



Staff Report

TO: Honorable Mayor and Members of the City Council
FROM: Brian Nakamura, City Manager *BN*
Steve Harding, Interim Assistant City Manager *M*
DATE: March 9, 2010
RE: Hemet Community Land Trust

RECOMMENDATION:

It is recommended by the City Council Housing Committee that the City Council:

- 1) Approve a "Cooperation and Loan Agreement" between the City of Hemet, the Hemet Redevelopment Agency and the Hemet Community Land Trust.
- 2) Approve a Joint Resolution between the City Council and the Redevelopment Agency.
- 3) Authorize the Mayor to sign the letter of support to the IRS.

BACKGROUND:

The Hemet Community Land Trust's (Trust) Articles of Incorporation have been approved by the Secretary of State and the By-laws have been finalized by the City Attorney. The City Council appointed Council members Franchville and Foreman to serve on the Trust's Board of Directors. Additional citizen Board members are currently being interviewed.

ANALYSIS:

The next step in forming the Trust is to obtain IRS approval of the Trust's non-profit status. The following documents are needed for the IRS application and to implement the Trust.

Housing Division
Hemet Community Land Trust

- 1) Cooperation Agreement - This document acknowledges that for a term of two years the City and RDA will provide staff and lend housing funds to the Trust to acquire, rehabilitate, demolish or maintain properties.
- 2) Resolution - This document demonstrates agency support for the formation of the Trust.
- 3) Letter of Support - Demonstrates support for the formation of the Trust.

FISCAL IMPACT:

No impact to the General Fund.

Respectfully Submitted,


Mark Trabing
Housing Manager

Attachments:

- 1) Cooperation and Loan Agreement
- 2) Resolution
- 3) Letter of Support

Attachment
No. 1

**COOPERATION AND LOAN
AGREEMENT**

Housing Authority Meeting
of December 8, 2009

COOPERATION AND LOAN AGREEMENT

This Cooperation and Loan Agreement ("**Agreement**") is entered into as of the 9th day of March, 2010, by and between the CITY OF HEMET, a general law municipal corporation organized and existing under the laws of the State of California, ("**City**"), the HEMET REDEVELOPMENT AGENCY, a public body corporate and politic, ("**Agency**"), and the HEMET COMMUNITY LAND TRUST, a California nonprofit public benefit corporation ("**Trust**").

RECITALS

A. Trust is a separate legal entity from City or Agency formed for the charitable purposes of lessening the burdens of these entities to provide safe, decent and affordable housing to all income segments in the Community. The primary purpose of Trust, as set forth in its Articles of Incorporation, is consistent with the housing responsibilities of City and Agency.

B. To assist Trust with its initial start-up and operation, City and Agency desire to provide Trust with facilities, services and supplies, and with a loan of funds to initially capitalize Trust as may subsequently be decided upon by the Parties.

C. City and Agency acknowledge that Trust will be performing a public function of City and Agency and therefore provision of facilities, services, supplies, and funds to Trust are for a public purpose.

OPERATIVE PROVISIONS

NOW THEREFORE, in consideration of the mutual agreements, covenants and promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, City, Agency and Trust agree as follows:

1.0 Form of Assistance. City and Agency shall provide facilities, services and supplies as required for Trust's initial operation and administration:

(a) City will provide Trust with facilities for its officers and directors to meet for regular and special meetings and from time to time as business of the Trust may require. City will not charge Trust rent or any fee for use of such facilities. City will allow Trust to use the address of City Hall for receipt of mail and other incidental purposes.

(b) City will provide those of its officers and employees designated in the initial By-Laws of Trust to fill the positions of executive director, treasurer, secretary, and general counsel, without additional charge to Trust. City and/or Agency will provide additional staff, technical, consultant, and support services to Trust at costs as provided below.

(c) City will provide Trust with such office and related supplies as it may require or that are incidental to its initial operation and administration at cost as provided in Section "2" "Repayment."

(d) City and/or Agency may, at the request of Trust, expend City or Agency funds on behalf of Trust. Any such funds expended by City and/or Agency on behalf of Trust shall be deemed to be a loan from City and/or Agency, as the case may be, to be repaid by Trust as provided in Section 3.0 "Loans."

(e) City and/or Agency may, at the request of Trust, loan funds directly to Trust for the purpose of initial capitalization, administrative or project related expenses. Any such funds expended by City and/or Agency on behalf of Trust shall be deemed to be a loan from City and/or Agency, as the case may be, to be repaid by Trust as provided in Section 3.0 "Loans."

2.0 Repayment. Trust agrees to repay the City and/or Agency for assistance provided as described in Section 1.0. On the basis of procedures established by the City Manager, City shall compute the costs of the services, facilities, and supplies provided hereunder, the amount of funds expended on the Trust's behalf and/or advanced to the Trust for services and facilities provided. Annually, City shall submit to the Trust a statement of such costs evidencing the Trust's liability ("Cost Statement"). Such Cost Statements shall include a proration of the City's / Agency's administrative and salary expenses attributable to the rendition of services by City / Agency officials, employees and consultants on behalf of the Trust, provided, however, that no City / Agency officer or employee shall be paid extra compensation for any work performed for the Trust unless such compensation is expressly authorized and provided by the City Council. The City shall maintain adequate accounting records to substantiate the costs charged to the Trust under this Agreement. City, Agency and Trust agree that the annual Cost Statement shall be deemed to be a promissory note by Trust to City and Agency under which Trust agrees to pay the balance owing on such terms and conditions as provided in Section 3.0 "Loans and Advances."

3.0 Loans and Advances. As provided above, City and/or Agency may loan or advance funds to Trust from time to time. The Agency agrees to repay the City together with accrued interest calculated at a variable rate based upon the annual average rate of return earned on the City's investment portfolio as determined by the City's Treasurer or Finance Director, compounded annually. Such interest shall be computed from the date the City / Agency disburses funds to Trust or, in the event of costs for services, supplies and facilities, the day upon which City issues the annual Cost Statement to Trust. Trust shall pay the principal and interest owed on such debts from the residual receipts of its projects or from other funds determined to be available by Trust's Board. The parties agree, however, that the indebtedness of the Trust to the City / Agency may be subordinated by Trust with City / Agency's written consent to repayment of loans and expenses incurred by Trust for the acquisition, rehabilitation or operation of affordable housing projects.

4.0 Insurance Policy. City shall initially obtain for Trust a general commercial comprehensive liability policy and a policy of director's insurance.

5.0 Remedies. If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within ninety (90) days after service of the notice of default, or if the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly within a reasonable period of time after commencement, the defaulting party shall be liable to the other party for damages caused by such default.

6.0 Miscellaneous Provisions. The following provisions shall apply to this Agreement:

(a) **Term.** The term of this Agreement is for 2 years, but such term shall be deemed to have been extended by a subsequent period of 2 years if no party has, at least 30 days prior to the expiration of the term, provided the other parties with a notice of termination of the Agreement.

(b) **Integration.** This Agreement consists of pages 1 through 5, inclusive, which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

(c) **Recitals and Definitions.** The Recitals 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 of this Agreement.

(d) **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.

(e) **Amendments to Agreement.** Any amendments to this Agreement must be in writing and signed by the appropriate authorities of the City, Agency and Trust.

(f) **Counterpart Originals.** This Agreement may be executed in duplicate originals, each of which is deemed to be an original.

(g) **Effective Date of Agreement.** This Agreement shall not become effective until the date it has been formally approved by the City's City Council, Agency's Governing Board, and Trust's Board and it has been executed by the appropriate authorities of the City, Agency and Trust.

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

CITY OF HEMET,
a municipal corporation

By _____
Eric McBride
Mayor

ATTEST

By _____
Sarah McComas
City Clerk

APPROVED AS TO FORM:

By _____
Eric S. Vail
City Attorney

HEMET REDEVELOPMENT AGENCY, a
public body corporate and politic,

By _____
Robert Youssef
Chairman

ATTEST

By _____
Sarah McComas
Agency Secretary

APPROVED AS TO FORM:

By _____
Eric S. Vail
Agency Counsel

HEMET COMMUNITY LAND TRUST, a
California non-profit public benefit
corporation.

By _____

Chairman / Executive Director

ATTEST

By _____

Sarah McComas
Secretary

APPROVED AS TO FORM:

By _____

Eric S. Vail
General Counsel

Attachment
No. 2

RESOLUTION

Housing Authority Meeting
of December 8, 2009



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**CITY OF HEMET
Hemet, California
RESOLUTION BILL NO. 10-004**

**A JOINT RESOLUTION OF THE CITY
COUNCIL OF THE CITY OF HEMET,
CALIFORNIA, AND THE BOARD OF THE
HEMET REDEVELOPMENT AGENCY
DIRECTING THE CREATION OF HEMET
COMMUNITY LAND TRUST**

WHEREAS, the City of Hemet (“City”) under the California Planning and Zoning Law, is required to make adequate plans for the development of all types of housing, including affordable housing in the City, meeting the full spectrum of housing needs of its population; and,

WHEREAS, the Hemet Redevelopment Agency (“Agency”), as assisted by the Hemet Housing Authority, has certain inclusionary housing requirements for low- and moderate income units within its project areas and can only use the funds it receives into its low and moderate income housing funds for affordable housing within the community; and,

WHEREAS, the California Planning and Zoning Law and the Community Redevelopment Law place particular emphasis on development of units sold or leased at an affordable housing cost to persons and families of low- and moderate income; and,

WHEREAS, the recession has caused hardships for low- and moderate-income families in Hemet as jobs have been lost, foreclosures of single-family properties have increased, and vacancies in rental properties have increased, in extreme cases leading to abandonment of properties; and,

WHEREAS, City and Agency need a way to ensure that future tenants and homeowners are rigorously screened for eligibility and creditworthiness in order to stabilize existing projects and avoid future problems in new projects; and,

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

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I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the foregoing Resolution is the actual Resolution adopted by the City Council of the City of Hemet and was passed at a regular meeting of the City Council on the 9th day of March, 2010 by the following vote:

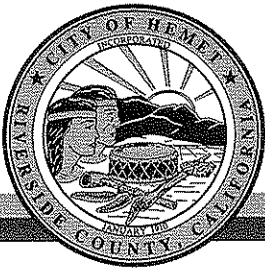
- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

Sarah McComas, City Clerk

Attachment
No. 3

LETTER OF SUPPORT

Housing Authority Meeting
of December 8, 2009



City of Hemet

445 EAST FLORIDA AVENUE • HEMET, CALIFORNIA 92543 • (951) 765-2303

From the Office
of the
MAYOR
Eric McBride

March 2, 2010

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

Re: Hemet Community Land Trust

Dear Ladies and Gentleman:

I am writing to urge you to approve the application of Hemet Community Land Trust ("Hemet Trust") to be recognized as an organization described in Section 501(c)(3) of the Internal Revenue Code. As described below, Hemet Trust will lessen the burdens of government of the City of Hemet (the "City").

The recession has caused significant difficulties in our City. We have experienced many foreclosures of single-family properties and high levels of vacancies in many rental properties. Many properties have been abandoned. Hemet was selected as one of 100 cities nationwide to receive federal stimulus money under the NSP #1 program to help us address these problems.

The City has a state mandate to provide affordable housing for its low- and moderate-income residents. According to the latest census, approximately ninety percent of our citizens fall under the moderate-income category. It is the City's intent to improve its affordable-housing programs by purchasing and rehabilitating properties and enforcing strict, non-discriminatory selection criteria to ensure that new residents have the income and credit-worthiness to afford the housing in which they own or rent. To stabilize neighborhoods and create permanent affordability, the City authorized the creation of Hemet Trust, based upon the recommendations of the City's City Council Housing committee.

It is expected that Hemet Trust will serve a vital function in the development and implementation of an affordable housing program for the City as a whole. Accordingly, Hemet Trust will significantly lessen the governmental burden undertaken by the City. I urge the Internal Revenue Service to recognize Hemet Trust as a Section 501(c)(3) organization so that it may carry out its needed charitable activities. I appreciate your timely attention to this matter.

Sincerely,

Eric McBride
Mayor
City of Hemet