



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council                      **Date:** May 08, 2012

**From:** Jim Andersen, Manager                                      **Item No:** 11  
Code Enforcement

**Subject:** CODE ENFORCEMENT MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF ADELANTO, CITY OF HESPERIA, CITY OF  
VICTORVILLE, COUNTY OF SAN BERNARDINO, AND THE TOWN OF  
APPLE VALLEY

**T.M. Approval:** \_\_\_\_\_                                      **Budgeted Item:**  Yes  No  N/A

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### RECOMMENDED ACTION:

That the Town Council approve the Code Enforcement Memorandum of Understanding between the City of Adelanto, City of Hesperia, City of Victorville, County of San Bernardino, and the Town of Apple Valley.

### SUMMARY:

This Code Enforcement Memorandum of Understanding will enable each of the participating jurisdictions to conduct joint targeted enforcement activities in each of the agencies boundaries.

The operation type and objective may be different in each location depending on the goal of the requesting party agency. One example of an operation may be to address all blight issues on a major entry road into the area. Another operation may be to conduct a sweep for all inoperative vehicles in a given area.

By pooling the participating agencies resources together, a monumental task can be handled in a short period of time which can result in among other things, a dramatic reduction of visual blight, business attraction, and can help improve surrounding property values.

**BACKGROUND:**

In May 2011, Councilman Nassif met with staff to discuss the idea of code enforcement from each of the high desert cities and the county working together for targeted code enforcement operations.

On May 26, 2011, staff attended a meeting with representatives from the Cities of Adelanto, Hesperia, Victorville, and San Bernardino County to discuss pooling each agencies resources to conduct targeted code enforcement operations in each of the represented jurisdictions.

A Memorandum of Understanding was drafted and has been circulated to each of the jurisdictions for their input. The MOU presented at this Council meeting has been reviewed and approved by each of the agencies legal representatives.

**FISCAL IMPACT:**

No direct financial impact. The only cost is staff time used in the operations in other jurisdictions which will be reciprocated when an operation is conducted in the Town of Apple Valley.

**CODE ENFORCEMENT MEMORANDUM OF UNDERSTANDING BETWEEN CITY  
OF ADELANTO, CITY OF HESPERIA, CITY OF VICTORVILLE, COUNTY OF SAN  
BERNARDINO AND TOWN OF APPLE VALLEY**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, (“Effective Date”), by and between the City of Adelanto (“Adelanto”), the City of Hesperia (“Hesperia”), the City of Victorville (“Victorville”), the County of San Bernardino (“San Bernardino”), and the Town of Apple Valley (“Apple Valley”) collectively referred to hereafter as “Parties” or individually as “Party.”

**RECITALS**

WHEREAS, each of the Parties provides code enforcement services within their respective jurisdictional limits; and

WHEREAS, the Parties desire to voluntarily aid and assist each other in targeted code enforcement actions, including through the pooling of their collective resources and the coordinating of their efforts; and

WHEREAS, the Parties are empowered to enter into the MOU pursuant to California Government Code section 8617, and find that doing so will further their ability to provide for the health, safety and general welfare of their respective citizens.

NOW, THEREFORE, it is hereby agreed by the Parties as follows:

**AGREEMENT**

**SECTION 1 - DEFINITIONS**

As used herein, unless otherwise specified, the following words have the following meanings:

- A. “**Code Enforcement Officer**” means any person designated and authorized by a Party to enforce that Party’s municipal or county code(s) as adopted and enacted pursuant to the California Constitution and applicable state and local laws.
- B. “**Targeted Enforcement Operation**” means a scheduled action occurring within one Party’s jurisdiction in which the participating Parties share equipment, facilities and/or Code Enforcement Officers and/or additional staff as authorized (including without limitation employees, representatives, agents and volunteers) in order to effectively and efficiently conduct a sweep pertaining to code enforcement violations.
- C. “**Assisting Party**” means a Party that renders assistance pertaining to a Targeted Enforcement Operation in another Party’s jurisdiction.

- D. **“Requesting Party”** means a Party that requests voluntary assistance from another Party pertaining to a Targeted Enforcement Operation in its own jurisdiction.
- E. **“Supervisor”** means the person, or his/her designee(s), designated by each Party, respectively, in accordance with Section 2.2 of this Agreement, who has oversight authority and primary responsibility for the Party’s code enforcement services.
- F. **“Commander”** means the Supervisor of the Requesting Party who, in accordance with Section 2.3 of this Agreement, has oversight authority and primary responsibility for a Targeted Enforcement Operation in the Requesting Party’s jurisdiction.

**SECTION 2 - MUTUAL AID**

- 2.1. **Voluntary Assistance.** At time periods to be designated, each Party may provide equipment, facilities and/or Code Enforcement Officers as mutually agreed upon by the Parties hereto and/or other authorized staff for a Targeted Enforcement Operation in another Party’s jurisdiction. During a Targeted Enforcement Operation, each Party’s Code Enforcement Officers shall be authorized to issue the appropriate notices and citations used in the Requesting Party’s jurisdiction as the authorized agents of the Requesting party. All Code Enforcement Officers issuing criminal citations shall be certified under Penal Code Section 832.
- 2.2. **Designation of Authorized Individuals.** All decisions concerning the scheduling of a Targeted Enforcement Operation shall be made by a Requesting Party’s Supervisor and shall be mutually agreed upon by the Parties hereto.
- 2.3. **Command and Control.** The Supervisor of the Requesting Party shall be in command of a Targeted Enforcement Operation in the Requesting Party’s jurisdiction (referred to in this Agreement as the “Commander”). The personnel and equipment of each Assisting Party shall be under the direction of, and an Assisting Party’s personnel shall cooperate with and abide by the instructions of, the Commander until the Targeted Enforcement Operation is complete.
- 2.4. **Compliance With Laws.** All services and Voluntary Assistance provided by any Party in a Targeted Enforcement Operation pursuant to this Agreement shall be rendered in full compliance with all applicable federal, state, and local laws, rules, statutes, and regulations.
- 2.5. **No Compensation for Assistance Rendered.** Each Party shall be responsible for compensating its respective employees who provide assistance during a Targeted Enforcement Operation, and an Assisting Party, and any of its officers, employees, representatives or agents, shall not be entitled to recover any compensation, including based on quantum meruit, from a Requesting Party for Voluntary Assistance rendered under the terms of this Agreement.
- 2.6. **Use of and Damage to Equipment.** Unless otherwise authorized in advance by a Party’s Supervisor, each Party’s equipment shall only be used by that Party’s respective personnel. Each Party shall be responsible for damage to or loss of its own

equipment when providing Voluntary Assistance pursuant to this Agreement. Each Party waives the right to sue any other Party for damage to or loss of equipment, unless the damage or loss was caused by the sole negligence or willful misconduct of another Party, or any of its officers, employees, representatives, agents or volunteers.

- 2.7. **Risk of Harm**. Each Party is solely responsible at all times for the safety of all of its respective officers, employees, representatives, agents and volunteers rendering Voluntary Assistance. The provisions of this Paragraph do not affect any Party's liability and indemnification obligations for Claims arising from injury or death that result from the sole negligence or willful misconduct of the Party's respective officers, employees, representatives, agents or volunteers, or the maintenance of or lack of maintenance of a Party's respective equipment and/or facilities, as provided for in Section 4 of this Agreement.

### SECTION 3 - INSURANCE

- 3.1. Without limiting any Party's indemnification obligations, each Party shall procure and maintain, in accordance with all applicable laws and at its sole cost and for the duration of this Agreement, general liability (bodily injury and property damage), workers' compensation, automobile liability, unemployment insurance, and any other insurance required by law. The workers' compensation insurance policy shall contain a waiver-of-subrogation clause in favor of each other Party to this Agreement, as well as their officers, elected officials, employees, agents, representatives and volunteers. Alternatively, any Party may self-insure if appropriate. Upon execution of this Agreement, each Party shall submit to every other Party certificates of insurance and any applicable endorsements evidencing that the foregoing policies are in effect.

### SECTION 4 - LIABILITY AND INDEMNIFICATION

- 4.1. **Generally**. Except as otherwise specified in this Agreement, each Party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other Parties, including their officers, elected officials, employees, representatives, agents and volunteers (herein collectively, "Released Parties"), with respect to any and all actions, suits, claims, demands, losses, judgments, attorney's fees, costs, damages, penalties, obligations, expenses or liabilities (herein collectively, "Claims") arising out of and/or in any way relating to the Indemnifying Party's actions under this Agreement whether such claims or suits are based in whole or in part upon the negligence, passive or active, of a Released Party; excluding, however, such Claims arising from the sole negligence or willful misconduct of any Released Party, and any Claims arising from a Released Party's maintenance of or lack of maintenance of its respective equipment and/or facilities or where such indemnification is prohibited by law.
- 4.2. **Indemnification of Assisting Party**. Notwithstanding any other provision of this Agreement, in the event a Claim is brought against an Assisting Party, including any of its officers, elected officials, employees, representatives, agents and volunteers, that arises out of and/or is related to actions of the Assisting Party taken pursuant to

this Agreement, whether such claims or suits are based upon the negligence, passive or active, of the Assisting Party, the Requesting Party shall indemnify, defend and hold harmless the Assisting Party against the Claim even if the Assisting Party is ultimately not held liable; excluding, however, such Claims arising from the sole negligence or willful misconduct of any Assisting Party, and any Claims arising from an Assisting Party's maintenance of or lack of maintenance of its respective equipment and/or facilities or where such indemnification is prohibited by law.

- 4.3. **No Liability For Refusal to Assist or Recall of Assistance.** Any assistance provided by an Assisting Party pursuant to this Agreement is strictly voluntary. Notwithstanding any other provision of this Agreement, no Party shall be liable to any other Party or to any other person for failure of any Party to furnish Voluntary Assistance to any other Party, or for recalling Voluntary Assistance, both as described in this Agreement.
- 4.4. **No Personal Liability.** No officer, elected official, employee, representative, agent or volunteer of any Party shall be personally liable to any other Party in the event of any default or breach under this Agreement or for any amount that may become due under the terms of this Agreement, except as may arise from the gross negligence or willful misconduct of such officer, elected official, employee, representative, agent or volunteer.
- 4.5. **Workers' Compensation Liability.** Notwithstanding any other provision of this Agreement, each Party shall provide, at its sole expense, the workers compensation coverage necessary for its own employees. At no time shall the employees of one Party be considered as employees of any other Party. Each Party waives the right to sue any other Party to recover any workers' compensation benefits paid to its own employees or volunteers, excluding, however, if the related injuries were caused by the sole negligence or willful misconduct of another Party, including any of its officers, elected officials, employees, representatives, agents or volunteers.

## SECTION 5 - TERM

This Agreement shall be in full force and effect for one (1) year from the Effective Date set forth above unless terminated pursuant to this Section by one or more of the Parties. Unless the Parties hereto agree otherwise, at the end of the one-year term, and thereafter at each subsequent termination date, this Agreement will automatically renew for a period of one year. Any Party may terminate this Agreement at any time, with or without cause, by giving all other Parties at least thirty (30) days written notice thereof. Termination by one Party shall not affect the operation of this Agreement with respect to the other Parties, nor otherwise require its redrafting or re-execution. Notwithstanding all of the preceding terms in this Section 5, the provisions of Sections 2.6 - 2.7 and all of Section 4 of this Agreement shall survive the earlier expiration or termination of this Agreement.

## SECTION 6 - NOTICES

Notices required or permitted under this Agreement shall be given in writing by personal delivery or by certified mail, postage prepaid and return receipt requested, to the following addresses:

To Adelanto:

City of Adelanto  
City Manager  
Attn: D. James Hart, Ph.D.  
11600 Air Expressway  
Adelanto, CA 92301

To Hesperia:

City of Hesperia  
City Manager  
Attn: Mike Podegracz  
9700 7<sup>th</sup> Avenue  
Hesperia, CA 92345

To Victorville:

City of Victorville  
City Manager  
Attn: Doug Robertson  
14343 Civic Drive  
Victorville, CA 92393

To San Bernardino:

Code Enforcement Division  
Land Use Services Department  
County of San Bernardino  
Attn: Program Manager  
385 N. Arrowhead Avenue  
San Bernardino, CA 92415

To Apple Valley:

Town of Apple Valley  
Town Manager  
Attn: Frank Robinson  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

A Party may change its address by giving written notice to all other Parties. Thereafter, any notice or other communication shall be addressed and transmitted to the new address.

#### SECTION 7 - MISCELLANEOUS

- 7.1. **Assignment.** No Party to this Agreement shall assign, sell, or otherwise transfer any obligation or interest in this Agreement.
- 7.2. **No Third-Party Rights.** This Agreement is intended for the exclusive benefit of the Parties hereto and shall not be construed in law or equity to create rights in any third party.
- 7.3. **Authority.** Each signatory hereto warrants to the other Parties that he or she has authority to sign on behalf of the Party for whom he or she purports to sign.
- 7.4. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through the signatures of their duly authorized representative(s) set forth below, as of the day and year first written above.

**CITY OF ADELANTO**

By: \_\_\_\_\_  
Mayor or City Manager

Attest:  
\_\_\_\_\_  
City Clerk, City of Adelanto

Approved As to Form:  
\_\_\_\_\_  
City Attorney, City of Adelanto

**CITY OF VICTORVILLE**

By: \_\_\_\_\_  
Mayor or City Manager

Attest:  
\_\_\_\_\_  
City Clerk, City of Victorville

Approved As to Form:  
\_\_\_\_\_  
City Attorney, City of Victorville

**TOWN OF APPLE VALLEY**

By: \_\_\_\_\_  
Mayor

Attest:  
\_\_\_\_\_  
LaVonda McPearson, Town Clerk, Town of Apple Valley

Approved As to Form:  
\_\_\_\_\_  
John Brown, Town Attorney, Town of Apple Valley

**CITY OF HESPERIA**

By: \_\_\_\_\_  
Mayor or City Manager

Attest:  
\_\_\_\_\_  
City Clerk, City of Hesperia

Approved As to Form:  
\_\_\_\_\_  
City Attorney, City of Hesperia

**COUNTY OF SAN BERNARDINO**

By: \_\_\_\_\_  
Chair

Attest:  
\_\_\_\_\_  
Clerk of the Board, County of San Bernardino

Approved As to Form:  
\_\_\_\_\_  
General Counsel, County of San Bernardino