

**HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HOUSING AUTHORITY
COMMUNITY DEVELOPMENT COMMISSION
WATER DISTRICT
AGENDA**

Regular Joint Meetings
1st and 3rd Tuesday

Date: August 6, 2019
SPECIAL MEETING

Time: NO CLOSED SESSION
3:00 P.M. (Regular Meeting)



CITY COUNCIL MEMBERS

Larry Bird, Mayor

William J. Holland, Mayor Pro Tem

Jeremiah Brosowske, Council Member

Cameron Gregg, Council Member

Rebekah Swanson, Council Member



Nils Bentsen, City Manager

Eric L. Dunn, City Attorney

City of Hesperia

Council Chambers
9700 Seventh Avenue
Hesperia, CA 92345

City Clerk's Office: (760) 947-1007

**Agendas and Staff Reports are
available on the City Website**
www.cityofhesperia.us

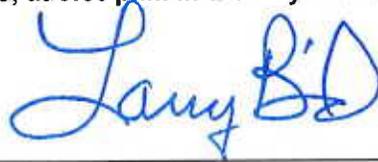
Documents produced by the City and distributed less than 72 hours prior to the meeting, regarding items on the agendas, will be made available in the City Clerk's Office located at 9700 Seventh Avenue during normal business hours.



NOTE: In compliance with the Americans with Disability Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (760) 947-1007 or (760) 947-1056. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

**NOTICE AND CALL OF SPECIAL MEETING
HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HESPERIA HOUSING AUTHORITY
HESPERIA COMMUNITY DEVELOPMENT COMMISSION
HESPERIA WATER DISTRICT**

NOTICE IS HEREBY GIVEN that a special meeting of the Hesperia City Council, Successor Agency to the Redevelopment Agency, Hesperia Housing Authority, Hesperia Community Development Commission, and Hesperia Water District will be held on Tuesday, August 6, 2019, at 3:00 p.m. in the City Council Chambers, at 9700 Seventh Avenue, Hesperia, CA 92345.



Larry Bird, Mayor / Chair

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**SPECIAL MEETING AGENDA
HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HESPERIA HOUSING AUTHORITY
HESPERIA COMMUNITY DEVELOPMENT COMMISSION
HESPERIA WATER DISTRICT**

As a courtesy, please silence your cell phones and other electronic devices while the meeting is in session. Thank you.

Prior to action of the Council, any member of the audience will have the opportunity to address the legislative body on any item listed on the agenda, including those on the Consent Calendar.

Individuals wishing to speak during General Public Comments or on a particular numbered item must submit a speaker slip to the City Clerk with the agenda item noted. Speaker slips should be turned in prior to the public comment portion of the agenda or before an agenda item is discussed. Comments will be limited to three minutes for General Public Comments, Consent Calendar items and New Business items. Comments are limited to five minutes for Public Hearing items.

In compliance with the Brown Act, the City Council may not discuss or take action on non-agenda items or engage in question and answer sessions with the public. The City Council may ask brief questions for clarification; provide a reference to staff or other resources for factual information and direct staff to add an item to a subsequent meeting.

NO CLOSED SESSION

CALL TO ORDER - 3:00 PM

A. Invocation

B. Pledge of Allegiance to the Flag

C. Roll Call

*Mayor Larry Bird
Mayor Pro Tem William J. Holland
Council Member Jeremiah Brosowske
Council Member Cameron Gregg
Council Member Rebekah Swanson*

D. Agenda Revisions and Announcements by City Clerk

E. Closed Session Reports by City Attorney

ANNOUNCEMENTS/PRESENTATIONS

1. Presentation by Joe Brady of the Bradco Companies on the Mojave River Valley Survey
2. Community Events Calendar

JOINT CONSENT CALENDAR

1. Page 7 Consideration of the Draft Minutes from the Regular Meeting held Tuesday, July 16, 2019

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Regular Meeting held Tuesday, July 16, 2019.

Staff Person: City Clerk Melinda Sayre

Attachments: [Draft CC Min 2019-07-16](#)

2. Page 15 Warrant Run Report (City - Successor Agency - Housing Authority - Community Development Commission - Water)

Recommended Action:

It is recommended that the Council/Board ratify the warrant run and payroll report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Hesperia Water District.

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Warrant Run 8-6-2019](#)

[Attachment 1 - Warrant Runs](#)

3. Page 17 Covenant Agreement for Reimbursement of Sewer Connection Operating Costs between the City of Hesperia and Rich Development Enterprises, LLC.

Recommended Action:

It is recommended that the City Council approve the Covenant Agreement for Reimbursement of Sewer Connection Operating Costs between the City of Hesperia (City) and Rich Development Enterprises, LLC (Developer) to facilitate the financial reimbursement arrangement for sewer fees charged to the City for sewer invoices incurred by the Developer pursuant to the agreement between the City and San Bernardino County Service Area (CSA 64).

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Rich Development Agreement 8-6-2019](#)

[Resolution 2019-037](#)

[Attachment 2 - Draft Rich Development Agreement](#)

[Attachment 3 - CSA Agreement](#)

4. Page 37 Local Transportation Fund - Article 8a Claim

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-038, authorizing the City Manager to file the FY 2019-20 Local Transportation Fund - Article 8a claim in the amount of \$807,864 with San Bernardino County Transportation Authority (SBCTA).

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Article 8a Claim 8-6-2019](#)
[Resolution 2019-038](#)

5. Page 41 Execute Agreements with California Department of Transportation

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-041 authorizing the City Manager to execute all Master Agreements, Program Supplement Agreements, Fund Exchange Agreements, Fund Transfer Agreements, and any amendments thereto with the California Department of Transportation (Caltrans) as necessary in order to allow the City to receive Federal and/or State funding for certain transportation projects.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Caltrans Agreements 8-6-2019](#)
[Resolution 2019-041](#)
[Attachment 2 - Updated Master Agreement](#)

6. Page 71 Fiscal Year 2019/20 - 2023/24 Five Year Measure I Capital Improvement Plan

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-042 approving the Measure I Five Year Capital Improvement Plan and Expense Strategy for Fiscal Years 2019/20 - 2023/24.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Measure I Capital Improvement Plan 8-6-2019](#)
[Resolution 2019-042](#)
[Attachment 2 - Spreadhsheet](#)
[Attachment 3 - Expenditure Strategy](#)
[Attachment 4 - Revenue Forecast](#)

7. Page 79 Award Contract for Re-Paint City Hall Decorative Tube Steel

Recommended Action:

It is recommended that the City Council award a contract for the Re-Paint City Hall Decorative Tube Steel project to the lowest responsive/responsible bidder, Harbor Coating and Restoration, for the bid amount of \$86,500; approve an additional 10% contingency in the amount of \$8,650 for a total construction budget of \$95,150; approve the design of the project represented by the plans and specifications; and authorize the City Manager to execute the contract.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Re-Paint City Hall Tube Steel 8-6-2019](#)

8. Page 81 Allocate Funds for Bear Valley Road Bus Stop Relocation Project, C.O. No. 7148

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-045 appropriating \$158,000 of unused project funds from Fiscal Year 2018-2019 to Fund 504 for Fiscal Year 2019-2020.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Bear Valley Rd Bus Stop 8-6-2019](#)
[Resolution 2019-045](#)

NEW BUSINESS

9. Page 85 Designation of Voting Delegate and Alternates for League of CA Cities Conference

Recommended Action:

It is recommended that the City Council designate a primary voting delegate and up to two alternate delegates to represent the City of Hesperia at the General Business meeting to be held during the League of California Cities annual conference October 16 through October 18, 2019 in Long Beach.

Staff Person: City Clerk Melinda Sayre

Attachments: [SR League Delegate 8-6-2019](#)

GENERAL PUBLIC COMMENTS (For items and matters not listed on the agenda)

Individuals wishing to speak during General Public Comments or on a particular numbered item are requested to submit a speaker slip to the City Clerk with the agenda item noted. Speaker slips should be turned in prior to the public comment portion of the joint agenda or before an agenda item is discussed. Comments will be limited to three minutes for General Public Comments, Consent Calendar items and New Business items. Comments are limited to five minutes for Public Hearing items.

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COUNCIL COMMITTEE REPORTS AND COMMENTS

The Council may report on their activities as appointed representatives of the City on various Boards and Committees and/or may make comments of general interest or report on their activities as a representative of the City.

CITY MANAGER/CITY ATTORNEY/STAFF REPORTS

The City Manager, City Attorney or staff may make announcements or reports concerning items of interest to the Council and the public.

ADJOURNMENT

I, Melinda Sayre, City Clerk of the City of Hesperia, California do hereby certify that I caused to be posted the foregoing agenda on Wednesday, July 31, 2019 at 5:30 p.m. pursuant to California Government Code §54954.2.

*Melinda Sayre,
City Clerk*

Documents produced by the City and distributed less than 72 hours prior to the meeting regarding items on the agenda will be made available in the City Clerk's Office during normal business hours.

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City of Hesperia

Meeting Minutes - Draft

City Council

City Council Chambers
9700 Seventh Ave.
Hesperia CA, 92345

Tuesday, July 16, 2019

6:30 PM

**REGULAR MEETING AGENDA
HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HESPERIA HOUSING AUTHORITY
HESPERIA COMMUNITY DEVELOPMENT COMMISSION
HESPERIA WATER DISTRICT**

CLOSED SESSION - 5:30 PM

Roll Call

Present: 4 - Mayor Bird, Mayor Pro Tem William J. Holland, Council Member Gregg and Council Member Swanson
Absent: 1 - Council Member Brosowske

Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.9(d)1

1. City of Barstow, et al. v. City of Adelanto, et al., Case No. 208568

Conference with Real Property Negotiators – Property Negotiations
Government Code Section – 54956.8

1. Negotiating Parties: CDC and HHA and ZAB, LLC
Location: APN 0407-261-03, 04, and 20 (9th and Juniper)
Under Negotiation: Price and Terms

CALL TO ORDER - 6:30 PM

- A. Invocation by Jason Jahn of High Desert Church**
- B. Pledge of Allegiance to the Flag**
- C. Roll Call**

Present: 4 - Mayor Bird, Mayor Pro Tem William J. Holland, Council Member Gregg and Council Member Swanson
Absent: 1 - Council Member Brosowske

- D. Agenda Revisions and Announcements by City Clerk - None**
- E. Closed Session Reports by City Attorney – Directions was given to staff, no reportable action taken.**

ANNOUNCEMENTS/PRESENTATIONS

1. Hesperia Police Department overview of Hesperia's 2018 crime rate and calls for service
2. Community Events Calendar - *Main Street Improvement Project paving will be completed this week with striping planned for July 29/30; Hesperia Animal Shelter Adoption Special of \$25 for all dogs over 25 pounds. Visit www.PetHarbor.com to view adoptable pets; Saturday, 8/3 Tire Amnesty Day at Advance Disposal from 7:30am – 12:00pm; City Council Meeting on 8/6 will begin at 3pm to allow for participation in National Night Out.*

JOINT CONSENT CALENDAR

Al Vogler commented on draft minutes.

Bob Nelson commented on items 10, 12 & 13.

Kelly Gregg commented on items 10 & 13.

Barbara Barrowman commented on traffic incidents involving DUI's.

Items 10 and 13 were pulled for discussion by the Council.

A motion was made by Swanson, seconded by Holland, that Consent Calendar items 2-15 be approved. The motion carried by the following vote:

Aye: 4 - Bird, Holland, Gregg and Swanson

Absent: 1 - Brosowske

1. Consideration of the Draft Minutes from the Regular Meeting held Tuesday, June 18, 2019

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Regular Meeting held Tuesday, June 18, 2019.

Item 1 was pulled by the Mayor for discussion.

A motion was made by Holland, seconded by Gregg, that this item be approved as amended. The motion carried by the following vote:

Aye: 4 - Bird, Holland, Gregg and Swanson

Absent: 1 - Brosowske

2. Warrant Run Report (City - Successor Agency - Housing Authority - Community Development Commission - Water)

Recommended Action:

It is recommended that the Council/Board ratify the warrant run and payroll report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Water District.

Sponsors: Director of Finance Casey Brooksher

3. Treasurer's Cash Report for the unaudited period ended May 31, 2019

Recommended Action:

It is recommended that the Council/Board accept the Treasurer's Cash Report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Water District.

Sponsors: Director of Finance Casey Brooksher

- Award Contract for Bear Valley Road Bus Stop Relocation Project, C.O. No. 7148

Recommended Action:

It is recommended that the City Council award a construction contract for the Bear Valley Road Bus Stop Relocation Project, C.O. No. 7148 to the lowest responsive/responsible bidder, TIS, Inc. in the amount of \$119,451; approve a 10% contingency in the amount of \$11,945 for a total contract amount of \$131,396; and authorize City Manager to execute the contract.

Sponsors: Assistant City Manager Michael Blay

- Approve Parcel Map 19944

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-031 approving Parcel Map No. 19944 to create five parcels from 4.7 gross acres zoned General Manufacturing (I2) located on the northwest corner of Eucalyptus Street and Darwin Avenue (Applicant: Doug Cox; APN: 0415-243-04).

Sponsors: Assistant City Manager Michael Blay

- Warehouse Commodity - Hydrant, Brass, and Pipe Materials

Recommended Action:

It is recommended that the Board of Directors of the Hesperia Water District authorize the City Manager to approve an annual contract for Fiscal Year 2019-20 to purchase Mueller parts for the Water Operations and Pipeline Division replacement program in the not-to-exceed amount of \$215,000.

Sponsors: Public Works Manager Mark Faherty and Public Works Supervisor/Water Jeremy McDonald

- Revised Combined Compensation Schedules

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-033 and the Board of Directors of the Hesperia Water District adopt Resolution HWD 2018-13; approving the City's Fiscal Year (FY) 2019-20 revised Combined Compensation Schedule effective July 1, 2019 for the addition of new positions, as well as a second schedule effective on July 6, 2019 to incorporate the approved salary increases.

Sponsors: Director of Finance Casey Brooksher and Assistant to the City Manager Rachel Molina

- Purchase Piping and Material

Recommended Action:

It is recommended that the Board of Directors of the Hesperia Water District authorize the City Manager to approve a contract to purchase piping and materials from S&J Supply for the Pipeline Water Line Replacement program in the not-to-exceed amount of \$100,000.

Sponsors: Public Works Manager Mark Faherty and Public Works Supervisor/Water Jeremy McDonald

- County of San Bernardino Environmental Health Services Contract

Recommended Action:

It is recommended that the City Council authorize the City Manager to enter into a non-financial contract with San Bernardino County Public Health Department, Division of Environmental Health Services to provide certain services within the City limits.

Sponsors: Administrative Analyst Tina Bulgarelli

10. Increase to Contract - Layne Christensen

Recommended Action:

It is recommended that the Chair and Board Members of the Hesperia Water District authorize the City Manager to execute an increase to contract with Layne Christensen, for water pump repair services in the amount of \$95,000 with a new not-to-exceed amount of \$300,000.

Sponsors: Public Works Manager Mark Faherty and Public Works Supervisor/Water Jeremy McDonald

11. Public Works Asset Management Software (Cityworks) Maintenance Agreement

Recommended Action:

It is recommended that the City Council and Board of Directors of the Hesperia Water District authorize the City Manager to enter into a three-year maintenance agreement with Azteca Systems, Inc. for an amount not-to-exceed \$125,000.

Sponsors: Public Works Manager Mark Faherty and Public Works Supervisor/Water Jeremy McDonald

12. Contract Services Amendment with LDM Associates, Inc.

Recommended Action:

It is recommended that the City Council extend the LDM Associates, Inc. (LDM) contract for Community Development Block Grant (CDBG), Neighborhood Stabilization Program (NSP) and Hesperia Housing Authority (HHA) administrative functions through June 30, 2020 and add \$219,036 to the contract.

Sponsors: Economic Development Manager Rod Yahnke and Administrative Analyst Jennifer Shove

13. Amendment of Professional Services Agreement with the Buxton Company

Recommended Action:

It is recommended that City Council and Commissioners of the Hesperia Community Development Commission (HCDC), approve and authorize an amendment to Professional Services Agreement (PSA) 2018-19-013 with The Buxton Company (Buxton), thereby increasing the contract amount by \$50,000 to \$100,000, and extending the term through June 30, 2020.

Sponsors: Economic Development Manager Rod Yahnke and Administrative Analyst Jennifer Shove

14. Special Assessment of Enforcement and Abatement Costs

Recommended Action:

It is recommended that the City Council approve Resolution No. 2019-35, confirming parcels of land upon which unpaid fees for services, and enforcement and abatement costs remain, and Resolution No. 2019-36, requesting that San Bernardino County place the unpaid fees for services, and enforcement and abatement costs on the property tax rolls.

Sponsors: Assistant City Manager Michael Blay and Administrative Analyst Tina Bulgarelli

15. Agreements and Equipment for the Main Street Traffic Signal Synchronization Project - Phase II, C.O. 7133 and the Main/Mariposa Signal Relocation Project, C.O. No. 7156

Recommended Action:

It is recommended that the City Council 1) approve a Professional Services Agreement (PSA) with Urban Systems Associates, Inc. in the amount of \$577,600, plus a 10% contingency in the amount of \$57,760, for a total contract amount of \$635,360, 2) authorize the purchase of equipment from Trafficware in the amount of \$103,316, 3) authorize the purchase of equipment from Rhythm Engineering in the amount of \$320,202, 4) adopt Resolution No. 2019-039 appropriating \$280,327 to Fund 204, 5) adopt Resolution No. 2019-040 approving the Memorandum of Understanding (MOU) between the City and Caltrans District 8; and 6) authorize the City Manager to execute the PSA and MOU.

Sponsors: Assistant City Manager Michael Blay

PUBLIC HEARING

16. Amendments to Title 5 of Hesperia Municipal Code

Recommended Action:

It is recommended that the City Council introduce and place on first reading Ordinance No. 2019-10 amending Title 5 of the Hesperia Municipal Code modifying the regulations for business licensing.

Sponsors: Assistant City Manager Michael Blay and Administrative Analyst Tina Bulgarelli

The public hearing was opened. There being no public comments the public hearing was closed.

A motion was made by Swanson, seconded by Gregg, that this item be approved. The motion carried by the following vote:

Aye: 4 - Bird, Holland, Gregg and Swanson

Absent: 1 - Brosowske

NEW BUSINESS

17. City Council Appointments to Outside Agencies

Recommended Action:

It is recommended that the City Council review liaisons (both primary and alternate) to various outside agencies and re-appoint as desired.

Sponsors: City Clerk Melinda Sayre

A motion was made by Gregg, seconded by Swanson, that this item be approved as indicated in the table on the following page. The motion carried by the following vote:

Aye: 4 - Bird, Holland, Gregg and Swanson

Absent: 1 - Brosowske

(see table on next page)

Agency/Commission/Committee Name	Primary Rep.	Alternate Rep.
League of California Cities(LOCC)	Cameron Gregg	Bill Holland
LOCC Inland Empire & Desert Mountain Divisions	Cameron Gregg	Bill Holland
Mojave Desert Air Quality Management District (MDAQMD)	Rebekah Swanson Bill Holland	Cameron Gregg Rebekah Swanson
San Bernardino County Transportation Authority (SBCTA) (formerly SANBAG) Board of Commissioners & Subcommittee – Mountain/Desert Measure I	Bill Holland Rebekah Swanson	Rebekah Swanson Cameron Gregg
San Bernardino County Solid Waste Task Force	Julie Ryan (staff appointment)	Jeremiah Brosowski
Victor Valley Economic Development Authority (VVEDA)	Rebekah Swanson	Jeremiah Brosowski
Victor Valley Transit Authority (VVTA)	Larry Bird	Rebekah Swanson
Victor Valley Wastewater Reclamation Authority (VWVRA)	Larry Bird	Bill Holland
Hesperia Chamber of Commerce Liaison (no compensation, non-voting liaison)	Larry Bird	
Hesperia Chamber of Commerce 2034 Committee	Cameron Gregg	Rachel Molina (Staff appointment)
Tri Agency Committee (no compensation)	Cameron Gregg	Rebekah Swanson
City Council Advisory Committee - (no compensation)	Jeremiah Brosowski	Rebekah Swanson
Public Safety Advisory Committee (no compensation)	Cameron Gregg	Jeremiah Brosowski
Development Review Committee (liaisons)	No appointments made	

*Changes reflected by strikethrough (~~abe~~)

GENERAL PUBLIC COMMENTS (For items and matters not listed on the agenda)

Daniel Krist commented on community issues. Bob Nelson commented on the terms of his probation. Al Vogler commented on renewal of a contract with Tony Strickland. Emma Gregg commented to Council member Swanson. Jasmine Gregg commented to Council Member Swanson. Rick Casas commented on regulations for cannabis delivery in the City. Dan Sterling commented on installing a bicycle lane on Hesperia Road. Bill Jensen commented on council seat requirements. Kelly Gregg commented on cooling centers. Barbara Barrowman commented on potential food contamination from an item purchased at Walmart.

COUNCIL COMMITTEE REPORTS AND COMMENTS

Mayor Pro Tem Holland commented on demolition of house on Buckthorn and thanked Police Department staff for the presentation on crime statistics.

Council Member Swanson commented on power outages, recent earthquakes, attendance at the Tri-Agency meeting, MDAQMD meeting, Visioning Ad-Hoc for SBCTA meeting and the San Bernardino Special Districts CSD meeting, National Night Out, and responded to comments made during public comment.

Council Member Gregg commented on attendance at the Tri-Agency meeting and Chamber Golf Tournament, July 4 holiday and requested information on illegal fireworks statistics within the City, recent earthquakes, and responded to comments made regarding the Tony Strickland contract.

Mayor Bird commented on the Tony Strickland contract, recent earthquakes, and cancellation of the VVTA meeting on 7/15.

CITY MANAGER/CITY ATTORNEY/STAFF REPORTS

The City Manager commented on the power outages planned through Southern California Edison.

ADJOURNMENT

8:27 p.m.

*Melinda Sayre,
City Clerk*

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City of Hesperia STAFF REPORT



DATE: August 6, 2019

TO: Mayor and Council Members
City Council, as Successor Agency to the Hesperia Community Redevelopment Agency
Chair and Commissioners, Hesperia Housing Authority
Chair and Commissioners, Community Development Commission
Chair and Board Members, Hesperia Water District

FROM: Nils Bentsen, City Manager

BY: Casey Brooksher, Director of Finance
Anne Duke, Deputy Finance Director
Keith Cheong, Financial Analyst

SUBJECT: Warrant Run Report (City – Successor Agency – Housing Authority – Community Development Commission – Water)

RECOMMENDED ACTION

It is recommended that the Council/Board ratify the warrant run and payroll report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Hesperia Water District.

BACKGROUND

The Warrant Run totals represented below are for the period June 29, 2019 through July 12, 2019.

<u>Agency/District</u>	<u>Accounts Payable</u>	<u>Payroll</u>	<u>Wires</u>	<u>Totals</u>
City of Hesperia	\$919,743.85	\$228,673.37	\$0.00	\$1,148,417.22
Successor Agency	0.00	0.00	0.00	0.00
Housing Authority	10,692.09	259.88	0.00	10,951.97
Community Development Commission	6,205.77	6,589.43	0.00	12,795.20
Water	621,823.73	103,012.73	31,255.58	756,092.04
Totals	\$1,558,465.44	\$338,535.41	\$31,255.58	\$1,928,256.43

The wire amounts are as follows:

- \$19,282.05 to Bank of America, N.A. for Hesperia Water Swap Interest Payment.
- \$11,973.53 to U.S. Bank Trust N.A. for Hesperia Water 1998A Interest Payment.

ATTACHMENT(S)

1. Warrant Runs

City of Hesperia
WARRANT RUNS
06/29/2019 - 07/12/2019

FUND #	FUND NAME	W/E		WARRANT TOTALS	Wires	YEAR-TO	PRIOR FY YTD
		7/5/2019	7/12/2019			DATE	DATE
						TOTALS *	TOTALS
Accounts Payable							
100	GENERAL	\$ 253,720.97	\$ 151,259.87	\$ 404,980.84	\$ -	\$ 404,980.84	\$ 155,451.35
200	HESPERIA FIRE DISTRICT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 904,482.34
204	MEASURE I - RENEWAL	\$ 2,912.50	\$ -	\$ 2,912.50	\$ -	\$ 2,912.50	\$ -
205	GAS TAX	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
207	LOCAL TRANSPORT-SB 325	\$ 6,630.00	\$ -	\$ 6,630.00	\$ -	\$ 6,630.00	\$ -
209	GAS TAX-RMRA	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
251	CDBG	\$ 4,431.65	\$ 23.50	\$ 4,455.15	\$ -	\$ 4,455.15	\$ 13,864.50
254	AB2766 - TRANSIT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
256	ENVIRONMENTAL PROGRAMS GRANT	\$ 1,538.84	\$ 76.02	\$ 1,614.86	\$ -	\$ 1,614.86	\$ 15.81
257	NEIGHBORHOOD STABILIZATION PROG	\$ -	\$ 180.00	\$ 180.00	\$ -	\$ 180.00	\$ 70.00
260	DISASTER PREPARED GRANT	\$ -	\$ 76.02	\$ 76.02	\$ -	\$ 76.02	\$ -
263	STREETS MAINTENANCE	\$ 108,669.60	\$ 20,548.39	\$ 129,217.99	\$ -	\$ 129,217.99	\$ 64,180.70
300	DEV. IMPACT FEES - STREET	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
301	DEV. IMPACT FEES - STORM DRAIN	\$ 13,442.50	\$ -	\$ 13,442.50	\$ -	\$ 13,442.50	\$ -
402	WATER RIGHTS ACQUISITION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
403	2013 REFUNDING LEASE REV BONDS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
501	CFD 91-3 BELGATE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
502	FIRE STATION BUILDING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,766.87
504	CITY WIDE STREETS - CIP	\$ 3,180.00	\$ -	\$ 3,180.00	\$ -	\$ 3,180.00	\$ -
509	CITY FACILITIES CIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
800	EMPLOYEE BENEFITS	\$ 81,723.05	\$ 245,133.59	\$ 326,856.64	\$ -	\$ 326,856.64	\$ 118,955.47
801	TRUST/AGENCY	\$ 26,204.60	\$ (7.25)	\$ 26,197.35	\$ -	\$ 26,197.35	\$ 22,440.28
802	AD 91-1 AGENCY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
804	TRUST-INTEREST BEARING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 67.50
807	CFD 2005-1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
808	HFPD (TRANSITION)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	CITY	\$ 502,453.71	\$ 417,290.14	\$ 919,743.85	\$ -	\$ 919,743.85	\$ 1,282,294.82
160	REDEVELOP OBLIG RETIREMENT - PA1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
161	REDEVELOP OBLIG RETIREMENT - PA2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
162	REDEVELOP OBLIG RETIREMENT-HOUSING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
163	REDEVELOP OBLIG RETIREMENT-2018	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
173	SUCCESSOR AGENCY ADMINISTRATION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,005.00
	SUCCESSOR AGENCY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,005.00
370	HOUSING AUTHORITY	\$ 6.00	\$ 10,686.09	\$ 10,692.09	\$ -	\$ 10,692.09	\$ 767.56
	HOUSING AUTHORITY	\$ 6.00	\$ 10,686.09	\$ 10,692.09	\$ -	\$ 10,692.09	\$ 767.56
170	COMMUNITY DEVELOPMENT COMMISSION	\$ -	\$ 6,205.77	\$ 6,205.77	\$ -	\$ 6,205.77	\$ 7,972.38
	COMMUNITY DEVELOPMENT COMMISSION	\$ -	\$ 6,205.77	\$ 6,205.77	\$ -	\$ 6,205.77	\$ 7,972.38
700	WATER OPERATING	\$ 139,025.14	\$ 231,654.99	\$ 370,680.13	\$ 31,255.58	\$ 401,935.71	\$ 305,732.34
701	WATER CAPITAL	\$ 932.50	\$ -	\$ 932.50	\$ -	\$ 932.50	\$ 23,821.70
710	SEWER OPERATING	\$ 241,270.93	\$ 7,010.17	\$ 248,281.10	\$ -	\$ 248,281.10	\$ 31,908.07
711	SEWER CAPITAL	\$ -	\$ 1,930.00	\$ 1,930.00	\$ -	\$ 1,930.00	\$ -
	WATER	\$ 381,228.57	\$ 240,595.16	\$ 621,823.73	\$ 31,255.58	\$ 653,079.31	\$ 361,462.11
	ACCOUNTS PAYABLE TOTAL	\$ 883,688.28	\$ 674,777.16	\$ 1,558,465.44	\$ 31,255.58	\$ 1,589,721.02	\$ 1,656,501.87
REG. PAYROLL							
	City	\$ -	\$ 228,673.37	\$ 228,673.37	\$ -	\$ 228,673.37	\$ 231,085.41
	Housing Authority	\$ -	\$ 259.88	\$ 259.88	\$ -	\$ 259.88	\$ 3,666.51
	Community Development Commission	\$ -	\$ 6,589.43	\$ 6,589.43	\$ -	\$ 6,589.43	\$ 3,775.64
	Water	\$ -	\$ 103,012.73	\$ 103,012.73	\$ -	\$ 103,012.73	\$ 96,307.23
	PAYROLL TOTAL	\$ -	\$ 338,535.41	\$ 338,535.41	\$ -	\$ 338,535.41	\$ 334,834.79

* The year to date totals for this Warrant Report are for the 2019-20 fiscal year starting July 1, 2019.



DATE: August 6, 2019

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager

BY: Michael Blay, Assistant City Manager
Jamie Carone, Administrative Analyst

SUBJECT: Covenant Agreement for Reimbursement of Sewer Connection Operating Costs between the City of Hesperia and Rich Development Enterprises, LLC.

RECOMMENDED ACTION

It is recommended that the City Council approve the Covenant Agreement for Reimbursement of Sewer Connection Operating Costs between the City of Hesperia (City) and Rich Development Enterprises, LLC (Developer) to facilitate the financial reimbursement arrangement for sewer fees charged to the City for sewer invoices incurred by the Developer pursuant to the agreement between the City and San Bernardino County Service Area (CSA 64).

BACKGROUND

On March 5, 2019, City Council approved the final, amended version of the agreement between the City and CSA 64 (CSA Agreement) to facilitate the extension of sewer service to the south of CSA 64 in order to serve property within the City's boundary located on the southern portion of Bear Valley Road near Fish Hatchery Road.

The impetus of the CSA Agreement was to provide sewer service to the Rich Development project and surrounding areas as the construction of a sewer connection is a condition of approval for the proposed commercial shopping center, and, at the time of the agreement, none existed. The City entered into the CSA Agreement on April 2, 2019 which established that CSA 64 would provide sewer service to the City for the Development Area.

The CSA Agreement also established a method for CSA 64 to collect meter data and sewer service fees whereby CSA 64 will bill the City directly for sewer services from the aforementioned property on a bimonthly basis.

In order to recoup these costs, as well as administrative costs involved in the processing of invoices, and as a material consideration for the City executing the CSA Agreement, the City must enter into an Agreement with the Developer, and/or future property owners, to establish a method of reimbursement as well as related terms and conditions to that reimbursement arrangement. The subject Agreement between Rich Development and the City establishes that the Developer shall reimburse the City for all sewer invoices incurred pursuant to the CSA Agreement as well as a 10% administrative fee.

ISSUES/ANALYSIS

Staff recommends that City Council approve the Covenant Agreement for Reimbursement of Sewer Connection Operating Costs between the City and Rich Development Enterprises, LLC in order to both facilitate the required construction of a sewer connection to the property at 18667 Bear Valley Road and to facilitate a repayment agreement between the City and the Developer to cover all sewer invoices and related administrative costs.

FISCAL IMPACT

There is no fiscal impact associated with this request.

ALTERNATIVE(S)

Provide alternative direction to Staff.

ATTACHMENT(S)

1. Resolution No. 2019-037
2. Draft Rich Development Agreement
3. CSA Agreement for reference

RESOLUTION NO. 2019-037

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, APPROVING THE COVENANT AGREEMENT FOR REIMBURSEMENT OF SEWER CONNECTION COSTS BETWEEN THE CITY OF HESPERIA (CITY) AND RICH DEVELOPMENT ENTERPRISES, LLC (DEVELOPER) TO FACILITATE THE FINANCIAL REIMBURSEMENT ARRANGEMENT FOR SEWER FEES CHARGED TO THE CITY FOR SEWER INVOICES INCURRED BY THE DEVELOPER PURSUANT TO THE AGREEMENT BETWEEN THE CITY AND SAN BERNARDINO COUNTY SERVICE AREA 64 (CSA 64).

WHEREAS, On March 5, 2019, City Council approved the final, amended version of the agreement between the City and CSA 64 (CSA Agreement) to facilitate the extension of sewer service to the south of CSA 64 in order to serve property within the City's boundary located on the southern portion of Bear Valley Road near Fish Hatchery Road; and

WHEREAS, the CSA Agreement was created in order to provide sewer service to the Rich Development project and surrounding areas as the construction of a sewer connection is a condition of approval for the proposed commercial shopping center; and

WHEREAS, the City entered into the CSA Agreement on April 2, 2019 which established that CSA 64 would provide sewer service to the City for the Development Area; and

WHEREAS, the CSA Agreement established a method for collecting sewer service fees whereby CSA 64 will bill the City directly for sewer services to the aforementioned property on a bimonthly basis; and

WHEREAS, the City must enter into a reimbursement Agreement with the Developer and/or all future property owners, to establish a method of reimbursement as well as related terms and conditions; and

WHEREAS, the Covenant Agreement for Reimbursement of Sewer Connection Operating Costs between the City and the Developer establishes that the Developer shall reimburse the City for all sewer invoices incurred pursuant to the CSA Agreement as well as a 10% administrative fee;

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF HESPERIA CITY COUNCIL AS FOLLOWS:

- Section 1. The City Council hereby specifically finds that all of the facts set forth in this resolution are true and correct; and
- Section 2. The City Council hereby approves the Covenant Agreement for Reimbursement of Sewer Connection Operating Costs between the City of Hesperia and Rich Development Enterprises, LLC;

ADOPTED AND APPROVED this 6th day of August, 2019.

Larry Bird
Mayor

ATTEST:

Melinda Sayre
City Clerk

ATTACHMENT 2

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Hesperia
9700 Seventh Ave.
Hesperia, CA 92345
Attn: City Clerk

APN:

SPACE ABOVE FOR RECORDER'S USE ONLY
Exempt from recording fees pursuant to Govt Code
27383

**COVENANT AGREEMENT FOR REIMBURSEMENT OF
SEWER CONNECTION OPERATING COSTS**

THIS REIMBURSEMENT AGREEMENT (“**Agreement**”) is entered into effective the ___ day of _____, 2019 (“**Effective Date**”), by and between the **CITY OF HESPERIA**, a California municipal corporation (“**City**”), and **RICH DEVELOPMENT ENTERPRISES, LLC**, a California Limited Liability Company (“**Developer**”). City and Developer may be referred to, individually or collectively, as “**Party**” or “**Parties**.”

RECITALS

- A.** Developer is, or will be, the owner of that certain real property commonly known as 18667 Bear Valley Road in the City of Hesperia, and further identified as Assessor’s Parcel No. 039901124 (“**Property**”). The Property is more particularly described in Exhibit “A” hereto.
- B.** Developer desires to begin construction of a commercial shopping center (“**Project**”) on the Property, but the Property is not, at the time of the execution of this Agreement, served by any sewer system.
- C.** The Parties desire to construct a connection (“**Sewer Connection**”) with a sewer system owned by San Bernardino County Service Area 64 (“**CSA**”) to service the Property and the Project.
- D.** The City has entered into, or will enter into, an Agreement for Sewer Service with CSA (“**CSA Agreement**”) that would permit the construction of the Sewer Connection, and provides for CSA to collect meter data and bill the City for sewer services to the Project on a bimonthly basis (“**Sewer Invoices**”). A copy of the CSA Agreement is attached hereto as Exhibit “B.”
- E.** The City and Developer have executed a list of conditions for the approval of a Conditional Use Permit, CUP 18-00002 (“**List of Conditions**”), that requires Developer to, among other things, construct, or contract for the construction of, the Sewer Connection. A copy of the List of Conditions is attached hereto as Exhibit “C.”
- F.** As a condition to, and as a material consideration for the City executing the CSA Agreement, Developer has agreed to reimburse the City for the Sewer Invoices incurred pursuant to the CSA Agreement.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. Incorporation of Recitals. The foregoing Recitals are true and correct and are incorporated herein as if set forth in full.

2. Developer Responsibility for Sewer Invoices. Developer shall reimburse City for the payment of the Sewer Invoices and for City's costs related to paying the Sewer Invoices contemplated in the CSA Agreement, to include an administrative fee as set forth in Section 2.1 of this Agreement, below.

2.1 Sewer Invoice Administrative Fees. In addition to reimbursing City for the payment of the Sewer Invoices, Developer shall pay to City an administrative fee equal to 10% of the amount of any Sewer Invoice for which Developer is responsible for reimbursing City.

2.2 Billing. Within thirty (30) days of the payment of any Sewer Invoice, the City shall bill the Developer, or any subsequent owner of the Property/Project, for the full amount of the Sewer Invoice plus the Administrative Fee set forth in Section 2.1 of this Agreement. Developer shall then reimburse the City in the stated amount within thirty (30) days of receiving such an invoice from the City.

3. City's Obligations. City shall timely pay all invoices it receives pursuant to the CSA Agreement and shall bear responsibility for the timely billing of Developer within thirty (30) days of City's payment of any Sewer Invoice.

3.1 Accounting. City shall maintain an accounting of the Sewer Invoices paid by the City and the reimbursement payments made by Developer. Upon written request, City shall provide to Developer a summary of the Sewer Invoices paid by the City and reimbursement payments made by the Developer. Failure of City to provide any accounting shall not excuse Developer's duty to perform any act under this Agreement. Developer may question or challenge any use of funds set forth in the accounting and may appeal same to the City Council.

4. Additional Taxes, Fees, and Charges. Developer shall pay all normal and customary fees and charges applicable to all permits necessary for the Sewer Connection, and any taxes, fees, and charges hereafter imposed by City in connection with the Sewer Connection which are standard and uniformly-applied to similar projects in the City, provided such fees and charges shall not duplicate the fees charged to the City by CSA under the CSA Agreement.

5. City Release; Termination. This Agreement may be terminated only in a writing executed by City and any and all owners of the Property and recorded in the Official Records of San Bernardino County.

6. Indemnity. Developer agrees to protect, defend, indemnify, and hold City free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by City including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the City) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident

to, in connection with or arising directly or indirectly out of, this Agreement, (collectively “Claims”) excluding any Claims arising from (i) the City’s default or failure to comply with the terms of the CSA Agreement, (ii) the negligence, gross negligence or willful misconduct of the City, its employees, agents or contractors, (iii) City’s failure to maintain or repair the connections, and (iv) City’s failure to timely bill Developer for its billings under Section 2.2.

7. Remedies; Attorney’s Fees. In the event of a breach by either Party, the non-defaulting Party may, in addition to any other remedies, seek to recover its attorneys’ fees in enforcing this Agreement. This provision will not be interpreted to curtail any of City’s remedies at law or equity against Developer for any violation of its codes, nor shall it be interpreted as a waiver of any defense or affirmative action of Developer.

8. Conflicts of Interest.

8.1 No Financial Relationship. Developer acknowledges the requirements of Government Code Sections 1090 *et seq.* (“**1090 Laws**”) and warrants that it has not entered into any financial or transactional relationships or arrangements that would violate the 1090 Laws, nor shall Developer solicit, participate in, or facilitate a violation of the 1090 Laws.

8.2 Developer’ Representations and Warranties. Developer represents and warrants that for the 12-month period preceding the Effective Date of this Agreement it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code sections 87100 *et seq.*).

9. Relationship between the Parties. The Parties agree that this Agreement does not operate to create the relationship of partnership, joint venture, or agency between City and Developer. Nothing herein shall be deemed to make Developer an agent of City.

10. Authority to Enter Agreement. Developer warrants that it has the legal capacity to enter into the Agreement. Each Party warrants that the individuals who have signed the Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

11. Notices. All notices, demands, invoices, and communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To City: City of Hesperia
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Nils Bentsen, City Manager
Email: nbentsen@cityofhesperia.us

With a Copy to: Aleshire & Wynder, LLP
3880 Lemon Street, Suite 520
Riverside, CA 92501
Attention: Eric Dunn, Esq.

Email: edunn@awattorneys.com

To Developer: Rich Development Enterprises, LLC
600 N. Tustin Ave., #150
Santa Ana, CA 92705
Attention: Bart Hollander

Depending upon the method of transmittal, notice shall be deemed received as follows: by overnight delivery, one business day after depositing with FedEx or UPS; by messenger, as of the date delivered; by U.S. Mail first class postage prepaid, as of seventy-two (72) hours after deposit in the U.S. Mail; and by email, upon the sender's receipt of an email from the recipient acknowledging receipt (provided a hard copy is subsequently also physically mailed by overnight delivery).

12. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

13. Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Unless otherwise specified, any term referencing time, days, or period for performance shall be deemed calendar days and not business days, provided, however, that any deadline that falls on a weekend or holiday shall be extended to the next City business day. All references to Developer include all employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, appointed boards and commissions, officers, employees, agents, and volunteers. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

14. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

16. Binding Effect. Each and all of the covenants and conditions contained in this Agreement shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation. It is the intention of the Parties that the covenants contained herein shall run with the land. Upon execution, this Agreement will be recorded in the Official Records of San Bernardino County.

17. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

18. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

19. Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of San Bernardino, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

20. Time is of the Essence. Time is of the essence with respect to this Agreement.

21. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

22. Entire Agreement. This Agreement contains the entire agreement between City and Developer and supersedes any prior oral or written statements or agreements between City and Developer with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

OWNER:

DEVELOPER RICH DEVELOPMENT
ENTERPRISES
a California limited liability company

CITY:

CITY OF HESPERIA,
a municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Nils Bentsen, City Manager
_____, 2019

ATTEST:

Melinda Sayre, City Clerk

APPROVED AS TO FORM:

Aleshire & Wynder, LLP

Eric Dunn, City Attorney

DEVELOPER' SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS OR OTHER ORGANIZATIONAL OR FORMATIONAL DOCUMENTS OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER' BUSINESS ENTITY.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 4 NORTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO UNITED STATES GOVERNMENT SURVEY.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF SAN BERNARDINO, A BODY CORPORATE AND POLITIC OF THE STATE OF CALIFORNIA, BY DEED RECORDED JULY 1, 1964, IN BOOK 6181, PAGE 178, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/4 INTEREST IN AND TO ALL OIL, GAS AND MINERALS LYING AND BEING MORE THAN 200 FEET BELOW THE RESPECTIVE PRESENT SURFACE ELEVATIONS OF THE PROPERTY HEREIN CONVEYED WHICH SAID RESERVED RIGHT SHALL NOT, HOWEVER, INCLUDE ANY RIGHT OF ENTRY UPON ANY PART OF THE SURFACE OF THE HEREIN DESCRIBED PROPERTY FOR THE PURPOSE OF EXPLORATION, DEVELOPMENT, DRILLING, STORAGE OR OTHER ACTIVITY ANCILLARY TO THE REMOVAL OF SUCH OIL, GAS OR MINERALS, AS RESERVED BY LACY MANUFACTURING COMPANY IN DEED RECORDED JUNE 11, 1954 IN BOOK 3400, PAGE 405, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/4 INTEREST IN AND TO ALL OIL, GAS AND MINERALS LYING AND BEING MORE THAN 200 FEET BELOW THE RESPECTIVE PRESENT SURFACE ELEVATIONS OF THE PROPERTY HEREIN CONVEYED WHICH SAID RESERVED RIGHT SHALL NOT, HOWEVER, INCLUDE ANY RIGHT OF ENTRY UPON ANY PART OF THE SURFACE OF THE HEREIN DESCRIBED PROPERTY FOR THE PURPOSE OF EXPLORATION, DEVELOPMENT, DRILLING, STORAGE OR OTHER ACTIVITY ANCILLARY TO THE REMOVAL OF SUCH OIL, GAS OR MINERALS AS RESERVED BY SECURITY-FIRST NATIONAL BANK OF LOS ANGELES AND C. W. STEVENSON, IN DEED RECORDED JUNE 11, 1954, IN BOOK 3400, PAGE 405, OFFICIAL RECORDS.

AND ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST IN AND TO ALL OIL, GAS, AND MINERALS, LYING AND BEING MORE THAN 200 FEET BELOW THE RESPECTIVE PRESENT SURFACE ELEVATIONS OF THE ABOVE DESCRIBED PROPERTY, PROVIDED, HOWEVER, THAT SUCH EXCEPTED OWNERSHIP OF SUCH 1/2 INTEREST IN AND TO SUCH OIL, GAS, AND MINERALS DOES NOT INCLUDE, AND SHALL NOT BE CONSTRUED TO INCLUDE, ANY RIGHT OF ENTRY UPON ANY

PART OF THE SURFACE OF THE HEREIN DESCRIBED PROPERTY FOR THE PURPOSE OF THE EXPLORATION, DEVELOPMENT, DRILLING, STORAGE, OR OTHER ACTIVITY ANCILLARY TO THE REMOVAL OF SUCH OIL, GAS OR MINERALS, AS EXCEPTED IN THAT CERTAIN DEED FROM THE APPLETON LAND, WATER AND POWER COMPANY, TO N. K. MENDELSON, ET AL., RECORDED JUNE 11, 1954, IN BOOK 3400, PAGE 409, OFFICIAL RECORDS.

APN: 0399-011-24-0000

EXHIBIT B
CSA Agreement
[On Following Pages]

EXHIBIT C

List of Conditions for CUP 18-00002

[On Following Pages]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2019 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER _____

- _____ TITLE OR TYPE OF DOCUMENT
- _____ NUMBER OF PAGES
- _____ DATE OF DOCUMENT
- _____ SIGNER(S) OTHER THAN NAMED ABOVE

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2019 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER _____

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

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

ATTACHMENT 3

**AGREEMENT
BETWEEN
CITY OF HESPERIA
AND
COUNTY SERVICE AREA 64 (SPRING VALLEY LAKE) FOR
SEWER SERVICE**

THIS AGREEMENT is made and entered into this 2nd day of April, 2019, by and between the City of Hesperia, herein referred to as CITY, and County Service Area 64 Spring Valley Lake, herein referred to as CSA 64.

WITNESSETH

WHEREAS, portions of the **CITY** in the Northeast area near Bear Valley Road and Mojave Fish Hatchery Road are available for development, herein referred to as Development Area, which is more particularly described and depicted herein as Exhibit A; and

WHEREAS, no **CITY** sewer service is available in or near the Development Area – it is more than 6,500 feet away from existing **CITY** sewer facilities; and

WHEREAS, **CSA 64** operates a sewer system immediately north of Bear Valley Road and Mojave Fish Hatchery Road in Spring Valley Lake; and

WHEREAS, the **CITY** has completed, and **CSA 64** has reviewed, a sewer system capacity study dated August 14, 2017 of **CSA 64**'s sewer collection system that will be impacted by sewer flow from the Development Area that determined sufficient capacity exists in the system to provide sewer service to **CITY** for the Development Area (A copy of the August 14, 2017 sewer system capacity study is attached hereto as Exhibit B).

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

1. **CSA 64** will provide sewer service to the **CITY** for the Development Area.

2. Parties will collaborate on processing an Out-of-Agency Service Contract with Local Agency Formation Commission for San Bernardino (LAFCO). The **CITY** will prepare all LAFCO applications and attachments thereto including mapping, letter requests, and related documents. **CSA 64** will also prepare letters as needed to complete the LAFCO application. The **City** shall be responsible for all costs related to the LAFCO application and/or approval.

3. **CSA 64** authorizes the **CITY** and/or its contractors to construct a connection to **CSA 64's** sewer collection system at the location shown on Exhibit C. The work shall include, but not be limited to, installation of an 8" pipeline, connection to the **CSA 64** system and related facilities (Project).

4. The **CITY**, or its contractors, shall be responsible for the preparation of engineering plans, related documents, permit acquisition, and construction of the Project. Prior to commencement of construction, the **CITY** shall submit a material list, engineering plans and profile of the sewer main pipeline and appurtenances to be installed for CSA 64 for review and approval.

5. The Project shall be completed within one year from LAFCO's approval. The sewer main pipeline and infrastructure located on Bear Valley Road, including the connections to the Development Area will be the responsibility and property of the **CITY** to own, operate, and maintain and any expenses related thereto shall be the responsibility of the **City**.

6. The **CITY** shall install an 8" sewer flow meter to record the wastewater flow being conveyed to CSA 64. The sewer flow meter shall be installed at the **CITY's** cost on the north side of Bear Valley Road at the point of connection to **CSA 64's** sewer collection system. The **CITY** shall calibrate and certify the meter once annually and submit the calibration reports to CSA 64.

7. **CSA 64** will collect meter data and bill the **CITY** for sewer service on a bimonthly basis. The **City** shall pay any such invoices within thirty (30) days of its receipt.

8. Any additional connections or increased Equivalent Dwelling Units (EDUs) resulting from further development beyond the Development Area shall require a Feasibility Study at the expense of the **CITY** in order to determine sewer system capacity of CSA 64's system.

9. **CSA 64** shall assign EDUs to the Development Area according to fixture units per the California Uniform Plumbing Code. **CSA 64** shall have the ability to assess and charge the **CITY** for wastewater flows that exceed 230 gallons per day per acre.

10. This agreement shall become effective upon approval by both parties and shall remain in effect until such time that the City redirects flows to its system or until terminated by either party with twelve (12) months written notice in advance of termination to the other party.

11. The **CITY** and its contractors shall indemnify, defend, hold harmless **CSA 64** and their authorized agents, officers, and employees against any and all claims or actions arising from the **CITY's** acts or omissions and for any cost or expenses incurred by **CSA 64** on account of any claim therefore.

12. **CSA 64** shall indemnify, defend, hold harmless **CITY** and their authorized agents, officers, and employees against any and all claims or actions arising from the **CSA 64's** acts or omissions and for any cost or expenses incurred by **CITY** on account of any claim therefore.

13. 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 the Agreement. Any amendments to this Agreement will be effective only if made in writing and signed by both parties hereto.

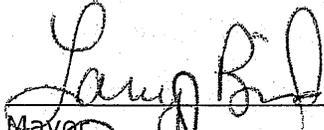
14. All notices required or permits to be given under this Agreement shall be deemed given by delivery or by mailing, postage prepaid to the recipient party to and at its current address; the present addresses of the parties are as follows:

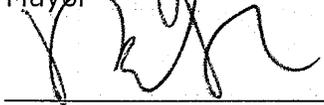
City: City of Hesperia
9700 Seventh Avenue
Hesperia, CA 92345
Attn: City Manager

CSA 64: Special District Department
Water and Sanitation Operations
12403 Industrial Blvd., Bldg. D, Suite 6
Victorville, CA 92392
Attn: General Manager

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

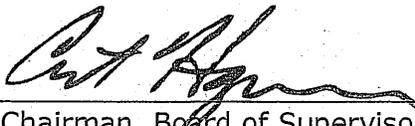
CITY OF HESPERIA



Mayor


City Clerk

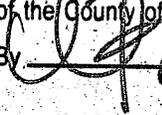
COUNTY SERVICE AREA 64

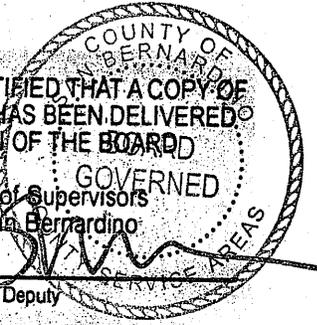


Chairman, Board of Supervisors

APR 02 2019

Clerk of the Board Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD LAURA H. WELCH Clerk of the Board of Supervisors of the County of San Bernardino
By  Deputy



CITY OF HESPERIA STAFF REPORT



DATE: August 6, 2019
TO: Mayor and City Council Members
FROM: Nils Bentsen, City Manager
BY: Casey Brooksher, Director of Finance
George Pirsko, Senior Financial Analyst
SUBJECT: Local Transportation Fund – Article 8a Claim

RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. 2019-038, authorizing the City Manager to file the FY 2019-20 Local Transportation Fund – Article 8a claim in the amount of \$807,864 with San Bernardino County Transportation Authority (SBCTA).

BACKGROUND

The California Transportation Development Act (TDA) of 1971 provides a funding mechanism to local government for transit services. This mechanism consists of the collection and allocation of one-fourth cent of each sales tax transaction to the State Local Transportation Fund. Called Local Transportation Funds (LTF), these monies are annually allocated to local governments based on population. In our region, SBCTA is the governing authority over these funds. In FY 2018-19, the total allocation of LTF for the City of Hesperia was approximately \$3,713,084.

LTF may be used for street and road improvements if any monies remain after providing for local transit needs. These road and street monies, should they be available, are designated as LTF – Article 8a funds, and must be officially claimed by the agency as such. This claim must be made to SBCTA.

Annually, the Victor Valley Transit Authority (VVTA) holds public hearings to determine the unmet transit needs. Based upon information from those hearings and established state and federal requirements, VVTA determines the total cost of all transit services in the High Desert. The City contributes LTF to this budget in proportion to its share of participants in the various VVTA programs offered. As a member of the VVTA, the City of Hesperia has met its constituents' FY 2018-19 transit needs through the expenditure of a major portion of allocated LTF.

The City's portion of the VVTA budget for FY 2018-19 was estimated to be \$2,905,219 by SBCTA. The City's monies are allocated to the following areas: VVTA administration and related capital purchases; the interconnected Victor Valley regional route system and related capital purchases; pickup service and transportation for ADA clients; and the Hesperia Community Route.

Distribution of Article 8a funds for FY 2018-19 occurs upon completion of the annual audit of these funds and the Measure I funds. For FY 2017-18, the audit was completed in January 2019.

ISSUES/ANALYSIS

Since all City transit needs have been met for FY 2018-19 through participation in the VVTA programs cited above, SBCTA has notified the Finance Department that the balance of the City's LTF allocation of \$807,864 can now be claimed as Article 8a monies and used for street and road improvements.

Adoption of the Resolution No. 2019-038 and submission of that Resolution with the required claim form will fulfill SBCTA requirements for the City to claim the residual LTF as Article 8a monies for street and road improvements.

FISCAL IMPACT

The Article 8a allocation of \$807,864 is included in the FY 2019-20 Budget.

ALTERNATIVE(S)

Provide alternative direction to staff.

ATTACHMENTS

1. Resolution No. 2019-038

RESOLUTION NO. 2019-038

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, AUTHORIZING THE CITY TO FILE THE FY 2019-20 LTF – ARTICLE 8a LOCAL STREETS AND ROADS CLAIM WITH SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY (SBCTA)

WHEREAS, the California Transportation Development Act of 1971 (TDA) provides that one-fourth cent of every sales tax collection on the dollar be deposited in the State Local Transportation Fund (LTF) for allocation to local government based upon population; and

WHEREAS, this allocation is managed by the SBCTA, and is distributed annually; and

WHEREAS, these monies must first be used to meet local transit needs, with this portion of the allocation given to the agency which manages this service; for the City of Hesperia this entity is the Victor Valley Transit Authority (VVTA); and

WHEREAS, the balance of this LTF allocation can be requested by each local government to use for the improvement of streets and roads; and

WHEREAS, this application must be made to SBCTA on an official LTF – Article 8a claim form, wherein the applying jurisdiction agrees: (1) that such monies will be used only in accordance with TDA provisions and allocation instructions; (2) to provide financial reporting information; and (3) to provide a governing body authorization document to file said claim; and

WHEREAS, the City’s Finance Department has completed the first two steps of the claim process, and now requests Council authorization to proceed in the collection of these Article 8a monies.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF HESPERIA CITY COUNCIL AS FOLLOWS:

Section 1. The Council hereby finds that all of the facts set forth in the Resolution are true and correct.

Section 2. The Council authorizes the City Manager to file the FY 2019-20 LTF –Article 8a Local Streets and Roads Claim in the amount of \$807,864 with SBCTA.

Section 3. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

ADOPTED AND APPROVED THIS 6th DAY OF AUGUST 2019.

Larry Bird, Mayor

ATTEST:

Melinda Sayre, City Clerk

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DATE: August 6, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Michael Blay, Assistant City Manager
Jamie Carone, Administrative Analyst
SUBJECT: Execute Agreements with California Department of Transportation

RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. 2019-041 authorizing the City Manager to execute all Master Agreements, Program Supplement Agreements, Fund Exchange Agreements, Fund Transfer Agreements, and any amendments thereto with the California Department of Transportation (Caltrans) as necessary in order to allow the City to receive Federal and/or State funding for certain transportation projects.

BACKGROUND

The legislature of the State of California has enacted legislation by which certain State funds and Federal funds are made available for use on local transportation related projects of public entities qualified to act as recipients of State funds. The City of Hesperia is a qualified entity for State and Federal funded programs and often applies for, and is awarded, State and Federal funding through various grant programs related to transportation.

In order to receive Federal funds for a specific program project, each qualified entity or agency is required to enter into an agreement with the state to establish terms and conditions applicable to the agency administering the funds, in this case the City of Hesperia, when receiving federal funds for a designated project facility and to the subsequent operation and maintenance of that facility after completion. This agreement is referred to as a Master Agreement which is an umbrella agreement covering all federally funded projects and includes terms and conditions related to project administration, rights of way, maintenance and management, fiscal provisions, audits, and records retention.

Program Supplement Agreements also must be executed between an administering agency and Caltrans before funding is allocated to the receiving agency. These agreements are project specific and necessary for the execution of both state and federal funds. Program Supplement Agreements include specific information regarding fund amounts, advertisement and awarding procedures, invoicing and audits, and project specific terms and conditions.

ISSUES/ANALYSIS

The City of Hesperia entered into a Master Agreement on April 13, 1994; however, Caltrans has updated the Master Agreement since that date and is requesting that the City adopt a new Resolution allowing the City Manager to execute the updated Master Agreement and all Program Supplement Agreements that will be issued under the new Master Agreement. The

Master Agreement with Caltrans is a standard contract that simply establishes general terms and conditions to receiving State and Federal funding for designated project facilities and subsequent operations and maintenance of such completed facilities. The Supplemental Program Agreements are contracts that provide for project specific terms and conditions for receiving funds. Staff has reviewed all of the standard language contained in both contracts and recommends the City Manager be given authority to execute both Master and Program Supplement Agreements with Caltrans for both State and Federal funded projects so the City may continue to receive funding for transportation related projects.

FISCAL IMPACT

There is no fiscal impact associated with this recommendation. The adoption of Resolution No. 2019-041 simply gives the City Manager the authority to execute the aforementioned agreements between the City and Caltrans.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Resolution No. 2019-041
2. Updated Master Agreement

RESOLUTION NO. 2019-041

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE ALL MASTER AGREEMENTS, PROGRAM SUPPLEMENT AGREEMENTS, FUND EXCHANGE AGREEMENTS, FUND TRANSFER AGREEMENTS AND ANY AMENDMENTS THERETO WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) AS NECESSARY SO THE CITY MAY RECEIVE FEDERAL AND/OR STATE FUNDING FOR CERTAIN TRANSPORTATION PROJECTS.

WHEREAS, the City of Hesperia is eligible to receive Federal and/or State funding for certain Transportation Projects, through the California Department of Transportation (Caltrans); and

WHEREAS, Master Agreements, Program Supplement Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements need to be executed with Caltrans before such funds could be claimed; and

WHEREAS, the City of Hesperia wishes to delegate authorization to execute these agreements and any amendments thereto to the City Manager; and

WHEREAS, authorization will allow the City Manager to execute the Program Supplement Agreements without having to obtain authorization from the City Council each time and allow the City Manager to sign updated or revised Master Agreements; and

WHEREAS, the City Council will continue to review and approve each project and allocate funding with the Capital Improvement Program budget each fiscal year.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HESPERIA AS FOLLOWS:

Section 1. That the City Manager be authorized to execute all Master Agreements, Program Supplement Agreements, Fund Exchange Agreements, Fund Transfer Agreements and any amendments thereto with the California Department of Transportation (Caltrans).

Section 2. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

ADOPTED AND APPROVED this 6th day of August, 2019.

Larry Bird
Mayor

ATTEST:

Melinda Sayre, City Clerk

MASTER AGREEMENT
ADMINISTERING AGENCY-STATE AGREEMENT FOR
FEDERAL-AID PROJECTS

08 City of Hesperia

District Administering Agency

Agreement No. 08-5452F15

This AGREEMENT, is entered into effective this _____ day of _____, 20____, by and between City of Hesperia, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE", and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Transportation Authorization Bills to fund transportation programs; and
2. WHEREAS, the Legislature of the State of California has enacted legislation by which certain federal-aid funds may be made available for use on local transportation related projects of public entities qualified to act as recipients of these federal-aid funds in accordance with the intent of federal law; and
3. WHEREAS, before federal funds will be made available for a specific program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving federal funds for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project-specific "Authorization/Agreement Summary", herein referred to as "E-76" document, is approved by STATE and the Federal Highway Administration (FHWA).
2. The term "PROJECT", as used herein, means that authorized transportation related project and related activities financed in part with federal-aid funds as more fully-described in an "Authorization/ Agreement Summary" or "Amendment/Modification Summary", herein referred to as "E-76" or "E-76 (AMOD)" document authorized by STATE and the Federal Highway Administration (FHWA).
3. The E-76/E-76 (AMOD) shall designate the party responsible for implementing PROJECT, type of work and location of PROJECT.
4. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive federal-aid funds from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these federal funds that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.
5. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future authorizations/obligations and invoice payments for any on-going or future federal-aid project performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.
6. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of federal funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.
7. Federal, state and matching funds will not participate in PROJECT work performed in advance of the approval of the E-76 or E-76 (AMOD), unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT. ADMINISTERING AGENCY agrees that it will only proceed with the work authorized for that specific phase(s) on the project-specific E-76 or E-76 (AMOD). ADMINISTERING AGENCY further agrees to not proceed with future phases of PROJECT prior to receiving an E-76 (AMOD) from STATE for that phase(s) unless no further federal funds are needed or for those future phase(s).

8. That PROJECT or portions thereof, must be included in a federally approved Federal Statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submitting the "Request for Authorization".
9. ADMINISTERING AGENCY shall conform to all state statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of Federal Regulation (CFR) and 2 CFR part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.
10. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with LOCAL ASSISTANCE PROCEDURES that describes minimum statewide design standards for local agency streets and roads. LOCAL ASSISTANCE PROCEDURES for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current LOCAL ASSISTANCE PROCEDURES.
11. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and, where appropriate, an executed Cooperative Agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.
12. When PROJECT is not on the State Highway System but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.
13. If PROJECT is using STATE funds, the Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.
14. ADMINISTERING AGENCY will advertise, award and administer PROJECT in accordance with the current LOCAL ASSISTANCE PROCEDURES unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT.

15. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a full-time employee to be in responsible charge of each PROJECT who is not a consultant.

16. ADMINISTERING AGENCY shall submit PROJECT-specific contract award documents to STATE's District Local Assistance Engineer within sixty (60) days after contract award. A copy of the award documents shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY.

17. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within one hundred eighty (180) days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LOCAL ASSISTANCE PROCEDURES.

18. ADMINISTERING AGENCY shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

19. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of PROJECT-related work shall incorporate Exhibits A and B (with third party's name replacing ADMINISTERING AGENCY) as essential parts of such agreement to be enforced by that third party as verified by ADMINISTERING AGENCY.

ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a federal-aid PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.
2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for a PROJECT, including, but not limited to, being clear as certified or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of relocation costs and damages to remainder real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.
3. Subject to STATE approval and such supervision as is required by LOCAL ASSISTANCE PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from federal funds for expenditures incurred in purchasing only the necessary rights of way needed for the PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.
4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with all applicable State and Federal laws and regulations, in accordance with State procedures as published in State's current LOCAL ASSISTANCE PROCEDURES and STATE's Right-of-Way Manual, subject to STATE oversight to ensure that the completed work is acceptable under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
5. Whether or not federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in 49 CFR, Part 24. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least ninety (90) days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of PROJECT-displaced persons as provided in 49 CFR, Part 24.

6. ADMINISTERING AGENCY shall, along with recording the deed or instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, also record an Agreement Declaring Restrictive Covenants (ADRC) as a separate document incorporating the assurances included within Exhibits A and B and Appendices A, B, C and D of this AGREEMENT, as appropriate.

ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon ADMINISTERING AGENCY's acceptance of the completed federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and FHWA and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE and FHWA. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE and FHWA. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.

3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission (CTC).
2. STATE'S financial commitment of federal funds will occur only upon the execution of this AGREEMENT, the authorization of the project-specific E-76 or E-76 (AMOD), the execution of each project-specific PROGRAM SUPPLEMENT, and STATE's approved finance letter.
3. ADMINISTERING AGENCY may submit signed invoices in arrears for reimbursement of participating PROJECT costs on a regular basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.
4. ADMINISTERING AGENCY agrees, at a minimum, to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six (6) month period.
5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.
6. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.
8. Indirect Cost Allocation Plans/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.
9. Once PROJECT has been awarded, STATE reserves the right to de-obligate any excess federal funds from the construction phase of PROJECT if the contract award amount is less than the obligated amount, as shown on the PROJECT E-76 or E-76 (AMOD).
10. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

11. The estimated total cost of PROJECT, the amount of federal funds obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES hereto with a finance letter, a detailed estimate, if required, and approved E-76 (AMOD). Federal-aid funding may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.
12. When additional federal-aid funds are not available, ADMINISTERING AGENCY agrees that the payment of federal funds will be limited to the amounts authorized on the PROJECT specific E-76 / E-76 (AMOD) and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.
13. ADMINISTERING AGENCY shall use its own non-federal funds to finance the local share of eligible costs and all expenditures or contract items ruled ineligible for financing with federal funds. STATE shall make the determination of ADMINISTERING AGENCY's cost eligibility for federal fund financing of PROJECT costs.
14. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.
15. Federal and state funds allocated from the State Transportation Improvement Program (STIP) are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.
16. Federal funds encumbered for PROJECT are available for liquidation for a period of six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. State funds encumbered for PROJECT are available for liquidation only for six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. Federal or state funds not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance (per Government Code section 16304). The exact date of fund reversion will be reflected in the STATE signed finance letter for PROJECT.
17. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.
18. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.
19. ADMINISTERING AGENCY agrees, and will ensure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

20. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

21. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

22. Should ADMINISTERING AGENCY fail to refund any moneys due upon written demand by STATE as provided hereunder or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty 30 days of demand, or within such other period as may be agreed to in writing between the PARTIES, STATE, acting through the State Controller, the State Treasurer, or any other public entity or agency, may withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may withhold approval of future ADMINISTERING AGENCY federal-aid projects.

23. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 22, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

24. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover State funds improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

ARTICLE V
AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of ARTICLE V.
2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.
3. ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.
4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year. The Federal Funds received under a PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205.
5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.
6. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000; construction contract over \$10,000, or other contracts over \$25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)) on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions 5, 6, 17, 19 and 20 of ARTICLE IV, FISCAL PROVISIONS, and provisions 1, 2, and 3 of this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner as required of all other PROJECT expenditures.

9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with the LOCAL ASSISTANCE PROCEDURES.

ARTICLE VI - FEDERAL LOBBYING ACTIVITIES CERTIFICATION

1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer's knowledge and belief, that:

A. No federal or state appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or federal contract, including this AGREEMENT, the making of any STATE or federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or federal contract, grant, loan, or cooperative contract.

B. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this AGREEMENT, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT and each PROGRAM SUPPLEMENT was or will be made or entered into. Submission of this certification is a prerequisite for making or entering into this AGREEMENT imposed by Section 1352, Title 31, United States Code. Any party who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADMINISTERING AGENCY also agrees by signing this AGREEMENT that the language of this certification will be included in all lower tier sub-agreements which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

ARTICLE VII - MISCELLANEOUS PROVISIONS

1. ADMINISTERING AGENCY agrees to use all state funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and the relevant Federal Regulations.
2. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE or the federal government.
4. Each project-specific E-76 or E-76 (AMOD), PROGRAM SUPPLEMENT and Finance Letter shall separately establish the terms and funding limits for each described PROJECT funded under the AGREEMENT. No federal or state funds are obligated against this AGREEMENT.
5. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT. ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.
6. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in STATE's discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
7. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.
8. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE, FHWA or Federal Transit Administration (FTA) that may have an impact upon the outcome of this AGREEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of this AGREEMENT.
9. ADMINISTERING AGENCY hereby certifies that it does not have nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT under this AGREEMENT.

10. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Officer who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.

12. Neither the pending of a dispute nor its consideration by the Contract Officer will excuse ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT.

13. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

14. Neither STATE nor any officer or employee thereof shall be responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. STATE reserves the right to terminate funding for any PROJECT upon written notice to ADMINISTERING AGENCY in the event that ADMINISTERING AGENCY fails to proceed with PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT, the bonding requirements if applicable, or otherwise violates the conditions of this AGREEMENT and/or PROGRAM SUPPLEMENT, or the funding allocation such that substantial performance is significantly endangered.

16. No termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if not reasonably susceptible of cure within said thirty (30) day period, ADMINISTERING AGENCY proceeds thereafter to complete the cure in a manner and time line acceptable to STATE. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

17. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT, the terms stated in that PROGRAM SUPPLEMENT shall prevail over those in this AGREEMENT.

18. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

19. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

City of Hesperia

By _____

By _____

Chief, Office of Project Implementation
Division of Local Assistance

City of Hesperia
Representative Name & Title
(Authorized Governing Body Representative)

Date _____

Date _____

EXHIBIT A

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.
2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.
3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.
4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.
5. Remedies for Willful Violation:
 - (a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

EXHIBIT B

NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation. ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of STATE assisted contracts. ADMINISTERING AGENCY'S DBE Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved DBE Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO EXHIBIT B

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

(1) Compliance with Regulations: ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

(2) that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX C TO EXHIBIT B

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX D TO EXHIBIT B

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

- (1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;
- (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and
- (3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

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DATE: August 6, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Michael Blay, Assistant City Manager
Jamie Carone, Administrative Analyst
SUBJECT: Fiscal Year 2019/20 – 2023/24 Five Year Measure I Capital Improvement Plan

RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. 2019-042 approving the Measure I Five Year Capital Improvement Plan and Expense Strategy for Fiscal Years 2019/20 – 2023/24.

BACKGROUND

In November 2004, voters in San Bernardino County approved Ordinance 04-01, a second 30 year term to impose a one half of one percent retail transaction and sales tax to fund transportation related improvements and traffic management programs. Originally established in 1989 as Measure I, currently referred to as Measure I 2010-2040, revenue collected are to be utilized as follows:

- 70% Local Street Program (2% of the revenue is to be reserved for Project Development and Traffic Management Systems)
- 25% Major Local Highway Program (used to leverage against State/Federal funds)
- 5% Senior and Disabled Transit Program

ISSUES/ANALYSIS

Jurisdictions receiving Measure I tax revenue from the San Bernardino County Transportation Authority (SBCTA) Local Street Program must annually adopt, by action of their governing body, a Five Year Capital Improvement Plan (CIP) which outlines the projects upon which the Measure I pass-through funds will be expended. Only projects identified in the current CIP are eligible for use of Measure I revenue and only 50% of the estimated revenue can be programmed for use on general maintenance and city overhead. The other 50% of revenue should be programmed to specific road projects which identify projects by street name and project type. The Measure I Five Year (CIP) should also include an Expense Strategy, which explains the City's policy approach and expenditure method in identifying projects to be funded by Measure I. At the end of the year, SBCTA audits the City's Measure I expenditures to ensure they are consistent with the projects programmed in the Measure I Five Year (CIP). The Fiscal Year 2019/20 – 2023/24 Measure I CIP is due to SBCTA this year on September 1, 2019.

- Beginning in Fiscal Year 2018/19, the first payment of the Rancho Road Interchange Public Share Reimbursement was due to SBCTA. This 10-year payback agreement between the City and SBCTA allowed the advancement of the Rancho Road interchange project whereby the City borrowed its local share of the project funding from SBCTA. The City obligated Development Impact Fees (DIF) as the source of this

repayment, and City Staff anticipates the City will be able to make reimbursement payments from DIF for fiscal years 2019/20 and 2020/21; however, the repayment is included in the MICIP for future years past FY 2020/21 as a placeholder to prepare for the possibility of a reduction in DIF fees which would result in payments made from Measure I funding.

•
FISCAL IMPACT

There is no direct fiscal impact as a result of the subject item. This action simply adopts the FY 2019/20 - 2023/24 Five Year Measure I Capital Improvement Plan for the purpose of expending Measure I revenues. Any changes in financial condition can be clarified with an amendment to the plan.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Resolution No. 2019-042
2. Measure I Five Year CIP 2019/20 - 2023/24 Spreadsheet
3. Measure I Five Year CIP 2019/20- 2023/24 Expenditure Strategy
4. Measure I Five Year CIP 2019/20 - 2023/24 Revenue Forecast

RESOLUTION NO. 2019-042

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA,
CALIFORNIA, ADOPTING THE 2019/20-2023/24 MEASURE I FIVE-YEAR
CAPITAL IMPROVEMENT PLAN.**

WHEREAS, San Bernardino County voters approved passage of Measure I in November 2004, authorizing the San Bernardino County Transportation Authority to impose a one-half of one percent retail transactions and use tax applicable in the incorporated and unincorporated territory of the County of San Bernardino; and

WHEREAS, revenue from the tax can only be used for transportation improvement and traffic management programs authorized in the Expenditure Plans set forth in Ordinance No. 04-1 of the Authority; and

WHEREAS, the Strategic Plan requires each local jurisdiction applying for revenue from the Local Streets Program to annually adopt and update a Five-Year Capital Improvement Plan; and

WHEREAS, California Public Utilities Code 190300 and Ordinance No. 04-01 require each local jurisdiction to maintain General Fund expenditures for transportation-related construction and maintenance activities at the required Maintenance of Effort base year level in each fiscal year of the adopted Five-Year Capital Improvement Plan, which for the City of Hesperia is \$29,429; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HESPERIA AS FOLLOWS:

Section 1. The City Council hereby adopts the 2019/20- 2023/24 Measure I Five-Year Capital Improvement Plan, attached to this resolution; and

Section 2. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

ADOPTED AND APPROVED this 6th day of August, 2019.

Larry Bird
Mayor

ATTEST:

Melinda Sayre
City Clerk

ATTACHMENT 3

CITY OF HESPERIA

MEASURE I CAPITAL IMPROVEMENT PLAN

EXPENDITURE STRATEGY

Fiscal Year 2019/20 – Fiscal Year 2023/24

The majority of Measure I revenue is planned to be utilized for the following types of eligible transportation improvements and policy prioritizations:

- Intent to allocate 50% or less of anticipated annual revenue on General Program Categorical expenditures. Specifically, the Measure I funds will be utilized annually to supplement the City's Street Division General Maintenance Program. This includes preservation and upkeep of existing and newly reconstructed roads to original constructed condition in order to maintain its integral useful life and to provide safe, convenient, and practical intercity transportation.
- Intent to allocate the remaining 50% of the anticipated annual revenue on the rebuilding and betterments of local roadways and alternative transportation. Local roadway betterments are scheduled to be completed under the Annual Street Improvement Project which includes full removal and reconstruction efforts designated to roads in the City in the worst condition including a fifth reconstructed section of Main Street. Other transportation projects in the current fiscal year program include a second phase of the Main Street Traffic Synchronization Project, the Park and Ride Expansion Project, the Aqueduct Crossing Project at the bridge on Main Street, traffic signals at Rancho Road and Maple Avenue as well as Rancho Road and Cottonwood Avenue, the Sultana Street Improvements, the Muscatel Street Improvements, and the Bear Valley Road Bus Stop Relocation.
- Beginning in Fiscal Year 2018/19, the first payment of the Rancho Road Interchange Public Share Reimbursement was due to the San Bernardino County Transportation Authority (SBCTA). This 10 year payback agreement between the City and SBCTA allowed the advancement of the Rancho Road interchange project whereby the City borrowed its local share of the project funding from SBCTA. The City obligated Development Impact Fees (DIF) as the source of this repayment, but if insufficient DIF fees are collected, SBCTA will withhold the City's annual Measure I allocation to make the payment whole on an annual basis. Currently the City anticipates that revenue from DIF will cover the Reimbursement for fiscal years 2019-20 and 2020-21. The Reimbursement is included in the MICIP report for future fiscal years after FY 2020-21 as a placeholder to prepare for the possibility of a reduction in DIF fees which would result in payments made from Measure I funding.

ATTACHMENT 4

**Measure I Local Pass-through Program
REVENUE ESTIMATES FOR FY2019/2020 TO FY2023/2024
Valley Subarea**

VALLEY SUBAREA	Population Distribution Percentage	Estimated Annual Local Pass-Through Amount*					Total FY19/20 thru FY23/24
		FY19/20	FY20/21	FY21/22	FY22/23	FY23/24	
Chino	5.50%	\$ 1,547,523	\$ 1,599,832	\$ 1,655,530	\$ 1,713,603	\$ 1,769,598	\$ 8,286,085
Chino Hills	5.27%	\$ 1,482,808	\$ 1,532,930	\$ 1,586,298	\$ 1,641,943	\$ 1,695,596	\$ 7,939,576
Colton	3.40%	\$ 956,650	\$ 988,987	\$ 1,023,418	\$ 1,059,318	\$ 1,093,933	\$ 5,122,307
Fontana	13.43%	\$ 3,778,769	\$ 3,906,500	\$ 4,042,502	\$ 4,184,306	\$ 4,321,036	\$ 20,233,113
Grand Terrace	0.79%	\$ 222,281	\$ 229,794	\$ 237,794	\$ 246,136	\$ 254,179	\$ 1,190,183
Highland	3.47%	\$ 976,346	\$ 1,009,349	\$ 1,044,489	\$ 1,081,127	\$ 1,116,455	\$ 5,227,766
Loma Linda	1.52%	\$ 427,679	\$ 442,135	\$ 457,528	\$ 473,577	\$ 489,052	\$ 2,289,973
Montclair	2.49%	\$ 700,606	\$ 724,288	\$ 749,503	\$ 775,795	\$ 801,145	\$ 3,751,337
Ontario	11.25%	\$ 3,165,387	\$ 3,272,384	\$ 3,386,311	\$ 3,505,096	\$ 3,619,631	\$ 16,948,810
Rancho Cucamonga	11.19%	\$ 3,148,505	\$ 3,254,932	\$ 3,368,250	\$ 3,486,402	\$ 3,600,327	\$ 16,858,416
Redlands	4.51%	\$ 1,268,969	\$ 1,311,863	\$ 1,357,534	\$ 1,405,154	\$ 1,451,070	\$ 6,794,590
Rialto	6.78%	\$ 1,907,674	\$ 1,972,157	\$ 2,040,816	\$ 2,112,405	\$ 2,181,431	\$ 10,214,483
San Bernardino	14.01%	\$ 3,941,963	\$ 4,075,209	\$ 4,217,085	\$ 4,365,013	\$ 4,507,648	\$ 21,106,918
Upland	4.98%	\$ 1,401,212	\$ 1,448,576	\$ 1,499,007	\$ 1,551,589	\$ 1,602,290	\$ 7,502,673
Yucaipa	3.46%	\$ 973,533	\$ 1,006,440	\$ 1,041,479	\$ 1,078,012	\$ 1,113,238	\$ 5,212,701
County/Valley	7.95%	\$ 2,236,874	\$ 2,312,485	\$ 2,392,993	\$ 2,476,935	\$ 2,557,873	\$ 11,977,159
Total Valley Region	100.00%	\$ 28,136,777	\$ 29,087,862	\$ 30,100,538	\$ 31,156,409	\$ 32,174,502	\$ 150,656,088

* Estimates for Local Pass-through Revenue updated July 2019.

**Measure I Local Pass-through Program
REVENUE ESTIMATES FOR FY2019/2020 TO FY2023/2024
Mountain/Desert Subareas**

MOUNTAIN/DESERT SUBAREA	Distribution Percentage (50% Population & 50% Revenue Generation)		Estimated Annual Local Pass-Through Amount*					Total FY19/20 through FY23/24
	Population	Revenue Generation	FY19/20	FY20/21	FY21/22	FY22/23	FY23/24	
Needles	69.29%	86.68%	\$ 127,268.60	\$ 131,800.62	\$ 131,800.62	\$ 136,627.68	\$ 141,667.61	\$ 669,165.14
County/Colorado River	30.71%	13.32%	\$ 35,927.66	\$ 37,207.04	\$ 37,207.04	\$ 38,569.70	\$ 39,992.47	\$ 188,903.90
Colorado River Subarea	100.00%	100.00%	\$ 163,196.26	\$ 169,007.66	\$ 175,197.38	\$ 181,660.08	\$ 187,924.19	\$ 689,061.38
Twentynine Palms	36.14%	20.70%	\$ 464,533.14	\$ 478,047.99	\$ 492,437.73	\$ 507,389.91	\$ 521,583.22	\$ 2,463,991.99
Yucca Valley	29.18%	66.02%	\$ 778,035.80	\$ 800,671.51	\$ 824,772.55	\$ 849,815.61	\$ 873,587.67	\$ 4,126,883.13
County/Morongo Basin	34.68%	13.28%	\$ 391,960.05	\$ 403,363.51	\$ 415,505.16	\$ 428,121.39	\$ 440,097.32	\$ 2,079,047.43
Morongo Basin Subarea	100.00%	100.00%	\$ 1,634,528.98	\$ 1,682,083.01	\$ 1,732,715.44	\$ 1,785,326.91	\$ 1,835,268.21	\$ 8,669,922.55
Barstow	40.97%	72.86%	\$ 1,684,042.51	\$ 1,749,579.92	\$ 1,819,447.57	\$ 1,892,587.59	\$ 1,964,100.55	\$ 9,109,758.14
County/North Desert	59.03%	27.14%	\$ 1,274,830.39	\$ 1,324,442.61	\$ 1,377,332.84	\$ 1,432,700.28	\$ 1,486,836.02	\$ 6,896,142.13
North Desert Subarea	100.00%	100.00%	\$ 2,958,872.90	\$ 3,074,022.53	\$ 3,196,780.41	\$ 3,325,287.86	\$ 3,450,936.57	\$ 16,005,900.27
Big Bear Lake	10.40%	51.99%	\$ 421,982.65	\$ 436,494.06	\$ 451,946.57	\$ 468,065.40	\$ 483,634.49	\$ 2,262,123.16
County/Mountains	89.60%	48.01%	\$ 930,742.63	\$ 962,749.59	\$ 996,832.30	\$ 1,032,384.66	\$ 1,066,724.51	\$ 4,989,433.69
Mountains Subarea	100.00%	100.00%	\$ 1,352,725.28	\$ 1,399,243.65	\$ 1,448,778.87	\$ 1,500,450.06	\$ 1,550,358.99	\$ 7,251,556.85
Adelanto	8.78%	2.94%	\$ 691,186.06	\$ 691,186.06	\$ 747,818.04	\$ 781,329.28	\$ 814,448.36	\$ 3,725,967.79
Apple Valley	18.41%	15.06%	\$ 1,973,890.55	\$ 1,973,890.55	\$ 2,135,620.29	\$ 2,231,321.77	\$ 2,325,903.29	\$ 10,640,626.45
Hesperia	23.59%	22.00%	\$ 2,688,666.58	\$ 2,688,666.58	\$ 2,908,961.13	\$ 3,039,317.58	\$ 3,168,148.52	\$ 14,493,760.38
Victorville	30.78%	53.89%	\$ 4,993,406.43	\$ 4,993,406.43	\$ 5,402,538.69	\$ 5,644,637.40	\$ 5,883,902.94	\$ 26,917,891.89
County/Victor Valley	18.44%	6.11%	\$ 1,447,834.27	\$ 1,447,834.27	\$ 1,566,461.85	\$ 1,636,658.18	\$ 1,706,033.04	\$ 7,804,821.61
Victor Valley Subarea	100.00%	100.00%	\$ 11,794,983.90	\$ 11,794,983.90	\$ 12,761,399.99	\$ 13,333,264.21	\$ 13,898,436.13	\$ 63,583,068.12
Total Mt Desert Region			\$ 17,904,307.32	\$ 18,119,340.74	\$ 19,314,872.09	\$ 20,125,989.11	\$ 20,922,924.09	\$ 96,199,509.17

* Estimates for Local Pass-through Revenue updated July 2019.

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DATE: August 6, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Michael Blay, Assistant City Manager
David Burkett, Project Construction Manager
SUBJECT: Award Contract for Re-Paint City Hall Decorative Tube Steel

RECOMMENDED ACTION

It is recommended that the City Council award a contract for the Re-Paint City Hall Decorative Tube Steel project to the lowest responsive/responsible bidder, Harbor Coating and Restoration, for the bid amount of \$86,500; approve an additional 10% contingency in the amount of \$8,650 for a total construction budget of \$95,150; approve the design of the project represented by the plans and specifications; and authorize the City Manager to execute the contract.

BACKGROUND

It has been approximately thirteen years since Hesperia's City Hall completed construction. As a part of the design for the City Hall building non-structural steel tubing was installed to enhance the exterior elevations of the building. The steel tubing was painted onsite after installation and it appears that some of the work may have been substandard. There are various spots where the paint has begun to peel, most notably on the east side of City Hall near the main entrance. Unfortunately, the warranty period expired some time ago and it has become necessary to repaint the steel tubing before permanent damage to the underlying steel begins.

ISSUES/ANALYSIS

This project was advertised for bids beginning on May 30, 2019. Multiple contractors were notified about the project via the City's online bidding site. Bids were received, opened, and publicly read aloud on July 16, 2019.

After review of the submitted bids, staff has determined that Harbor Coating and Restoration is the lowest responsive/responsible bidder. Harbor Coating and Restoration has earned a reputation as a service-oriented company that produces first-class, quality projects, on schedule and within budget. After completing due diligence, staff believes Harbor Coating and Restoration has a reputation of professionalism and reliability and will meet the needs of this project. Therefore, staff is recommending that the Council award a contract to Harbor Coating and Restoration for the Re-Paint City Hall Decorative Tube Steel project.

The City received the following three bids:

Harbor Coating and Restoration	Orange, CA	\$86,500
Cramer Painting, Inc.	Montclair, CA	\$103,100
U.S. National Corporation	Pacoima, CA	\$134,600

FISCAL IMPACT

This project was included in the adopted FY 2019-20 Budget in the amount of \$75,000. However, upon opening bids for this project it has become evident that the project's existing budget is insufficient. Approval of staff's recommendation will increase the total budget for the project to \$95,150 (\$86,500-Construction and \$8,650-Contingency). It is anticipated that General Fund savings will be utilized for the difference of \$20,150. Should such savings not exist, a budget amendment will be presented to the City Council during the quarterly budget review (First Quarter, Mid-Year or Fourth Quarter).

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

None



DATE: August 6, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Michael Blay, Assistant City Manager
Tina Souza, Senior Management Analyst
SUBJECT: Allocate Funds for Bear Valley Road Bus Stop Relocation Project, C.O. No. 7148

RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. 2019-045 appropriating \$158,000 of unused project funds from Fiscal Year 2018-2019 to Fund 504 for Fiscal Year 2019-2020.

BACKGROUND

On October 17, 2017, the City was awarded a grant to relocate the bus stop on Bear Valley Road near Hesperia Road further east, as well as construct curb, gutter, and sidewalk to the new location for improved accessibility for all transit users.

Shortly after receipt of grant award, the property owner of the parcel adjacent to the new bus stop location came to the City with a development project. Because the developer would be required to construct many of the same components planned for the bus stop relocation project as a condition of development, the developer has agreed to reimburse the City for the match to the grant as it relates to construction.

On July 16, 2019, City Council awarded a contract for construction of the improvements related to the Bear Valley Road Bus Stop Relocation Project, C.O. No. 7148 (Project) to TIS, Inc. in the amount of \$119,451 plus a 10% contingency, for a total amount of \$131,396.

ISSUES/ANALYSIS

The Fiscal Year (FY) 2018-2019 Capital Improvement Program (CIP) included funds for the Project. The adopted FY 2019-2020 CIP identified revised FY 2018-19 expenditures of \$158,000 in Fund 504 for the project because during preparation of the budget, it was anticipated that some expenditures would take place toward the end of the fiscal year. Subsequently, only the remaining expenditure estimates were identified under the project for FY 2019-20.

No expenditures occurred in this fund during FY 2018-19. Consequently, an allocation to the FY 2019-2020 CIP budget to accommodate forthcoming expenditures is required.

FISCAL IMPACT

Funding for the project is budgeted in the approved FY 2019-2020 CIP in Funds 204 and 504. Further funding for the project will require amending the FY 2019-2020 CIP Budget by appropriating \$100,000 in account No. 504-29-700-7148-7500 and \$58,000 in account No. 504-29-700-7148-8000 for a total of \$158,000.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Resolution No. 2019-045

RESOLUTION NO. 2019-045

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, AMENDING THE FISCAL YEAR 2019-2020 CAPITAL IMPROVEMENT PROGRAM BUDGET APPROPRIATING \$158,000 TO FUND 504 FOR THE BEAR VALLEY BUS STOP RELOCATION PROJECT, C.O. NO. 7148.

WHEREAS, on June 18, 2019, the City Council of the City of Hesperia adopted the Fiscal Year (FY) 2019-2020 Capital Improvement Program (CIP) Budget; and

WHEREAS, partial funding for the project is budgeted in the 2019-2020 CIP Budget; and

WHEREAS, expenditures did not occur in FY 2018-19 under Fund 504 for the Bear Valley Road Bus Stop Relocation Project, C.O. No. 7148; and

WHEREAS, an appropriation in the amount of \$158,000 to re-allocate funds from FY 2018-19 to FY 2019-20 is needed to complete the project.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HESPERIA AS FOLLOWS:

- Section 1. The City hereby amends the FY 2019-2020 Capital Improvement Budget and appropriates \$100,000 to Account No. 504-29-700-7148-7500 and \$58,000 to Account No. 504-29-700-7148-8000 for the Bear Valley Road Bus Stop Relocation Project, C.O. No. 7148.
- Section 2. That the above is true and correct and adopted as findings.
- Section 3. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

ADOPTED AND APPROVED this 6th day of August 2019.

Larry Bird, Mayor

ATTEST:

Melinda Sayre, City Clerk

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DATE: August 6, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Melinda Sayre, City Clerk
SUBJECT: Designation of Voting Delegate and Alternates for League of CA Cities Conference

RECOMMENDED ACTION

It is recommended that the City Council designate a primary voting delegate and up to two alternate delegates to represent the City of Hesperia at the General Business meeting to be held during the League of California Cities annual conference October 16 through October 18, 2019 in Long Beach.

BACKGROUND

The annual League of California Cities Conference will be held in Long Beach from October 16 through October 18, 2019. One important aspect of this conference is the General Business meeting when actions are taken on proposed resolutions. To expedite the conduct of business at this meeting, each City Council is requested to designate a voting representative and two alternate who will be present at the General Business meeting to vote on proposed resolutions and other issues affecting municipal or League policy. The current Primary Representative is Council Member Cameron Gregg and the Alternate Representative is Mayor Pro Tem Bill Holland.

ISSUES/ANALYSIS

There are no issues identified with this action.

FISCAL IMPACT

There are no fiscal impacts identified with this action.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENT

None