recreation Area/East Marina Area] and 5.2.4 [Applicable Development Impact Fees -- Northern Area], Owner, and its successors and assigns, shall pay all customary and typical Processing Fees imposed for Implementing Approvals and Subsequent Development Approvals as required under ordinances and resolutions then in effect at the time of issuance of the permit or approval.

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

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

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

5.3.5 **Health & Safety Regulations**. Nothing in Section 5.2 [Effect of Agreement] or otherwise in this Agreement shall prevent the City from applying to the development of the Project on the Property, or time subsequent use of the Property, any ordinances, rules, regulations, policies, or procedures ("Laws"), the primary purpose of which is to protect health, safety, and welfare, or the primary purpose of which is the general regulation of business activity within the City. These matters may include, but are not limited to: (i) Law regarding the abatement of public nuisances; (ii) Laws regulating hazardous materials, trash and related rubbish and solid waste, weeds, dust, graffiti, and inoperative vehicles; (iii) Laws regarding emergency situations including fires, floods,

earthquakes, and other natural disasters; (iv) Laws prohibiting criminal acts; (v) Laws regulating the keeping and use of animals; (vi) Laws regulating prurient interests including the regulations of adult businesses and activities, smoking, and the sale and consumption of alcoholic beverages; (vii) Laws regulating the conduct of business within the City including the requirement to obtain a business license; and (viii) Laws regulating the use and placement of signs within the City; and (ix) building, plumbing, electrical, mechanical, fire, dangerous buildings, and similar uniform codes adopted by the City. In the event Owner contests that application of such Health & Safety Regulations to development of the Project or the Property as being in conflict with any of the Existing Development Approvals, or as impairing or prohibiting Owners ability to develop the Project as contemplated in this Agreement, then Owner shall so notify the City in writing prior to adoption of the Health & Safety Regulations, in which event City shall not impose such regulation unless and until the City adopts a finding that imposition of the regulation is reasonably necessary to correct or avoid a condition generally injurious or detrimental to the public health, safety or welfare. These findings shall be based upon substantial evidence in the record from a hearing conducted by the City Council.

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

5.3.7 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies. City agrees to work cooperatively with Owner to ensure fairness of regulation by other public agencies.

5.4 Need For Subsequent Approvals. The parties contemplate that development of the Project will require Owner to obtain certain Implementing Approvals for the Project. In addition, the parties acknowledge that Owner may, from time to time, find it necessary and convenient, to seek certain Subsequent Development Approvals from the City that are not currently within the scope of, or contemplated by, the Project. Such approvals shall be governed by the following:

5.4.1 Implementing Approvals. The parties acknowledge and agree that Owner shall need certain Implementing Approvals, such as grading and building permits, to undertake and complete the Project as contemplated under the Existing Development

Approvals and this Agreement. These Implementing Approvals are to be of a ministerial or only limited discretionary nature and shall not cause a substantial or significant change in the Project or in any Existing Development Approval. A minor change to the Project or the Existing Development Approvals may be made through an Implementing Approval and shall not require amendment of this Agreement. Implementing Approvals shall be subject to Section 5.2. [Effect of Agreement] and no Subsequent Land Use Regulation, Dedication Exaction, or Subsequent Regional Traffic Impact Fee not imposed under the Existing Development Approvals or Existing Land Use Regulations shall be imposed as a condition of approval on an Implementing Approval. City shall accept for processing, review, and action all applications for Implementing Approvals and such applications shall be processed in the normal manner for processing such matters. City may, at the request of Owner, contract for planning and engineering consultant services to expedite the review and processing of Implementing Approvals, the cost of which shall be borne in accordance with applicable sections otherwise expressly provided herein.

5.4.2 Subsequent Development Approvals—Northern Area. The parties acknowledge and agree that Owner may from time to time find it necessary or convenient to seek Subsequent Development Approvals pertaining to the Northern Area in response to changed market conditions, unknown site conditions, or other conditions over which Owner has no reasonable control. Subsequent Development Approvals pertaining to the Northern Area are anticipated to be major discretionary approvals that are quasi-adjudicatory or legislative in nature, the granting of which would cause a substantial or significant change in the Project and/or the Existing Development Approvals. The parties agree that any application which, if approved, would have any of the following effects, impacts, or characteristics, is to be considered a Subsequent Development Approval:

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

Although this Agreement shall not prohibit the processing or approval of Subsequent Development Approvals, the parties agree that such approvals will require amendment of

this Agreement in accordance with Section 5.5 [Changes and Amendments]. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations, or denying the application, in the reasonable exercise of the City's discretion, and will not restrict or limit the City's authority to impose Development Impact Fees, TUMF or other new or increased Development Exactions as conditions of approval on the Project and such other reasonable and legal conditions of approval or mitigation measures.

5.4.3 Subsequent Development Approvals - East Recreation Area/East Marina Area. The parties acknowledge and agree that Owner may from time to time find it necessary or convenient to seek Subsequent Development Approvals pertaining to the East Recreation Area and/or the East Marina Area in response to changed market conditions, unknown site conditions, or as needed to effectuate the purpose of the DVLSP - 02-1. Subsequent Development Approvals pertaining to the East Recreation Area and/or East Marina Area are anticipated to require major discretionary approvals and changes to the Existing Development Approvals as they apply to these areas. Such changes may include, but are not limited to, amendment of the DVLSP 02-1. Provided that the purpose, intent, and effect of such Subsequent Development Approvals would be to further and facilitate the recreational purposes of the DVLSP 02-1 as contemplated in this Agreement e.g. addition of a golf course or additional major hotel to the Project in these areas, then the parties agree that such Subsequent Development Approvals shall not require an amendment to this Agreement and that, when approved, such Subsequent Development Approvals shall be considered to be part of the Existing Development Approvals. The parties expressly agree that, although nothing in this Section shall prevent the City from exercising its legislative discretion to approve or disapprove a Subsequent Development Approval, City agrees that it shall only apply the Existing Land Use Regulations to such application, shall not impose any new Development Impact Fees as conditions of approval, and shall limit the imposition conditions of approval requiring installation of new Public Improvements to those directly related to and required to service and operate any new facilities proposed in the application for the Subsequent Development approval. Notwithstanding the foregoing, in the event that the purpose, intent and affect of a Subsequent Development Approval will not further or facilitate the recreational purpose of the Subsequent Development Agreement or will be substantially contrary or inconsistent with the DVLSP 02-1, then such Subsequent Development Approval shall be processed in accordance with, and be subject to, Section 5.4.2.

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

5.5.1 Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only by mutual consent of the parties and in the

manner provided for in Government Code Sections 65868, 65867, and 65867.5. The provisions of this Section do not impact the right of the City to terminate this Agreement because of Owner's breach or failure to comply in good faith with the requirements of this Agreement.

5.5.2 Review by City Council. Any amendment to this Agreement, except as may be required under Section 3.9 [Compliance Prevailing Wages Statutes] or allowed in Section 10-13 [Amendments to Agreement] of this Agreement, shall require review and approval by the City Council. The City agrees to not unreasonably disapprove an amendment requested by Owner provided the amendment is: (i) related to a Subsequent Development Approval that is necessary to effectuate the purpose of this Agreement in response to changed market conditions, unknown site conditions, or other conditions over which Owner has no reasonable control; (ii) is necessary to correct an inconsistency or inaccuracy in the Agreement; or (iii) the proposed change and amendment is appropriate and mutually desirable. If approved, any such amendment shall be incorporated herein. Owner shall, within thirty (30) days of written demand by City, reimburse City for any and all reasonable costs associated with any amendment or change to this Agreement that is initiated by Owner or Owner's successor -- without regard to the outcome of the request for amendment or change to this Agreement.

5.6 Waiver of Challenges. In exchange for the vested right to develop pursuant to this Agreement, Owner expressly waives for itself and for each of its successors and assigns, the right to challenge or contest the validity of any existing condition of approval attached to the MRSP 88-19, DVLSP 02-1, existing as of the effective date of this Agreement or other Existing Development Approval.

6.0 ASSIGNMENT AND RIGHTS OF HOLDERS

6.1 Assignment.

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

(a) No Assignment of any right or interest under this Agreement shall be made unless made together with the Assignment of all or a part of the Property,

Owner agrees to provide specific notice of this Agreement, including the record or document number, where a true and correct copy of the Memorandum of Agreement may be obtained from the County Clerk/County Recorder of the County of Riverside, and where a true and correct copy of this Agreement may be obtained from the City Clerk of the City of Hemet, in any grant deed or other document purporting to transfer the title or an interest in the Property during the term of Agreement or any extension thereof.

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

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

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

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

(b) The Owner is not then in default under this Agreement.

(c) The Owner or assignee has provided City with the notice and executed agreement required under Paragraph (b) of Subsection 6.1.1 above.

(d) The assignee provides City with security equivalent to any security previously provided by Owner to secure performance of its obligations hereunder. The Owner has reimbursed City for any and all City costs associated with Owner's transfer of all or a portion of the Property.

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

6.2 Rights of Mortgagees.

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

6.3 Notice of Default to Mortgagee; Right to Cure.

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

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

within this ninety (90) day period, then the Mortgagee shall have such additional time as the City Council determines is reasonably necessary to remedy or cure the Default, if the Mortgagee commences cure during the ninety (90) day period and thereafter diligently pursues and completes the cure.

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

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

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

6.4 Cure by Mortgagee. In the event any obligation of Owner is for the payment of money or fees, other than standard permit or processing fees, and a Default is declared by City based upon such failure to pay, a Mortgagee may be granted an extended time to remedy or cure until such time as Mortgagee obtains possession of the Property; provided, Mortgagee agrees that any money due City which remains unpaid shall bear the higher of the legal rate of interest or the Consumer Price Index as the measure of inflation.

6.5 Mortgagee Rights. The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property. City acknowledges

that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with the Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Owner shall reimburse City for any and all of City's reasonable costs associated with said negotiations, interpretations, and modifications and shall make reimbursement payments to City within thirty (30) days of receipt of an invoice from City. Any Mortgagee of the Property shall be entitled to the following rights and privileges: Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law or specified herein.

7.0 INDEMNITY, RELEASE & RESERVATION OF RIGHTS

7.1 General Indemnity. Except as to the sole negligence, active negligence or willful misconduct of City, Owner expressly agrees to and shall indemnify, defend, release, and hold City, its elected and appointed officers, officials, agents, servants, employees, attorneys and contractors harmless from and against, any Action, claim, liability, loss, damage, entry, costs, or expenses (including, but not limited to, attorney's fees, expert fees, and court costs) which arises out of, or is in any way connected with any challenge to this Agreement, Owner's performance under this Agreement, or any work performed by Owner or any services rendered to Owner in performance of this Agreement by any of Owner's employees, agents, servants, or subcontractors, notwithstanding that City may have benefitted from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Owner's employees, agents, servants, or subcontractors. City shall not be responsible for any acts, errors or omissions of any person or entity except the City and their respective officers; agents, servants, employees or contractors. The Parties expressly agree that the obligations of Owner under this Section shall survive the expiration or Termination of the Agreement.

7.2 Third Party Litigation Concerning Agreement. Owner shall, protect, defend, at its expense -- including Litigation Expenses, and hold City and its officers, employees, and agents harmless against any Action, loss, cost, expense, claim, or counter-claim, complaint, or proceeding to attack, set aside, void, or annul the approval of this Agreement, the approving Ordinance, any Implementing Approval(s), and/or any environmental determination made under the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), or the approval of any permit granted pursuant to this Agreement brought by a third party. The Owner may in its sole discretion elect to terminate the Development Agreement rather than incur the expense of defense, provided however

that should Owner make such election, Owner shall reimburse City for any costs of defense, including Litigation Expenses, incurred by the City through the date of such election and its communication to the City. City shall promptly notify Owner of any such claim, action, or proceeding, and City shall cooperate in the defense.

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

7.4 Release. Except for nondamage remedies, including the remedy of specific performance as provided for in Section 9.5.4 [Specific Performance Remedy], Owner, for itself, its successors and assignees, hereby releases the City, its officers, agents, and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I; Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

7.5 Reservation of Rights. With respect to Sections 7.1 to 7.3 herein, City reserves the right to either (1) approve the attorney(s) which Owner selects, hires, or otherwise engages to defend City hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that Owner shall reimburse City forthwith for any and all reasonable expenses incurred for such defense, including attorney's fees, upon billing and accounting therefor.

8.0 PERIODIC REVIEW PROCEDURE

8.1 Timing. Pursuant to Government Code § 65865.1, City, at its option and expense, may review this Owner's compliance with the terms, conditions, and covenants of this Agreement. Such review may be undertaken at least once during every twelve (12) month period from the Effective Date of this Agreement.

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

8.3 Certificate of Compliance. With respect to each year for which an annual review of compliance with this Agreement is conducted, and for which the City has determined that Owner is in good faith compliance with this Agreement, the City, upon written request of the Owner shall provide Owner with a written certificate of good-faith compliance, in recordable form, duly executed and acknowledged by the City. The Owner shall have the right, in the Owner's sole discretion, to record this notice of compliance.

9.0 DEFAULT AND ENFORCEMENT

9.1 Default. Either party's failure or unreasonable delay in performing any term, provision or covenant of this Agreement constitutes a Default of this Agreement. In the event of a Default, the injured party may give written "Notice of Default" to the defaulting party, specifying the Default. Delay in giving or failure to give such notice shall not constitute a waiver of the Default. If the defaulting party fails to cure the Default within

forty-five (45) business days after receipt of a Notice of Default, or, if the Default is of a nature that cannot be cured within forty-five (45) business days, the defaulting party fails to continue to cure the Default within said forty-five (45) business days and thereafter diligently prosecute such cure to completion, then the defaulting party shall be liable to the injured party for any and all damages caused by such Default, unless otherwise provided for by this Agreement.

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

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

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

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

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

9.3 Default by City. If City has failed to cure its Default after notice and an opportunity to cure as provided in Section 9.1. [Default], Owner may pursue any legal or equitable remedy available to it under this Agreement without further notice to City, except as may be required under the law for service of summons and other legal papers. It is acknowledged by the parties that City would not have entered into this Agreement if City was to be subject to or liable for damages -- including monetary damages -- under or with respect to this Agreement or the application thereof. Owner, for himself or any successor thereto, expressly waives the right to seek damages -- including monetary damages -- against the City or any officer, employee, or agent thereof, for any default or breach of this Agreement. Owner covenants and agrees not to sue for or claim any damages -- including monetary damages -- for any purported breach of this Agreement by City. During the time when Owner alleges the existence of a City Default and without limiting any of its other available remedies, Owner shall not be obligated to proceed with or complete the Project or any phase of the Project, nor to reserve or dedicate any property pursuant to the Development Plan or this Agreement. Upon a City Default, any resulting delays in Owner's performance shall neither be an Owner Default nor constitute grounds for termination or cancellation of this Agreement by the City.

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

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

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

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

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

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

9.6 Remedies are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same Default or any other Default by another Party.

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

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

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

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

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

10.0 GENERAL PROVISIONS

10.1 Enforced Delays; Extension of Times. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools; delays of any contractor, subcontractor or supplier; or withdrawal of financing not caused by any act or omission of Owner; war; insurrection; strikes; lockouts; riots; floods;

earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental agency or entity (other than the acts of failures to act of the City which shall not excuse performance by the City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period or the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within forty-five (45) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and Owner. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete Owner Improvements shall not constitute grounds of enforced delay pursuant to this Section.

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

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

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

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

To City: City of Hemet
 Attn: City Manager

445 E. Florida Avenue
Hemet, CA 92543
Facsimile: (909) 765-3785

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

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

To Owner: The Metropolitan Water District
of Southern California
Post Office Box 54153
Los Angeles, CA 90054-0153
Attention: Leslie J. Barrett
DVR Program Manager

With a copy to: The Metropolitan Water District
of Southern California
Post Office Box 54153
Los Angeles, CA 90054-0153
Attention: Marcia Scully
Deputy General Counsel IV

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

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

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

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

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

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

10.10 Interpretation. City and Owner acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction, which provides the ambiguities in a document, shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement.

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

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

10.13 Amendments to Agreement. Each Party agrees to consider reasonable requests for amendments to this Agreement which may be made by the other Party, lending institutions, bond counsel or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of City and Owner. Notwithstanding the requirements of Section 5.5.2 [Review by City Council], on behalf of City, the City Manager shall have the authority to make minor amendments to this Agreement, including, but not limited to, the granting of extensions of time to Owner, so long as such actions do not materially change the Agreement or make a commitment of additional funds of City. All other changes, modifications, and amendments shall require the prior approval of City Council, as provided in Section 5.5.2 [Review by City Council] of this Agreement.

10.14 Administration. This Agreement shall be administered for the City by, and the City shall maintain authority over this Agreement through, the City Manager, or his/her designated representative, following approval of this Agreement by the City Council. The City Manager (or his/her designated representative) shall have the authority to issue interpretations and to make minor amendments to this Agreement on behalf of the City as permitted under Section 10.13 [Amendments to Agreement] of this Agreement..

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

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

10.17 Memorandum of Agreement. The parties agree that in lieu of recording this entire Agreement, a Memorandum of Agreement may be recorded in a form substantially similar to that attached hereto and incorporated herein by this reference as Attachment "4".

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

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

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

"CITY"

CITY OF HEMET

By: _____

Mayor

ATTEST:

Steve Clayton, City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, City Attorney

"OWNER"

THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

Phillip J. Pace
Chairman

By: _____
Ronald R. Gastelum
President and CEO

APPROVED AS TO FORM:

Jeffrey Kightlinger
General Counsel

By: _____
Marcia L. Scully
Deputy General Counsel IV

ATTACHMENT 1-A

Diamond Valley Lake
Northern Area

That portion of Sections 21, 22, 27, 28 & 29, all in Township 5 South, Range 1 West, lying within Tract XVI of the Rancho San Jacinto Viejo, in the County of Riverside, State of California, described as follows:

Beginning at the center quarter corner of said Section 21 as shown on Record of Survey filed in Book 109, pages 28 through 59, of Record of Surveys of said County of Riverside; thence easterly along the north line of the southeast quarter of said Section 21, S 89° 54' 40" E 2651.38 feet to the west quarter corner of said Section 22; thence easterly along the north line of the southwest quarter of said Section 22, S 89° 55' 30" E 725.67 feet; thence leaving said north line of said Section 22, S 00° 03' 14" W 726.12 feet; thence S 89° 56' 46" E 600.00 feet; thence S 00° 03' 14" W 1443.90 feet to the beginning of a tangent curve concave northeasterly, having a radius of 333.00 feet; thence southeasterly along said curve a distance of 523.08 feet; thence S 89° 56' 46" E 422.57 feet; thence N 00° 03' 14" E 67.00 feet; thence S 89° 56' 46" E 540.15 feet to the easterly line of State Street as shown on said Record of Survey; thence southerly along said easterly line S 00° 03' 14" W 207.25 feet to the north line of said Section 27; thence leaving said easterly line and along the north line of said Section 27, N 89° 54' 55" W 440.00 feet; thence leaving said north line S 00° 03' 37" W 279.19 feet; thence S 89° 54' 55" E 440.00 feet to the easterly line of said State Street; thence southerly along said easterly line S 00° 03' 37" W 2335.92 feet; thence continuing along said easterly line S 00° 02' 13" W 1535.55 feet to the northerly right of way line of Domenigoni Parkway as shown on said Record of Survey; thence westerly along said northerly right of way line S 89° 58' 24" W 355.99 feet to the beginning of a tangent curve concave northerly, having a radius of 2268.00 feet; thence northwesterly along said curve a distance of 319.71 feet; thence N 08° 03' 00" E 10.00 feet to the beginning of a non tangent curve concave northerly, having a radius of 2258.00 feet, to which beginning of curve a radial bears S 08° 03' 00" W; thence northwesterly along said non tangent curve a distance of 188.17 feet; thence S 12° 49' 29" W 10.00 feet to the beginning of a non tangent curve concave northerly, having a radius of 2268.00 feet, to which beginning of curve a radial bears N 12° 49' 29" E; thence northwesterly along said non tangent curve a distance of 449.97 feet; thence

PREPARED UNDER MY SUPERVISION



Paul M. Ogilvie
Paul M. Ogilvie, P.L.S. 6439

Date: 1-6-2004

ATTACHMENT 1-A

Diamond Valley Lake
Northern Area

N 65° 48' 28" W 1523.84 feet; thence N 24° 11' 32" E 10.00 feet; thence N 65° 48' 28" W 1000.00 feet; thence N 24° 11' 32" E 10.00 feet; thence N 65° 48' 28" W 163.04 feet; thence N 65° 48' 28" W 336.96 feet; thence S 24° 11' 32" W 10.00 feet; thence N 65° 48' 28" W 700.00 feet; thence N 24° 11' 32" E 10.00 feet; thence N 65° 48' 28" W 200.00 feet; thence S 24° 11' 32" W 20.00 feet; thence N 65° 48' 28" W 300.00 feet; thence S 24° 11' 32" W 10.00 feet; thence N 65° 48' 28" W 153.62 feet to the beginning of a tangent curve concave northeasterly, having a radius of 2263.00 feet; thence northwesterly along said curve a distance of 130.53 feet; thence N 27° 29' 49" E 10.00 feet; thence N 62° 30' 11" W 107.95 feet; thence N 27° 29' 49" E 40.00 feet; thence N 62° 30' 11" W 100.00 feet; thence S 27° 29' 49" W 30.00 feet; thence N 62° 30' 11" W 100.00 feet; thence S 27° 29' 49" W 20.00 feet; thence N 62° 30' 11" W 500.00 feet; thence N 27° 29' 49" E 20.00 feet; thence N 62° 30' 11" W 100.00 feet; thence S 27° 29' 49" W 15.00 feet; thence N 62° 30' 11" W 500.00 feet; thence N 27° 29' 49" E 15.00 feet; thence N 62° 30' 11" W 599.05 feet to the beginning of tangent curve concave southerly, having a radius of 2657.00 feet; thence northwesterly along said curve a distance of 1170.09 feet; thence S 02° 15' 54" W 10.69 feet to the beginning of a non tangent curve concave southerly, having a radius of 2646.31 feet to which beginning of curve a radial bears N 02° 15' 54" E; thence northwesterly along said curve a distance of 590.02 feet; thence leaving said northerly right of way line of Domenigoni Parkway N 72° 33' 52" E 575.31 feet to the beginning of a tangent curve concave southerly, having a radius of 840.00 feet; thence northeasterly along said curve a distance of 257.30 feet; thence S 89° 53' 07" E 44.08 feet; thence N 00° 34' 22" W 40.73 feet to the north line of said Section 29; thence easterly along said north line S 89° 01' 26" E 1668.06 feet to the southwest corner of the southwest quarter said Section 21; thence easterly along the south line of said southwest quarter S 89° 53' 16" E 2641.65 feet to the southeast corner of the southwest quarter of said Section 21; thence northerly along the easterly line of said southwest quarter N 00° 05' 23" E 2642.28 feet to said center quarter corner of said Section 21 and the **Point of Beginning**.

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Paul M. Ogilvie
Paul M. Ogilvie, P.L.S. 6439

Date: 1-6-2004

ATTACHMENT 1-A

Diamond Valley Lake
Northern Area

EXCEPTING therefrom that portion of Sections 27 and 28 described as follows:

Beginning at the east quarter corner of said Section 28 as shown on said Record of Survey; thence westerly along the southerly line of the northeast quarter of said Section 28, N 89° 54' 33" W 310.86 feet; thence leaving said southerly line N 00° 30' 33" W 781.74 feet; thence S 89° 29' 27" E 830.00 feet; thence S 00° 30' 33" E 785.00 feet to the southerly line of said Section 27; thence westerly along said southerly line of the northwest quarter of said Section 27, S 89° 29' 27" W 519.16 feet to the **Point of Beginning**.

END OF DESCRIPTION



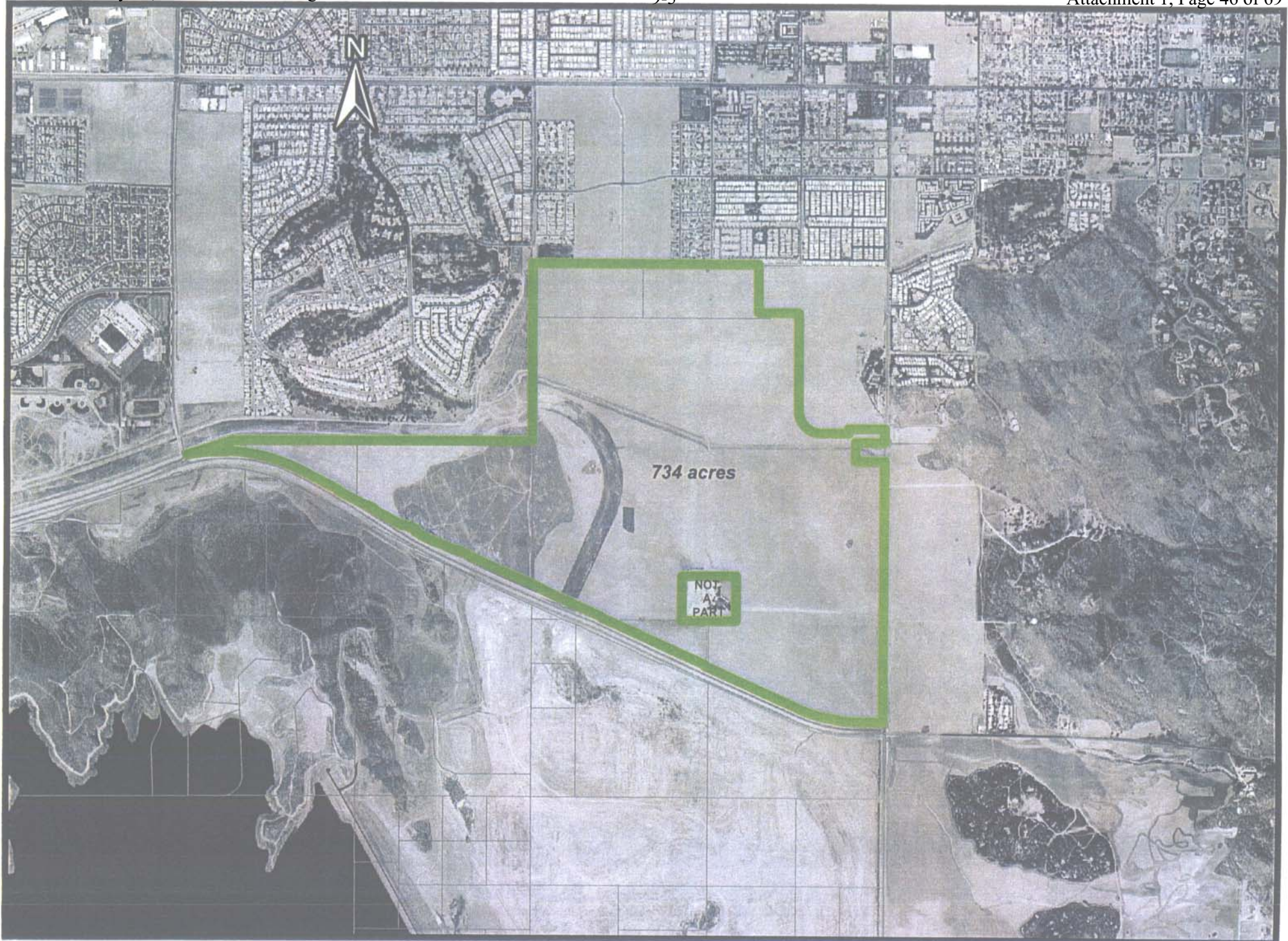
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Paul M. Ogilvie
Paul M. Ogilvie, P.L.S. 6439

Date: 1-6-2004

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January 6, 2004



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RIGHT OF WAY ENGINEERING
JANUARY 5, 2003
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Attachment No. 2A (Northern Area)

The Metropolitan Water District of Southern California

ATTACHMENT 1B**DIAMOND VALLEY LAKE**
Eastern Recreation Area

That portion of Sections 27, 28, 33, and 34, Township 5 South, Range 1 West, and Sections 3 and 4, Township 6 South, Range 1 West, in the County of Riverside, State of California, per the Sectionalized Survey of Tract XVI of the Partition of Rancho San Jacinto Viejo as described in a Decree of the Superior Court of San Diego County, California, dated November 22, 1882, and as shown on Map of said Partition made under said Decree, recorded December 8, 1882, in Book 43, page 161 of Deeds, Records of San Diego County, described as follows:

Commencing at triangular point 9 being on the Centerline of Construction as shown on sheet 7 of 14 sheets of Record of Survey filed July 2, 1998 in Book 104, pages 62 through 75, inclusive, of Records of Survey in the office of the County Recorder of Riverside County; thence along said Centerline S 65°48'28" E 803.62 feet to triangular point 10 as shown on said Record of Survey; thence at right angles to said centerline S 24°11'32" W 97.00 feet to the southerly right-of-way line of Domenigoni Parkway as shown on said Record of Survey; thence N 65°48'28" W 650.00 feet along said right-of-way line to the **TRUE POINT OF BEGINNING**; thence southeasterly and easterly along said southerly right-of-way line to the westerly line of State Street, 60 feet wide; thence southerly along said westerly line of State Street to the northerly line of said Section 34; thence easterly along said northerly line to the north quarter corner of said Section 34; thence southerly to the south quarter corner of said Section 34, said south quarter corner also being the southeast corner of Lot C of Parcel Map No. 17453, as shown on map filed in Book 111, pages 39 through 42, inclusive, of Parcel Maps, Records of said County of Riverside; thence westerly along the southerly line of said Lot C to the southwest corner of said Lot C; thence northerly along the westerly line of said Lot C to its intersection with a line lying 25 feet northerly and parallel to the southerly line of those certain Lots D, E, and F, as shown on said Parcel Map No. 17453; thence westerly along said parallel line to its intersection with the northerly prolongation of the most westerly line of Tract No. 2458, as shown on map filed in Book 45, pages 1 and 2, of Maps, Records of said County; thence southerly along said most westerly line to the southwest corner of Lot 10 of said Tract No. 2458,



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Paul M. Ogilvie

Paul M. Ogilvie, P.L.S. 6439

Date: 1-6-2004

ATTACHMENT 1BDIAMOND VALLEY LAKE
Eastern Recreation Area

said corner also being the northwest corner of Lot 1 of Tract No. 2773, as shown on map filed in Book 49, pages 23 and 24, of Maps, thence southerly, easterly, and southerly along the westerly line of said Tract No. 2773 to the southwesterly corner of Lot 14 of said Tract No. 2773; thence easterly along the southerly line of said Tract No. 2773 to the northwest corner of Lot 1 of Tract No. 20886-1, as shown on map filed in Book 167, pages 80 through 82, inclusive, of Maps, thence southerly and southeasterly along the westerly line of said Tract No. 20886-1 to the southerly line of said Rancho; thence southwesterly along said southerly line to the west line of said Section 3; thence northerly along said west line to the southeast corner of that certain Parcel 8 of Parcel Map 19190, as shown on map filed in Book 119, pages 42 through 47, inclusive, of Parcel Maps, thence westerly and southerly along the southerly line of said Parcel 8 to said southerly line of said Rancho San Jacinto Viejo; thence southwesterly 1482.38 feet along said southerly line of said Rancho; thence leaving said southerly line of said Rancho N 21°30'24" W 1150.00 feet; thence N 10°00'00" E 570.00 feet; thence N 24°47'09" E 566.36 feet; thence N 07°16'19" W 1318.69 feet; thence N 14°55'23" W 2068.15 feet; thence N 32°11'53" W 121.96 feet; thence N 30°19'26" W 2948.86 feet; thence N 00°38'56" W 3537.22 feet to said southerly right-of-way line of Domenigoni Parkway; thence along said southerly right-of-way line S 65°48'28" E 16.33 feet; thence N 24°11'32" E 10.00 feet to the **TRUE POINT OF BEGINNING**.

END OF DESCRIPTION

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Paul M. Ogilvie, P.L.S. 6439

Date: 1-6-2004



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Attachment No. 2B (Eastern Recreation Area)

The Metropolitan Water District of Southern California

ATTACHMENT No. 1C

DIAMOND VALLEY LAKE
Annexation Area

Parcel A

That portion of Sections 3 and 4, T6S, R1W, in the City of Hemet, County of Riverside, State of California per the Sectionalized Survey of Tract XVI of the Partition of Rancho San Jacinto Viejo as described in a Decree of the Superior Court of San Diego County, California, dated November 22, 1882, and as shown on Map of said Partition made under said Decree, recorded December 8, 1882, in Book 43, page 161 of Deeds, Records of San Diego County as shown on Record of Survey filed October 17, 2000 in book 109, pages 28 through 59, records of Survey in the Office of the County Recorder of said Riverside County and described as follows:

Beginning at the north quarter corner of said Section 4; thence S 89° 53' 33" E 2652.03 feet to the northeast corner of said Section 4; thence continuing along the northerly line of said Section 3a distance of 993.00 feet to the northerly prolongation of the west line of Tract No. 2458, filed in Map Book 45, pages 1 and 2, Records of said Riverside County; thence southerly and southeasterly along the westerly boundary of said Tract 2458, Tract 2773, filed in Map Book 49, pages 23 and 24, Tract No. 20886-1 filed in Map Book 167, pages 80 through 82, included, in Records of Survey, Records of said Riverside County the following courses, S 00° 02' 55" W 498.00 feet; thence N 89° 52' 33" E 70.00 feet; thence S 00° 02' 08" W 495.00; thence N 89° 53' 16" E 180.10 feet; thence easterly 65.75 feet along a non-tangent curve, concave northerly, having a radius of 45.00 feet, a radial line to the beginning of said curve bears S 41° 42' 33" W; thence non-tangent to said curve S 00° 08' 54" E 140.00 feet; thence S 35° 30' 02" E 444.04 feet to the southwest corner of said Tract 20886-1 and southerly line of said Rancho San Jacinto Viejo; thence South 68° 29' 36" W along said southerly line 1710.19 feet to the easterly line of said Section 4; thence leaving said southerly line N 00° 19' 27" W 16.61 feet; thence N 89° 40' 43" W 412.50 feet; thence S 0° 19' 16" W 181.83 feet to said southerly line of Rancho San Jacinto Viejo; thence along said southerly line S 65° 29' 36" W 1026.31 feet to the northerly line of the southeast quarter of said Section 4; thence N 89° 43' 24" E 45.20 feet to the northeast corner of Government Lot 2 said Section 4; thence S 00° 15' 20" W 1327.17 feet along the east line of said Lot 2 to the northerly boundary of Parcel Map No. 23901, recorded in Book 174, pages 19 and 20, Parcel Maps of said Riverside



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Paul M. Ogilvie
Paul M. Ogilvie PLS 6439

Date 1-12-2004
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ATTACHMENT No. 1C

DIAMOND VALLEY LAKE
Annexation Area

County; thence S 89° 56' 13" W 89.93 feet to the northwest corner of said Parcel Map No. 23901; thence S 00° 05' 37" S along the westerly line of said Parcel Map 1329.18 feet to the south line of said Section 4; thence N 89° 56' 25" W 1231.87 feet along said southerly line to the south quarter corner of said Section 4; thence N 00° 12' 23" E 2151.84 feet to the center of said Section 4; thence N 00° 04' 04" E 2655.24 feet to the point of beginning.

Parcel B

That portion of Sections 33 T5S, R1W, in the City of Hemet, County of Riverside, State of California per the Sectionalized Survey of Tract XVI of the Partition of Rancho San Jacinto Viejo as described in a Decree of the Superior Court of San Diego County, California, dated November 22, 1882, and as shown on Map of said Partition made under said Decree, recorded December 8, 1882, in Book 43, page 161 of Deeds, Records of San Diego County described as follows:

Beginning at the south quarter corner of said Section 33; thence N 00° 02' 41" W 2637.10 feet to the center of said Section 33; thence N 00° 03' 16" W 2643.78 feet to the north quarter of said Section 33; thence N 89° 52' 13" W along the northerly line of said Section 33 2558 feet, more or less, to elevation 1756.0 feet along the shoreline of Diamond Valley Lake of based on the North American Vertical Datum of 1988 as published in May 1994 by the National Geodetic Survey; thence southerly along said elevation contour line to the southerly line of said Section 33; thence S 89° 53' 35" E along said southerly line to the point of beginning.

Parcel C

That portion of Sections 29 and 32 T5S, R1W, in the City of Hemet, County of Riverside, State of California per the Sectionalized Survey of Tract XVI of the Partition of Rancho San Jacinto Viejo as described in a Decree of the Superior Court of San Diego County,



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Paul M. Ogilvie PLS 6439

Date 1-12-2004
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ATTACHMENT No. 1C

DIAMOND VALLEY LAKE
Annexation Area

California, dated November 22, 1882, and as shown on Map of said Partition made under said Decree, recorded December 8, 1882, in Book 43, page 161 of Deeds, Records of San Diego County described as follows:

Beginning at the northwest corner of the south half of said Section 29, being an angle point on the existing City of Hemet boundary; thence easterly along the northerly line of said south half of said City of Hemet boundary 5361.64 feet to the northeast corner of said south half of section 29; thence southerly along said City of Hemet boundary 2460 feet, more or less, to elevation 1,756.0 feet based on the North American Vertical Datum of 1988 as published in May 1994 by the National Geodetic Survey; thence westerly 16,000 feet more or less, along said elevation contour to the west line of said Section 29; thence northerly along said line 150 feet, more or less, to the northeast corner of the southeast quarter of the southeast quarter of said Section 29; thence continuing northerly along the westerly line of said Section 29, to the point of beginning.

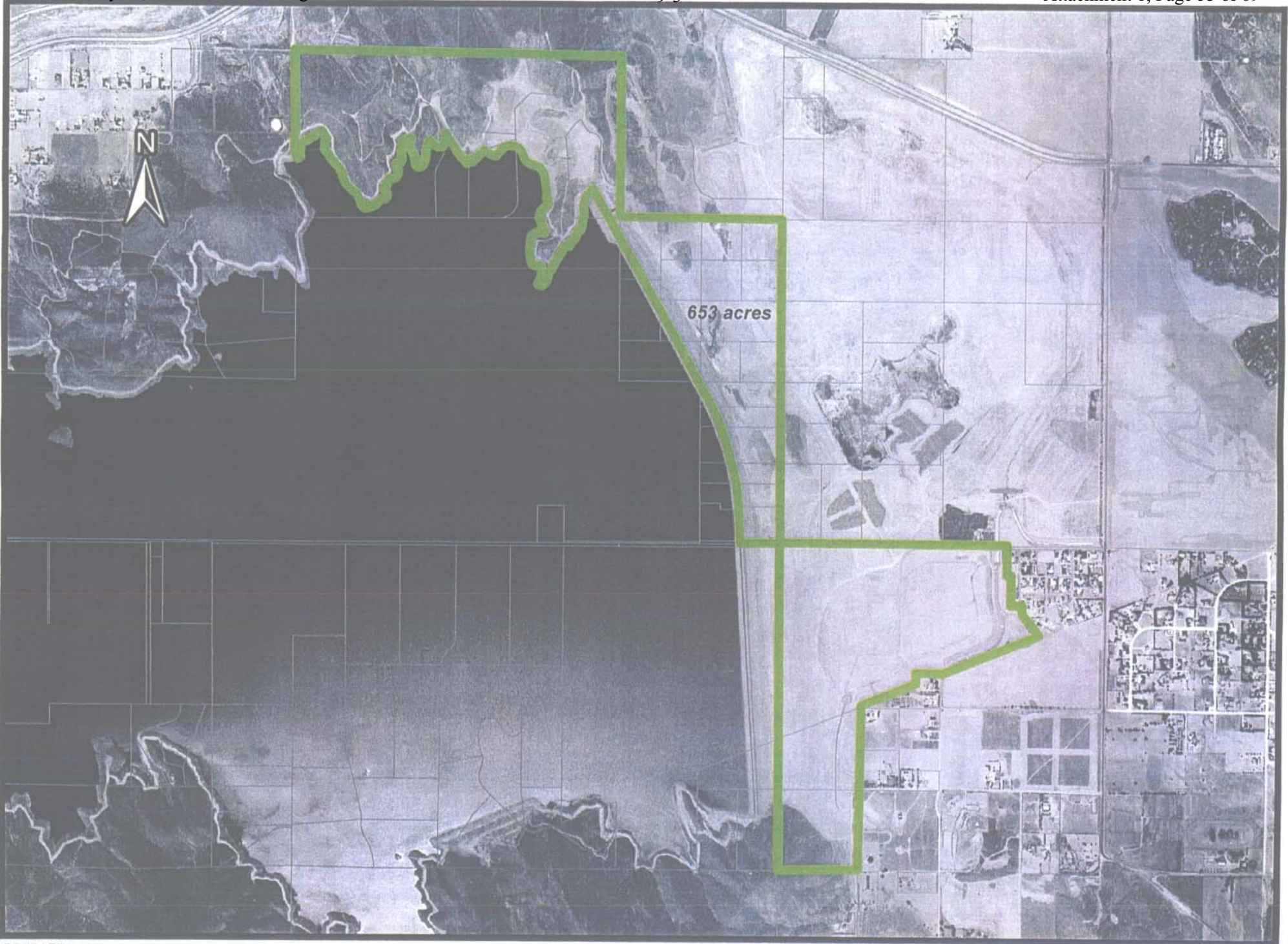
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Attachment No. 2C (Annexation Area)

The Metropolitan Water District of Southern California

ATTACHMENT No. 1D

DIAMOND VALLEY LAKE
 East Recreation Area
 Specific Plan Area

That portion of Sections 27, 28, 33 and 34, all in T5S, R1W, in the City of Hemet, County of Riverside, State of California per the Sectionalized Survey of Tract XVI of the Partition of Rancho San Jacinto Viejo as described in a Decree of the Superior Court of San Diego County, California, dated November 22, 1882, and as shown on Map of said Partition made under said Decree, recorded December 8, 1882, in Book 43, page 161 of Deeds, Records of San Diego County described as follows:

Commencing at triangular point 9 being on the Centerline of Construction as shown on sheet 7 of 14 sheets of Record of Survey filed July 2, 1998 in Book 104, pages 62 through 75 inclusive of Records of Survey in the office of the County Recorder of Riverside County thence; along said centerline S 65° 48' 28" E 803.62 feet to triangular point 10 as shown on said Record of Survey; thence at right angles to said centerline S 24° 11' 32" W 97.00 feet to the southerly right of way line of Domenigoni Parkway as shown on said Record of Survey, being **THE TRUE POINT OF BEGINNING**; thence N 65° 48' 28" W along said right of way 650.00 feet; thence S 24° 11' 32" W 10.00 feet; thence N 65° 48' 28" W 16.33 feet; thence leaving said right of way S 00° 38' 56" E 3537.22 feet to a point on the northerly line of the northwest quarter of said Section 33 which bears N 89° 52' 13" W 1486.43 feet along said line from the north quarter corner of said Section 33 as marked by a one inch diameter iron pipe tagged "RCE 12116" being 15 inches below surface, per Record of Survey filed October 17, 2000, in Book 109, pages 28 through 59 inclusive, Records of Survey of said Riverside County; thence S 30° 19' 26" E 2948.86 feet to the east line of the northwest quarter of said Section 33; thence leaving said east line S 32° 11' 53" E 121.96 feet; thence S 14° 55' 23" E 2068.15 feet; thence S 07° 16' 19" E 643.69 feet to a point on the southerly line of said Section 33 which bears N 89° 53' 33" W 1975.13 feet from the southeast corner of said Section 33 as marked by a one and one quarter inch diameter iron pipe tagged: RCE 12116 being 20 inches below surface, per Record of Survey filed October 17, 2000, in Book 109, pages 28 through 59 inclusive, Records of Survey of said Riverside County; thence S 89° 53' 33" E 1793.67 feet along said southerly line; thence leaving said southerly line N 00° 06' 28" W 571.71 feet; thence northerly 340.88 feet along a tangent



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Paul M. Ogilvie
 Paul M. Ogilvie PLS 6439

Date 1-6-2004

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ATTACHMENT No. 1D

DIAMOND VALLEY LAKE
 East Recreation Area
 Specific Plan Area

curve concave easterly, having a radius of 1282.04 feet; thence N 15° 07' 35" E 22.76 feet; thence parallel with the southerly line of said Section 33, S 89° 53' 33" E 594.35 feet; thence N 15° 07' 35" E 301.48 feet; thence northeasterly 723.78 feet along a tangent curve concave southeasterly, having a radius of 1733.00 feet; thence N 39° 03' 20" E 288.12 feet; thence northerly 2045.13 feet along a tangent curve concave westerly, having a radius of 1392.00 feet; thence N 45° 07' 24" W 549.72 feet; thence northwesterly 487.14 feet along a tangent curve concave southwesterly, having a radius of 867.00 feet; thence N 77° 18' 58" W 204.85 feet; thence N 67° 41' 28" W 723.43 feet; thence N 15° 55' 52" E 314.76 feet; thence northeasterly 549.10 feet along a tangent curve concave southeasterly, having a radius of 410.00 feet; thence non-tangent to said curve N 10° 45' 22" E 214.02 feet; thence N 34° 14' 38" W 360.30 feet; thence N 79° 14' 38" W 795.14 feet; thence N 51° 58' 28" W 300.24 feet; thence westerly 340.34 feet along a tangent curve concave southerly, having a radius of 300.00 feet to a point of reverse curve; thence northwesterly 815.87 feet along said curve concave northeasterly, having a radius of 525.00 feet; thence N 09° 01' 38" W 177.64 feet; thence S 77° 52' 50" W 385.90 feet; thence N 12° 07' 10" W 867.97 feet; thence S 77° 52' 50" W 275.54 feet; thence N 12° 07' 10" W 1079.14 feet to the southerly right of way line of said Domenigoni Parkway; thence along said right of way the following three courses, N 65° 48' 28" W 17.00 feet; thence N 24° 11' 32" E 15.00 feet; thence N 65° 48' 28" W 50.00 feet to **THE TRUE POINT OF BEGINNING.**

END OF DESCRIPTION



PREPARED UNDER MY SUPERVISION

Paul M. Ogilvie

 Paul M. Ogilvie PLS 6439

Date 1-6-2004
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553 acres

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RIGHT OF WAY ENGINEERING
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Attachment No. 2D (Diamond Valley Lake Park Specific Plan Area)

The Metropolitan Water District of Southern California

ATTACHMENT No. 1E

Diamond Valley Lake
East Marina Area

Those portions of Section 29 and 32, Township 5 South, Range 1 West, San Bernardino Meridian, in the County of Riverside, State of California, described as follows;

Commencing at the northwest corner of the south half of said Section 29, being an angle point on the existing City of Hemet boundary; thence easterly along the northerly line of said south half and said City of Hemet boundary 5,361.64 feet to the northeast corner of said south half of Section 29; thence southerly along said City of Hemet boundary 2,460 feet more or less to elevation 1,756.0 feet based on the North American Vertical Datum of 1988 as published in May 1994 by the National Geodetic Survey and the **POINT OF BEGINNING**; thence westerly along a line representing said elevation 1,756.0 feet 16,000 feet more or less to the west line of said Section 29; thence northerly along said westerly line to the future southerly boundary of the habitat reserve; thence easterly along said future southerly boundary of the habitat reserve to the **POINT OF BEGINNING**.

Containing 97 acres, more or less.

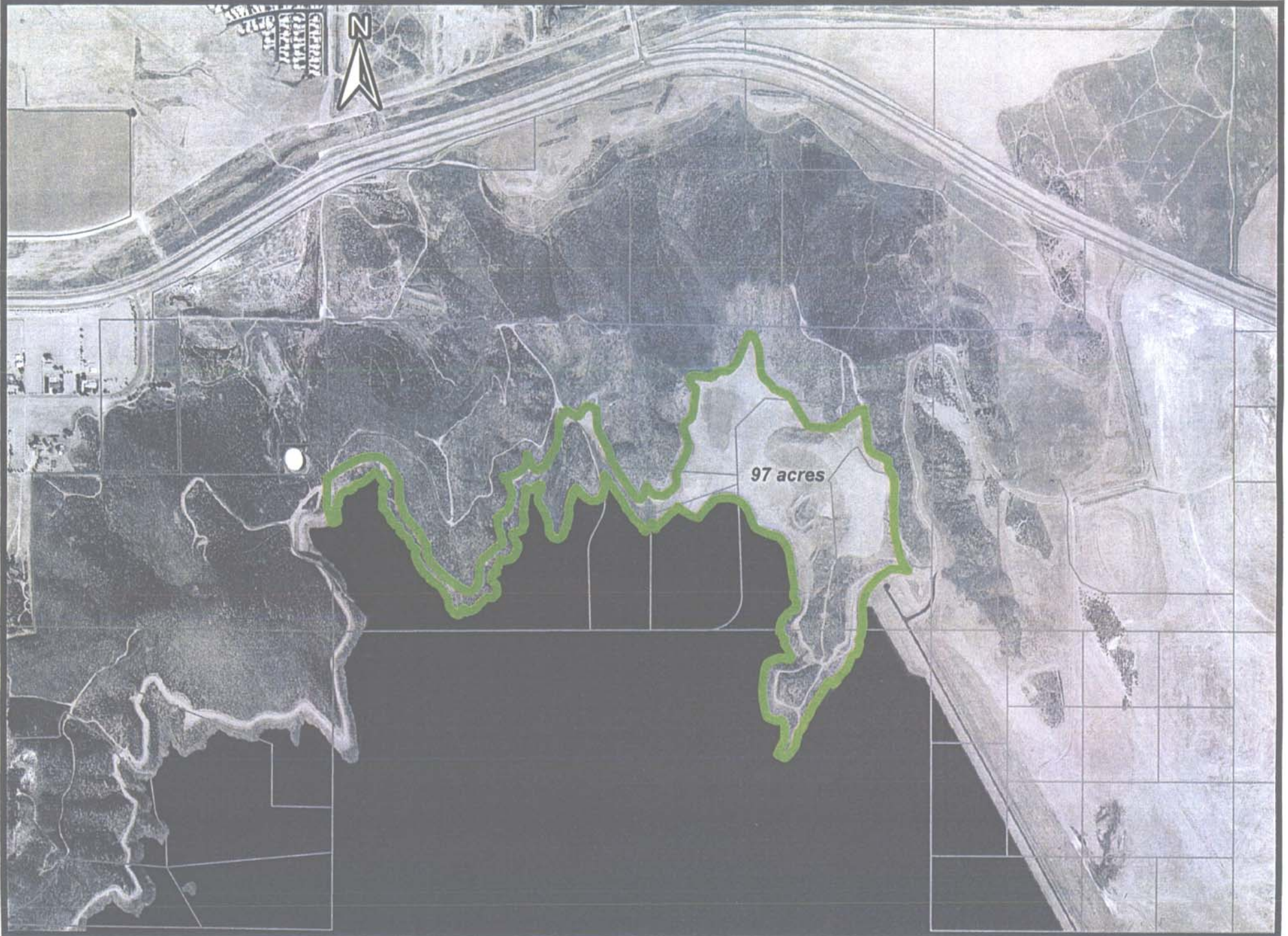
END OF DESCRIPTION



PREPARED UNDER MY SUPERVISION

Paul M. Ogilvie
Paul M. Ogilvie, P.L.S. 6439

Date: 1-6-2004



PREPARED BY:
RIGHT OF WAY ENGINEERING
JANUARY 5, 2003
D:\r\row\misc\Marina.mxd HN

0 225 450 900 1,350 1,800
Feet

Attachment No. 2E (East Marina Area)

The Metropolitan Water District of Southern California



PREPARED BY:
RIGHT OF WAY ENGINEERING
JANUARY 5, 2003
D:\r\rowmisc\Property.mxd HN



Attachment No. 2F (Property)

The Metropolitan Water District of Southern California

Attachment 1 G

LEGAL DESCRIPTION**DRAFT**

The real property situated in the State of California, County of Riverside, City of Hemet, described as follows:

PARCEL 11

THOSE PORTIONS OF TRACT 16 OF RANCHO SAN JACINTO VIEJO, AS SHOWN BY MAP OF THE PARTITION OF SAID RANCHO AND PARTICULARLY DESCRIBED IN THE FINAL DECREE OF PARTITION OF SAID RANCHO FILED ON NOVEMBER 22, 1882, IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY, CALIFORNIA, IN THAT CERTAIN ACTION ENTITLED "F. M. BOUTON VS. MIGUEL PEDRORENA, ET AL." DESCRIBED AS FOLLOWS:

THAT PORTION OF SECTION 21, IN TOWNSHIP 5 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, INCLUDED WITHIN THE BOUNDARY LINES OF SAID TRACT 16 OF SAID RANCHO SAN JACINTO VIEJO, DESCRIBED AS FOLLOWS:

THE SOUTHEAST ONE-QUARTER OF SAID SECTION 21.

PARCEL 21

THOSE PORTIONS OF TRACT 16 OF RANCHO SAN JACINTO VIEJO, AS SHOWN BY MAP OF THE PARTITION OF SAID RANCHO AND PARTICULARLY DESCRIBED IN THE FINAL DECREE OF PARTITION OF SAID RANCHO FILED ON NOVEMBER 22, 1882, IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY, CALIFORNIA, IN THAT CERTAIN ACTION ENTITLED "F. M. BOUTON VS. MIGUEL PEDRORENA, ET AL." DESCRIBED AS FOLLOWS:

THAT PORTION OF SECTION 22 IN TOWNSHIP 5 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, INCLUDED WITHIN THE BOUNDARY LINES OF SAID TRACT 16 OF SAID RANCHO SAN JACINTO VIEJO, DESCRIBED AS FOLLOWS:

THE SOUTHWEST ONE-QUARTER OF SAID SECTION 22.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO EZILDA C. MC SWEENEY IN A DECREE OF DISTRIBUTION RECORDED AUGUST 16, 1968 AS INSTRUMENT NO. 79823 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AND DESCRIBED AS FOLLOWS:

COMMENCING AT CORNER S. J. 26 AS SAID CORNER IS SHOWN BY RECORD OF SURVEY ON FILE IN BOOK 12 PAGE 27 OF RECORDS OF SURVEY, RECORDED OF RIVERSIDE COUNTY, CALIFORNIA, SAID CORNER BEING ALSO THE INTERSECTION OF THE NORTH LINE OF SAID TRACT 16 WITH THE CENTER LINE OF STATE STREET:

THENCE SOUTH 0 DEGREES 02' 38" EAST ALONG THE CENTER LINE OF SAID STATE STREET A DISTANCE OF 1253.78 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 57' 22" WEST A DISTANCE OF 199.15 FEET;

THENCE SOUTH 21 DEGREES 43' 05" WEST A DISTANCE OF 468.71 FEET;

THENCE SOUTH 24 DEGREES 57' 13" EAST A DISTANCE OF 247.74 FEET;

THENCE NORTH 89 DEGREES 57' 22" EAST A DISTANCE OF 268.58 FEET TO AN INTERSECTION WITH THE CENTER LINE OF SAID STATE STREET;

THENCE NORTH 0 DEGREES 02' 38" WEST ALONG THE CENTER LINE OF SAID STATE STREET A DISTANCE OF 660.00 FEET TO THE TRUE POINT OF BEGINNING.

Attachment 1 G

PARCEL 3:

THOSE PORTIONS OF TRACT 16 OF RANCHO SAN JACINTO VIEJO, AS SHOWN BY MAP OF THE PARTITION OF SAID RANCHO AND PARTICULARLY DESCRIBED IN THE FINAL DECREE OF PARTITION OF SAID RANCHO FILED ON NOVEMBER 22, 1882, IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY, CALIFORNIA, IN THAT CERTAIN ACTION ENTITLED "F. M. BOUTON VS. MIGUEL PEDRORENA, ET AL." DESCRIBED AS FOLLOWS:

THAT PORTION OF SECTION 28 IN TOWNSHIP 5 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, INCLUDED WITHIN THE BOUNDARY LINES OF SAID TRACT 16 OF SAID RANCHO SAN JACINTO VIEJO, DESCRIBED AS FOLLOWS:

THE NORTHEAST ONE-QUARTER OF THE SAID SECTION 28.

PARCEL 4:

THOSE PORTIONS OF TRACT 16 OF RANCHO SAN JACINTO VIEJO, AS SHOWN BY MAP OF THE PARTITION OF SAID RANCHO AND PARTICULARLY DESCRIBED IN THE FINAL DECREE OF PARTITION OF SAID RANCHO FILED ON NOVEMBER 22, 1882, IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY, CALIFORNIA, IN THAT CERTAIN ACTION ENTITLED "F. M. BOUTON VS. MIGUEL PEDRORENA, ET AL." DESCRIBED AS FOLLOWS:

THAT PORTION OF SECTION 27, IN TOWNSHIP 5 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, INCLUDED WITHIN THE BOUNDARY LINES OF SAID TRACT 16 OF SAID RANCHO SAN JACINTO VIEJO, DESCRIBED AS FOLLOWS:

THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 27.

PARCEL 5:

THOSE PORTIONS OF TRACT 16 OF RANCHO SAN JACINTO VIEJO, AS SHOWN BY MAP OF THE PARTITION OF SAID RANCHO AND PARTICULARLY DESCRIBED IN THE FINAL DECREE OF PARTITION OF SAID RANCHO FILED ON NOVEMBER 22, 1882, IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY, CALIFORNIA, IN THAT CERTAIN ACTION ENTITLED "F. M. BOUTON VS. MIGUEL PEDRORENA, ET AL." DESCRIBED AS FOLLOWS:

THAT PORTION OF SECTION 27, IN TOWNSHIP 5 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, INCLUDED WITHIN THE BOUNDARY LINES OF SAID TRACT 16 OF SAID RANCHO SAN JACINTO VIEJO, DESCRIBED AS FOLLOWS:

THE SOUTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 27.

Attachment 1 G

THOSE PORTIONS OF TRACT 16 OF RANCHO SAN JACINTO VIEJO, AS SHOWN BY MAP OF THE PARTITION OF SAID RANCHO AND PARTICULARLY DESCRIBED IN THE FINAL DECREE OF PARTITION OF SAID RANCHO FILED ON NOVEMBER 22, 1882, IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY, CALIFORNIA, IN THAT CERTAIN ACTION ENTITLED "F. M. BOUTON VS. MIGUEL PEDRORENA, ET AL." DESCRIBED AS FOLLOWS:

THAT PORTION OF SECTION 27 IN TOWNSHIP 5 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, INCLUDED WITH THE BOUNDARY LINES OF SAID TRACT 16 OF SAID RANCHO SAN JACINTO VIEJO, DESCRIBED AS FOLLOWS:

THE SOUTHWEST ONE-QUARTER OF SAID SECTION 27.

ROBERT BEIN, WILLIAM FROST & ASSOCIATES

BY: *S. Robert Kallenbaugh* DATE: April 22, 1988
 S. Robert Kallenbaugh
ADDRESS: 14725 Alton Parkway Irvine, CA 92718
 (Number) (Street) (City) (Zip)
PHONE: (714) 472-3505
 (Area Code) (Number)

Attachment 2 G

DRAFT
Douglas Wood & Associates

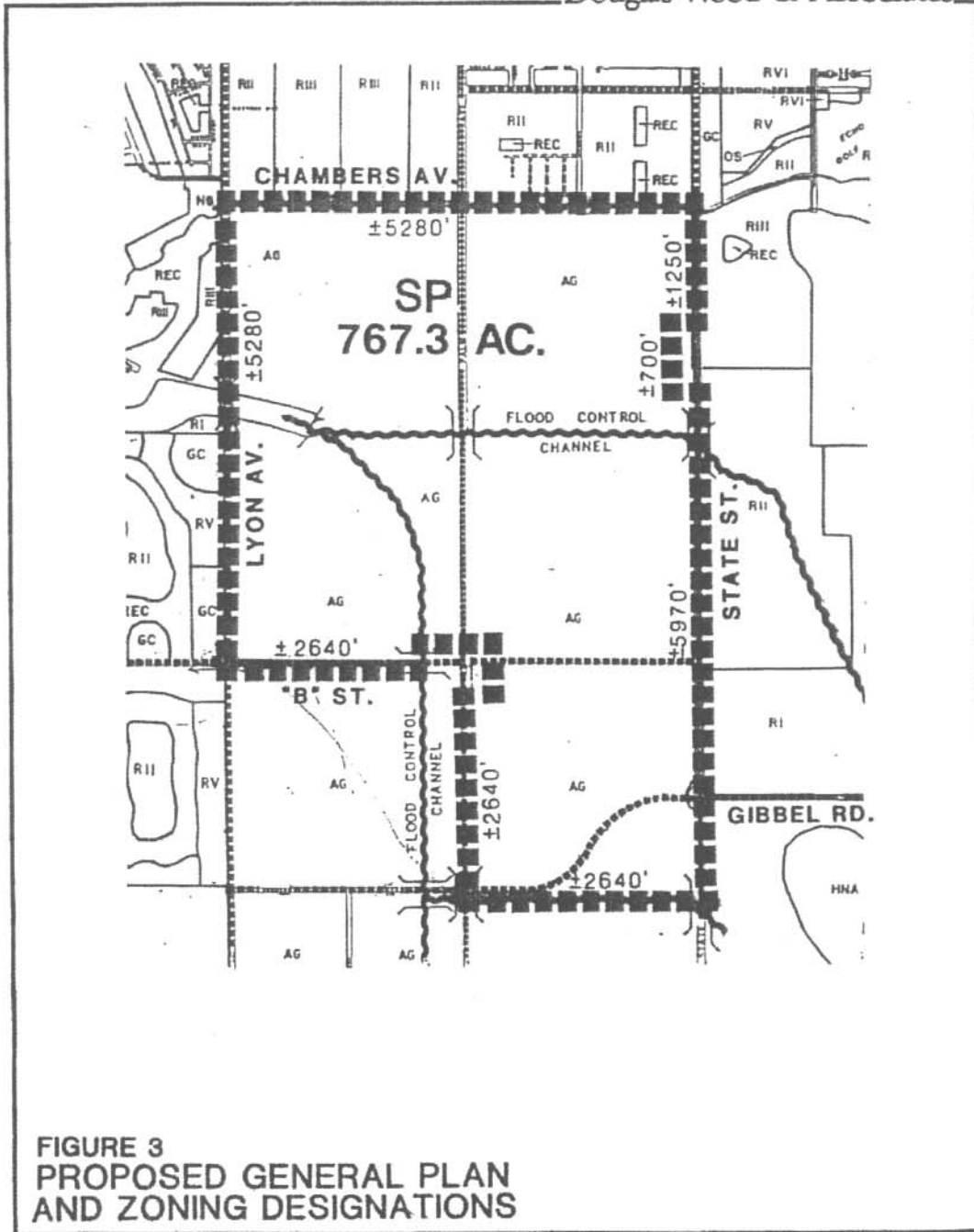


FIGURE 3
PROPOSED GENERAL PLAN
AND ZONING DESIGNATIONS

McSWEENEY RANCH PLANNED COMMUNITY
HEMET, CALIFORNIA NTS 

ATTACHMENT 3

List of Public Facilities and Improvements

Architectural Features/Projections
Boating Facilities
Buildings
Center For Water Education
Drainage Facilities
Fire Facility (Partial Participation In Facility)
Grading
Landscaping
Museums
Open Space
Outdoor Education Facilities
Parking
Parks
Permanent Outdoor Structures
Recreation And Aquatic Facility
Recreation Lakes
Roadways
Sewer Facilities
Signage
Sports Fields
Trails (Various)
Utilities
Water Facilities (On & Off Site)
Water Mains And Fire Hydrants
Youth Camp

OFFICIAL BUSINESS
Document exempt from recording
fees pursuant to Cal. Gov. Code
§ 27383.

Recording Requested By And
When Recorded Mail To:

CITY OF HEMET
Attn: City Manager
445 E. Florida
Hemet, CA 92543

SPACE ABOVE THIS LINE
FOR RECORDING USE

MEMORANDUM OF AGREEMENT

NOTICE

**THE PROPERTY DESCRIBED HEREIN
IS SUBJECT TO A DEVELOPMENT AGREEMENT
VESTING THE OWNER WITH CERTAIN RIGHTS
AND AFFECTING THE USE AND DEVELOPMENT
OF THE PROPERTY**

**THE DEVELOPMENT AGREEMENT
AND RELATED DOCUMENTS ARE
PUBLIC RECORDS ON FILE IN
THE OFFICES OF THE CITY CLERK
OF THE CITY OF HEMET LOCATED AT
445 E. FLORIDA, HEMET, CALIFORNIA 92543.**

This Memorandum of Agreement (“Memorandum”) is dated [REDACTED], 200[REDACTED], for reference purposes.

1. The CITY OF HEMET, a California general law municipal corporation (“City”) and METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a public agency of the State of California, organized and existing under the Metropolitan Water District Act of the State of California, (“Owner”), have entered into a Development Agreement for Owner properties east and northeast of “Diamond Valley Lake” (“Agreement”). The Effective Date of the Agreement is [REDACTED], 200[REDACTED]. The Agreement, together with all attachments, is incorporated herein by reference as though fully set forth in its entirety. Unless otherwise specified herein, all terms in initial capitalization shall have the meaning ascribed to them in the Agreement.

2. The Agreement affects those certain parcels of real property defined in the Agreement as the “Property” and as more particularly described in the legal descriptions attached hereto and incorporated herein by reference as Exhibit “1.” Generally, the Property consists of

approximately 1967 acres, a portion of which is located south of Chambers Street and west of State Street within the City of Hemet, County of Riverside, State of California, and another portion of which is located within the unincorporated territory of Riverside County, State of California. The configuration of the Property is more particularly depicted in the maps attached hereto and incorporated herein by reference as Exhibit "2." The Property is comprised of three separate but contiguous sub-areas that are defined in the Agreement as the Northern Area, the East Recreation Area, and the East Marina Area. The Northern Area consists of approximately 734 acres substantially equivalent to the McSweeney Ranch Specific Plan Area. The East Recreation Area consists of approximately 1136 acres and includes the Diamond Valley Lake Park Specific Plan Area and the Other MWD Parcels. The East Marina Area consists of approximately 97 acres and is within the subject area of the Annexation as defined in the Agreement. These sub-areas are more particularly depicted on Exhibit "2."

3. This Memorandum is intended to satisfy the requirements of Government Code § 65868.5 for recordation of the Agreement. This Memorandum has been recorded in lieu of the full Agreement in order to reduce the voluminous records filed with, and to reduce the burdens placed upon, the Recorder for the County of Riverside. The Agreement and related documents are public records on file in the offices of the City Clerk of the City of Hemet located at 445 E. Florida, Hemet, California 92543.

4. In accordance with Government Code § 65868.5, the burdens of the Agreement shall be binding upon, and the benefits of the Agreement shall inure to, all successors in interest to the parties to the Agreement. Furthermore, the promises, agreements, and covenants made, the obligations and burdens imposed, and the rights and benefits created under the Agreement ("Covenants") shall be considered covenants running with the land within the meaning of Civil Code § 1460 through § 1468 and shall be binding on, and inure to Owner, its successors and assigns, and any person or entity claiming any right, title or interest in the Property through them. In addition, the Covenants shall be considered to be "restrictions" upon the Property within the meaning of Civil Code § 784. The Covenants are made for the direct benefit of the Property and are appurtenant to the estate held by the Owner and its successors and assigns. The Covenants also benefit and may be enforced by the City of Hemet and its successors and assigns. Neither the Owner, nor its successors or assigns, shall challenge the Covenants or any right of the City created under the Agreement.

5. The Agreement is a statutory development agreement within the meaning of California Government Code § 65864 through § 65869.5. The Agreement vests the Owner of the Property with the right to develop the Project, as more particularly described in the Agreement, but generally consisting of the development of recreational, educational, commercial, residential and hotel uses on the Property as provided in, and subject to, the Existing Development Approvals, Existing Land Use Regulations, and the terms and conditions of the Agreement. The term of the Agreement is for fifteen (15) years from and after the Effective Date of the Agreement which is [REDACTED], 200[REDACTED]. The Agreement affects the use of the Property through limitations on maximum density, intensity of use, maximum building height, and maximum building size. The Agreement also limits the Development Exactions and Development Impact Fees that may be levied and imposed on the development of the Project, including levy and imposition of fees, charges and other monetary exactions by or through the City, including, but not limited to Transportation Uniform Mitigation Fees.

6. This Memorandum is not a complete summary of the Agreement and related documents. Provisions of this Memorandum shall not be used to interpret the provisions of the Agreement or related documents. In the event of conflict between this Memorandum and the provisions of the Agreement or related documents, the provisions of the Agreement shall control.

7. This Memorandum is expressly authorized under Section 10.17 [Memorandum of Agreement] of the Agreement.

IN WITNESS WHEREOF, City and Owner have executed this Memorandum of Agreement which shall be recorded in the Official Records of the County of Riverside, State of California.

CITY OF HEMET

By: _____
Steve Temple
City Manager

ATTEST:

By: _____
Steve Clayton
City Clerk

**THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA**

Philip J. Pace
Chairman

By: _____
Ronald R. Gastelum
President and CEO

EXHIBIT 1
Legal Description of the Property

EXHIBIT 1
Legal Description of the Property

EXHIBIT 1
Legal Description of the Property

EXHIBIT 2
Property Map (showing Sub-Areas)

EXHIBIT 2
Property Map (showing Sub-Areas)

EXHIBIT 2
Property Map (showing Sub-Areas)