

HESPERIA LAKES OPERATING AGREEMENT

This Agreement dated this 1st day of October, 2001, by and between the Hesperia Water District, hereinafter referred to as "HWD", and the Hesperia Recreation and Park District, hereinafter referred to as "HRPD",

WITNESSETH

WHEREAS, HWD, owns the property shown and legally described on Exhibits "A-1" and "A-2" on the attached map, which map is incorporated herein by this reference and said Exhibits "A-1" and "A-2" is hereinafter referred to as the "Property", containing a lake, island, stream, designated surrounding land and certain improvements, and water and other facilities servicing same, the current use of which property includes, among other uses, recreation and related uses; and

WHEREAS, it is understood that HWD reserves all property as noted on Exhibits "A-1" and "A-2" for future use by the water district, thereby limiting the park facility to the designated area currently utilized; and

WHEREAS, it appears to be in the best interest of the community, and the parties hereto that HRPD be allowed to enter upon, maintain and continue the operations of said Property; and

WHEREAS, it appears to be in the interest of HWD, to enter into an Agreement to insure the continued maintenance and use of said Property during the term of this agreement.

WHEREAS, it appears to be in the best interest of the community for the HWD, HRPD, and the City of Hesperia to assist each other in conservation of water, and finding additional water sources for the continued operation of Hesperia Lake Park.

NOW THEREFORE, in consideration of the above, and in consideration of the terms, covenants and conditions herein set forth, the parties hereto mutually agree as follows:

1. During the term hereof, HRPD shall have the right and obligation to occupy and operate the designated property owned by HWD, as a public park and recreational area, including the maintenance and development of said property for the benefit of the residents of Hesperia, invitees and visitors at the expense of the HRPD. HRPD is not obligated to keep the lake or stream filled at any specified level. Water use will be at the discretion of HRPD.

2. The term of this Agreement is effective as of October 1, 2001, and shall continue for a period of 25 years, ending on the 31st day of September, 2026, unless terminated sooner as provided herein. HRPD shall have an option to extend the term of this agreement for two (2) additional five (5) year periods providing HRPD notifies HWD in writing ninety (90) days prior to expiration of said agreement. Either party may elect to terminate this Operating Agreement without cause by giving at least 120 days written notice of that election to the other party. In the event, either party wishes to so terminate this agreement, and the cancellation is effective prior to the end of the term hereof, then HWD agrees to reimburse to HRPD for improving and developing the property. This

reimbursement may exclude any improvements funded through grants unless the grant terms require such reimbursement. The consideration of reimbursement will be limited to any improvements that have previously received the approval of the HWD Board and which are incurred for the purpose of improving and developing the property. Any reimbursement will be subject to a depreciation rate of 5% per year from the date of expenditure. Upon completion or termination of the term hereof or of any renewal or extension hereof, all building and improvements on the property shall be and remain the property of HWD.

All major capital improvements, exceeding \$2000, must be approved or part of an approved master plan of the HWD Board to ensure the long-term integrity of the property. Improvements costing less than \$2000 not approved by HWD or elements of the master plan, may be excluded from consideration of reimbursement. Additionally, any improvements exceeding \$2000 undertaken by HRPD and not approved by HWD or an element of the master plan may be excluded from consideration of reimbursement upon termination of the contract.

3. In the event that HWD deems it necessary to liquidate the property and receives an acceptable offer to purchase within the period of this Agreement, HWD shall thereupon give to HRPD within 30 days after receiving the offer the right to purchase the property on the same terms and conditions. Upon receipt of notice of Offer to Sell, if it elects to purchase the property, HRPD shall thereupon have a period of 45 days to provide HWD with written election to purchase said property in accordance with the terms and conditions as stipulated in the offer. The parties shall then complete the sale to the HRPD within 60 days thereafter or

such longer period as the parties may agree. The rights and obligations under this paragraph are subject to all applicable provisions of state law relating to the sale by HWD of the property, and are subject to all conditions and limitations relating to said sale; further the provisions of this paragraph should not necessarily be construed as obligating HWD to sell the property to any person or entity if it chooses not to sell the property.

4. During the terms of this Agreement, HRPD shall be responsible for the timely maintenance and repair of the facilities and maintaining the property in a safe condition. HRPD shall be responsible for the prompt repair and reconstruction of any improvements damaged or destroyed during the term hereof. Any damage that could result in injury or illness to HWD or HRPD employees, or to the public, shall be repaired within 24 hours after the damage is discovered by either HWD or HRPD. If the damage cannot be repaired within this time period, then the area shall be properly barricaded to prevent the public from coming in contact with the area. All repairs to any improvements shall be performed within thirty (30) days after the damage has been caused or identified. Any deviation to this time limit shall be requested by HRPD in writing, and shall be approved by, in writing, HWD. If repairs are not performed in accordance with the time limits, HWD may elect to perform the repairs, and all costs associated with the repair work shall be paid entirely by HRPD.

5. The HRPD represents that its agents or employees have entered upon and inspected the property and accepts the property and any improvements thereon in their present conditions. The HRPD also agrees to indemnify, hold

harmless and defend the HWD from any and all claims, demands or actions for damages of any kind, including but not limited to, injury, death or damage to property resulting from or concerning the use or operation of the property, the condition of the property or any acts or omissions of any kind on or about the property or relating to the property or its use or condition.

The HRPD shall also forthwith provide, at its expense, liability insurance protecting against claims for injury, death or property damage in the sum of at least \$5,000,000 for injury or death and \$1,000,000 for property damage. HWD shall have the right to review the limits of said liability insurance coverage every year following the effective date of this agreement, and if deemed reasonably necessary by HWD, may require the limits of said insurance coverage to be increased to an extent deemed reasonably appropriate by HWD, in which event HRPD shall obtain said increased coverage effective within 90 days from HWD's request. Said liability insurance coverage shall be a responsible and reliable coverage acceptable to and in conformance with similar coverage as provided by other public agencies performing like duties.

HRPD shall further forthwith provide at its expense insurance covering all risks of physical damage to any substantial or major buildings (including contents left by HWD) including those existing and those constructed or installed or erected during the term hereof, which coverage shall include but not be limited to fire and extended coverage, adequate to cover replacement costs, as reasonably approved by HWD. On all insurance policies, HWD shall be named as an insured and/or, as applicable, loss payee, and said policies shall be primary and

not contributing with any other insurance available to HWD. Said policies or certificates or riders evidencing coverage shall be delivered to HWD on an annual basis coinciding with each renewal. Said insurance shall be with an admitted insurance company or companies acceptable to similar public agencies in this state. HWD shall have the right to review the limits of said insurance coverage every year following the effective date of this agreement, and if deemed reasonably necessary by HWD, may require the limits of said insurance coverage to be increased to an extent deemed reasonably appropriate by HWD, in which event HRPD shall obtain said increased coverage effective within 30 days from HWD's request.

6. To the extent that water is reasonably available, water for landscape and lake replenishment can be provided from HWD's non-potable Wells Number 1, 2 and 7. HRPD is responsible for all costs, electrical and other, associated with drawing water from these wells. HRPD will be required to provide verification of the flow meter calibration on a biannual basis as required by the Watermaster. If the flow meter ceases to function, HWD must be notified immediately. HWD will not assume responsibility for the condition of the wells, well casing, pumps and motors, pipeline transmission system or operation thereof from the date of this operating agreement. If HWD personnel identify a necessary repair, HRPD has 30 days from notification to complete the repair. If not completed in that timeframe, HWD will make the repairs and bill HRPD for any associated costs.

All costs associated with the usage of water from the aforementioned wells will be borne by HRPD, including monitoring, administrative and biological

assessments and replacement water. The cost of the water utilized by HRPD from the aforementioned wells will be determined by October 1st of each year, and will apply to all water used from the previous water year (October 1, through September 30)

All costs for usage of water, replacement water (Mojave Water Agency or market price which ever is lowest,) HWD monitoring and inspection, payment schedule and Watermaster administrative and biological fees shall be as indicated in Exhibit "B-1" attached herein, and shall be updated yearly on October 1.

The following meters, which are installed as of the date of this agreement for use at the park site, are currently and subsequently maintained by HWD. These meters are read and billed bimonthly at the appropriate retail rate:

- (1) Meter #B89961703 2"
- (2) Meter #N27064767 1"
- (3) Meter #N23602771 1"
- (4) Meter #B91540146 5/8"
- (5) Meter #B90852129 1" (apartment use)
- (6) Meter # B96652024 1" (museum)

Additional meters or substitute meters may be added as needed by contacting HWD. Appropriate established fees for installation will be applicable. HRPD is responsible for all applicable fees, charges, rates, costs and expenses in connection with the use of metered water. All costs of revising, improving or

repairing the water system shall be the responsibility of HRPD. The HRPD shall also be responsible for the cost of any utilities and other expenses incurred in the operation, maintenance or use of the property.

7. HRPD shall not have the right to assign, sublet, delegate, contract or otherwise transfer, whether in whole or in part, any of its rights or obligations hereunder without the prior written consent of HWD. Any such consent by HWD will not be construed as a waiver of any further rights of HWD Hereunder, including but not limited to the right to terminate without cause. This paragraph is not intended to cover ordinary maintenance and operations by HRPD (such as minor contracts for weed removal, ordinary and day to day maintenance). Further, this paragraph shall not be construed so as to limit the rights of HWD under paragraph 2 of this agreement.

8. All notices required or permitted to be given under this Agreement shall be deemed given by delivery or by mailing, postage prepaid to the recipient party at its then current address; the present addresses of the parties are as follows:

To HWD: City of Hesperia
15776 Main Street
Hesperia, CA 92345

To HRPD: Hesperia Rec. & Park District
P.O. Box 401055
Hesperia, CA 92340

9. This agreement constitutes the entire agreement of the parties. No verbal agreement or statement made by either party prior to execution hereof shall be

effective unless set forth in this agreement. Any amendments to this agreement will be effective only if made in writing and signed by both parties hereto.

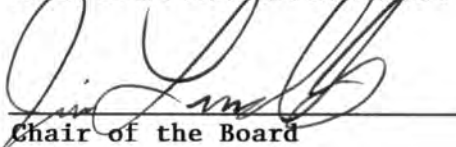
10. The HRPD agrees to pay HWD as rental for the leased premises the total sum of twenty-five dollars (\$25.00), payable in advance in its entirety or in the amount of one dollar (\$1.00) per year on the anniversary date of each and every year during the term of this operating agreement.

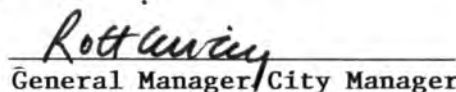
11. Without conceding that any property taxes or assessments of any kind are or will become due or payable, in the event any such property taxes, assessments or charges, whether assessed against real or personal property on or about the premises are levied or assessed or become payable during the term hereof, HRPD shall indemnify and hold harmless HWD therefrom and shall be responsible for same; provided, however, HRPD shall have and reserve the right to contest any of said taxes, assessments or claims, provided it continues to indemnify, defend and hold harmless HWD therefrom.

12. HRPD shall at all times keep the property clear and free of all liens, claims and encumbrances of any kind, and shall indemnify, defend and hold harmless HWD therefrom.

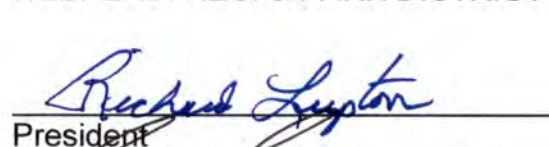
IN WITNESS WHEREOF, this Agreement is effective on the day and year first above written.

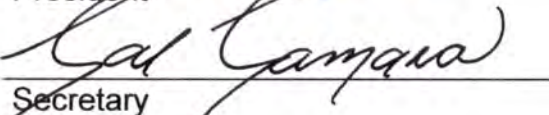
HESPERIA WATER DISTRICT


Chair of the Board


General Manager/City Manager

HESPERIA REC. & PARK DISTRICT

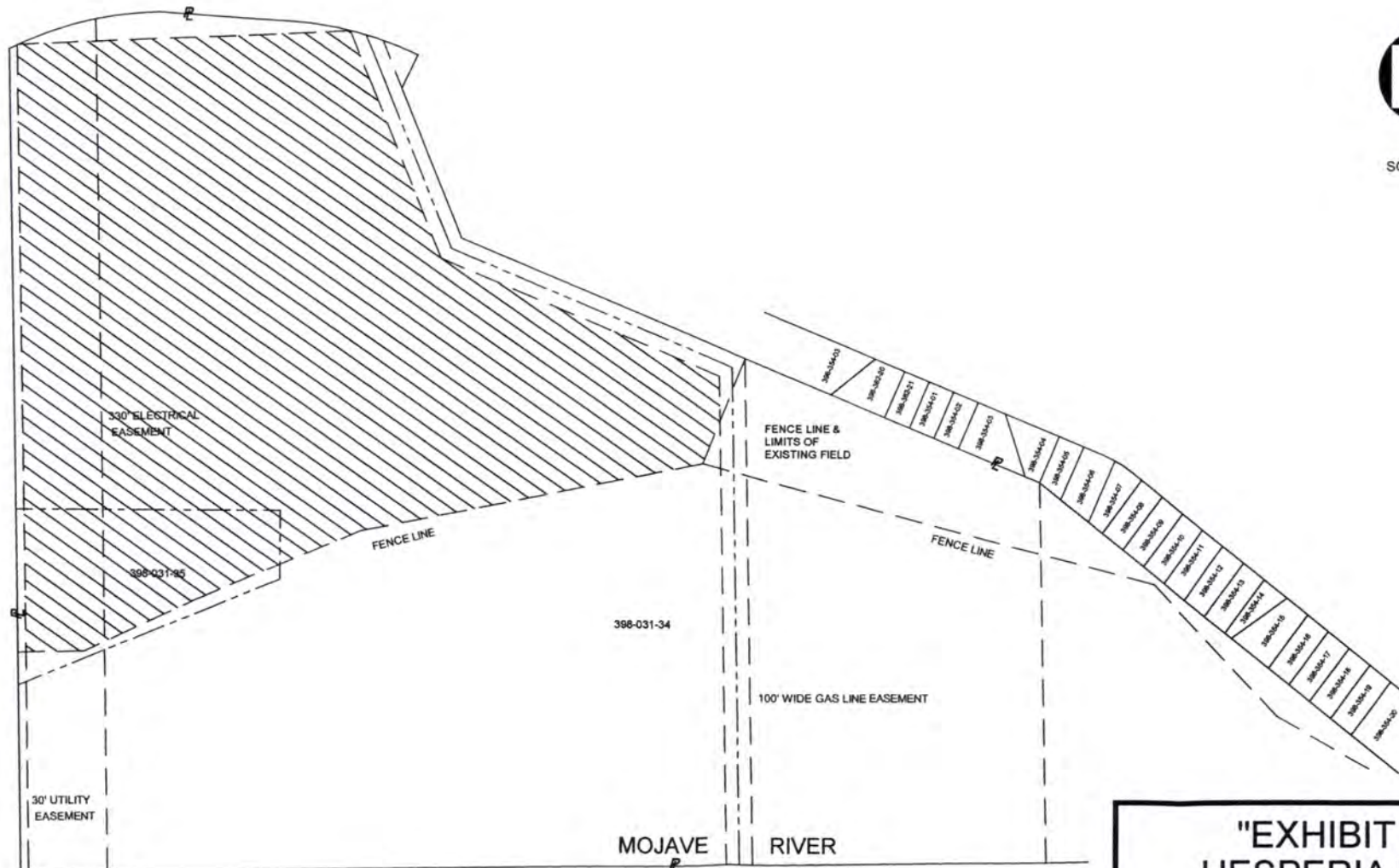

President


Secretary

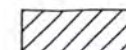
W4-15



NORTH
SCALE: 1"=400'



"EXHIBIT A-1" HESPERIA LAKES



HESPERIA LAKES AREA

Area = 88 ± Acre

104-16



NORTH
SCALE: 1"=400'

"EXHIBIT A-2" HESPERIA LAKES

 HESPERIA LAKES AREA

Area = 88 ± Acre

EXHIBIT "B-1"

WATER USAGE COSTS AND INCIDENTAL FEES FOR WATER YEAR OCTOBER 1, 2001 TO SEPTEMBER 30, 2002

1. Water usage cost

• _____ Acre-Feet (AF) x \$ _____ per AF = \$ _____

2. HWD monitoring, inspection and administrative cost

• \$ _____ per month x 12 months = \$ _____

3. Watermaster administrative and biological fees

• Administrative Fee = \$ _____ per AF

• Biological Fee = \$ _____ per AF

• Total Fee = \$ _____ per AF x _____ AF = \$ _____

IN WITNESS WHEREOF, this Exhibit (B-1") is effective on the 1st day of
October, 2001.

HESPERIA WATER DISTRICT

HESPERIA REC. & PARK DISTRICT

Chair of the Board

President

General Manager/City Manager

Secretary