

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

Regular Joint Meetings
1st and 3rd Tuesday

Date: October 1, 2019
REGULAR MEETING

Time: 6:00 P.M. (Closed Session)
6:30 P.M. (Regular Meeting)

CITY COUNCIL MEMBERS

Larry Bird, Mayor

William J. Holland, Mayor Pro Tem

Cameron Gregg, Council Member

Rebekah Swanson, Council Member

Vacant, 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 PUBLIC FINANCING AUTHORITY**

NOTICE IS HEREBY GIVEN that a special meeting of the Hesperia Public Financing Authority will be held on Tuesday, October 1, 2019, at 6:30 p.m. in the City Council Chambers, at 9700 Seventh Avenue, Hesperia, CA 92345.



Larry Bird, Mayor / Chair

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

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.

CLOSED SESSION - 6:00 PM

Roll Call

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

Conference with Labor Negotiator
Government Code Section 54957.6

1. Negotiations between the City of Hesperia and the Teamsters Local 1932 with the City's Negotiator. (Staff person: Michael Blay, Assistant City Manager)

CALL TO ORDER - 6:30 PM

A. Invocation

B. Pledge of Allegiance to the Flag

C. Roll Call

*Mayor Larry Bird
Mayor Pro Tem William J. Holland
Council Member Cameron Gregg*

*Council Member Rebekah Swanson
Council Member Vacant*

D. Agenda Revisions and Announcements by City Clerk

E. Closed Session Reports by City Attorney

ANNOUNCEMENTS/PRESENTATIONS

1. Community Events Calendar

JOINT CONSENT CALENDAR

1. Page 9 Consideration of the Draft Minutes from the Regular Meeting held Tuesday, September 17, 2019

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Regular Meeting held Tuesday, September 17, 2019.

Staff Person: City Clerk Melinda Sayre

Attachments: [Draft CC Min 2019-09-17](#)

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 Water District.

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Warrant Run 10-1-2019](#)
[Attachment 1 - Warrant Runs](#)

3. Page 17 Purchase and Sale Agreement - APNs 0398-304-25 and 26

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-052: (i) approving the "Agreement For The Purchase And Sale Of Real Property And Joint Escrow Instructions" (PSA) for real property located at the east end of the Temecula Avenue cul-de-sac just east of Lassen Avenue, Assessor's Parcel Numbers 0398-304-25 & 26 (Property) by and between The Douglas and Nancy Coats Trust, Dated April 13, 1995 (Seller) and the City of Hesperia (Buyer); and (ii) authorizing the City Manager to execute all documents necessary to consummate the transaction.

Staff Person: Economic Development Manager Rod Yahnke

Attachments: [SR Coats Purchase & Sale Agreement 10-1-2019](#)
 [Resolution 2019-52](#)
 [Attachment 2 - Purchase & Sale Agreement](#)

4. Page 33 Vehicle Procurement

Recommended Action:

It is recommended that the City Council authorize the City Manager to approve the procurement of a new Freightliner Dump Truck and award the bid to Valew Quality Truck Bodies in the not-to-exceed amount of \$123,930.

Staff Person: Public Works Manager Mark Faherty

Attachments: [SR Vehicle Procurement 10-1-2019](#)
 [Attachment 1 - Bid Comparison](#)

5. Page 35 Approve and Accept Construction of FY 2018-19 CDBG Street Improvements

Recommended Action:

It is recommended that the City Council accept the work constructed under FY 2018-19 CDBG Street Improvements (C.O. No. 7150) and authorize staff to record a "Notice of Completion" and release all withheld retention amounts after 35 calendar days from the date of recordation.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR CDBG Street Improvements CO 7150 10-1-2019](#)

6. Page 37 Award Professional Services Agreement for the I Avenue Corridor Enhancement Study, C.O. No. 7151

Recommended Action:

It is recommended that the City Council award a Professional Services Agreement (PSA) for Sustainable Transportation Planning Services for the I Avenue Corridor Enhancement Study, C.O. No. 7151 to KOA Corporation in the amount of \$255,455; and authorize City Manager to execute said PSA.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR "I" Ave. Corridor Enhancement Study 10-1-2019](#)

7. Page 39 Parcel Map No. 20020

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-049 approving Parcel Map No. 20020 to create two parcels from 2.1 gross acres within the R1-18,000 zone located 600 feet south of Cromdale Street on the east side of Maple Avenue (Applicant: Mas Tierra, Inc; APN: 0405-441-32).

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Parcel Map 20020 10-1-2019](#)

[Resolution 2019-049](#)

[Attachment 2 - Parcel Map 20020](#)

8. Page 45 Approve Contract Change Orders and Increase Contract Amount for Recycled Water System - Phase 1B, C.O. No. 8087

Recommended Action:

It is recommended that the Board of Directors of the Hesperia Water District approve the proposed Contract Change Orders to the contract with R.I.C. Construction Company, Inc. for Recycled Water System - Phase 1B (C.O. No. 8087) in the amount of \$235,828.97; approve an additional 10% contingency in the amount of \$23,580.00; and authorize a revised total construction budget of \$5,404,540.34.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Recycled Water Phase 1B CO 8087 10-1-2019](#)

CONSENT ORDINANCES

WAIVE READING OF ORDINANCES

Approve the reading by title of all ordinances and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

9. Page 47 Amendments to Title 6 of Hesperia Municipal Code - Animal Keeping

Recommended Action:

Place on second reading and adopt by title waiving the text of Ordinance No. 2019-12 amending Title 6 of the Hesperia Municipal Code modifying Animal Keeping regulations for mandatory spay and neuter requirements.

Staff Person: Assistant City Manager Michael Blay and Administrative Analyst Tina Bulgarelli

Attachments: [SR Title 6 Amendment 9-17-2019](#)

[Ordinance 2019-12](#)

[Attachment 2 - Exhibit A Chapter 6.08 - Track Changes](#)

[Attachment 3 - Exhibit B Chapter 6.08 - Clean Copy](#)

PUBLIC HEARING

Individuals wishing to comment on public hearing items must submit a speaker slip to the City Clerk with the numbered agenda item noted. Speaker slips should be turned in prior to an agenda item being taken up. Comments will be limited to five minutes for Public Hearing items.

WAIVE READING OF ORDINANCES

Approve the reading by title of all ordinances and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

10. Page 53 **ITEM CONTINUED FROM THE 9/3/2019 and 9/17/2019 MEETINGS.** Planned Development PPD18-00001, Conditional Use Permit CUP18-00007

(Americana-Hesperia Retirement Project, LLC; APN: 0405-062-56 & 70)

Recommended Action:

It is recommended that the City Council introduce and place on first reading Ordinance 2019-11 approving Planned Development PPD18-00001, and adopt Resolution 2019-046, approving Conditional Use Permit CUP18-00007 for the development of the project.

Staff Person: Principal Planner Chris Borchert

Attachments: [SR Americana-Hesperia Retirement Project 10-1-2019](#)

[Ordinance 2019-11](#)

[Attachment 2 - Planned Development PPD18-00001](#)

[Resolution 2019-46](#)

[Attachment 4 - List of Conditions](#)

[Attachment 5 - Planning Commission Staff Report](#)

[Attachment 6 - Planning Commission Minutes](#)

11. Page 93

Amendments to Title 5 of Hesperia Municipal Code - Cannabis Regulations

Recommended Action:

It is recommended that the City Council introduce and place on first reading Ordinance No. 2019-52 amending Title 5 of the Hesperia Municipal Code modifying cannabis regulations.

Staff Person: Assistant City Manager Michael Blay and Administrative Analyst Tina Bulgarelli

Attachments: [SR Title 5 Cannabis Regulations Amendment 10-1-2019](#)

[Ordinance 2019-52](#)

[Attachment 2 - Exhibit A Title 5 Amendment \(clean copy\)](#)

[Attachment 3 - Exhibit A Title 5 Amendment \(track changes\)](#)

NEW BUSINESS

12. Page 99

Desert Candle Appeal of CFD 2005-1 Special Taxes

Recommended Action:

It is recommended that the City Council evaluate the three appeal requests made by Desert Candle, LP regarding properties within Community Facilities District (CFD) 2005-1 and:

- A. Uphold the recommendation of the City Attorney and staff by providing direction as follows: Appeal Request #1 - approve a \$6,342.02 refund of special taxes for APN# 3046-301-01 for which confirmation of a building permit could not be obtained; Appeal Request #2 - deny the request for special tax reimbursement related to 24 parcels that were properly added to the Assessor's Tax Roll upon issuance of a building permit; and Appeal Request #3 - approve a refund of \$843.24 for the overcharge

of APN #3046-261-39 which should have been levied as a Class 7 category; and authorize the City Manager and City Attorney to effectuate the necessary actions.

- B. Adopt Resolution Nos. 2019-054 and HPFA 2019-01, providing clarification to the CFD 2005-1 Rate and Method of Apportionment for the treatment of Developed Property where a change in square footage occurs after the issuance of a building permit for new construction.

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Desert Candle Appeal 10-1-2019](#)

[Attachment 1 - CFD 2005-1 Rate and Method of Apportionment](#)

[Attachment 2 - Appeal Letter by Zimmerman Group](#)

[Resolutions 2019-054 and HPFA 2019-01](#)

13. Page 123 Support of Mojave River Valley Movement

Recommended Action:

It is recommended that the City Council consider adoption of Resolution 2019-055 and provide direction to staff on support of the Mojave River Valley movement.

Staff Person: Assistant to the City Manager Rachel Molina

Attachments: [SR Support of Mojave River Valley Movement 10-1-2019](#)

[Resolution 2019-055](#)

14. Page 125 Options for Filling Vacancy in City Council District Four

Recommended Action:

It is recommended that the City Council determine whether to take one of the following actions, and give direction to staff to prepare an action item for the October 15 City Council agenda:

- (1) Make an appointment to fill the District Four vacancy on the City Council. Because the vacancy occurred in the first half of the term, the District Four seat will be up for election in November 2020 in accordance with state law. The person elected in November 2020 will serve the remainder of the unexpired term, which ends December 2022.
- (2) Call a special election to be held March 3, 2020 to fill the vacancy. The person elected in March 2020 will serve the remainder of the unexpired term which ends December 2022.

Staff Person: City Attorney Eric Dunn

Attachments: [SR District Four Council Vacancy 10-1-2019](#)

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 Thursday, September 26, 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, September 17, 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

Conference with Legal Counsel - Potential Litigation:
Government Code Section 54956.9(d)2

1. Three (3) cases

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

1. City of Hesperia v. Lake Arrowhead Community Service District, et al., Court of Appeal Case No. E067679
(Superior Court Case No. CIVDS1602017)

CALL TO ORDER - 6:30 PM

- A. Invocation by Bill Burnett of New Life 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
(Note one vacant seat)

- D. Agenda Revisions and Announcements by City Clerk - None**
- E. Closed Session Reports by City Attorney - No reportable action taken.**

ANNOUNCEMENTS/PRESENTATIONS

1. Community Events Calendar - *Community Meetings as part of the preparation for our 2020-2024 Consolidated*

Plan for the US Department of Housing and Urban Development grants – 9/21 at 10am at the Police Community Room on Smoke Tree Street, 9/25 at 10am at the Library Community Room on Seventh Avenue and 9/25 at 6pm at the Library Community Room on Seventh Avenue; September is National Emergency Preparedness Month; The City's next Meet & Clean event is 9/28 at 8am at Escondido x Sultana; Hesperia Animal Shelter is offering a new special – Whisker Wednesdays – cat adoptions are only \$25 every Wednesday.

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

Angela Valles commented on statements made by a member of the public regarding her service on the Victorville City Council.

Daniel Krist commented on Hesperia Days.

Bob Nelson commented on previous City Council meeting actions taken.

Al Vogler commented on intimidating behavior by individuals who attended the 9/3/2019 City Council Meeting in the parking lot.

Kelly Gregg commented on Hesperia Days.

JOINT CONSENT CALENDAR

A motion was made by Holland, seconded by Gregg, that the Consent Calendar be approved. The motion carried by the following vote:

Aye: 4 - Bird, Holland, Gregg and Swanson

Nay: 0

1. Consideration of the Draft Minutes from the Regular Meeting held Tuesday, September 3, 2019

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Regular Meeting held Tuesday, September 3, 2019.

Sponsors: City Clerk Melinda Sayre

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 July 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

4. Reject Bid Received for Hesperia Police Station Gate Replacement Project

Recommended Action:

It is recommended that the City Council reject the bid received from Fence Works, Inc. on August 12, 2019, for the Hesperia Police Station Gate Replacement Project.

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

5. Adopt Measure I Five Year Capital Project Needs Analysis for Fiscal Years 2020/21 through 2024/2025

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-050 approving the Measure I Five-Year Capital Project Needs Analysis submittal to the San Bernardino County Transportation Authority (SBCTA) for Fiscal Years 2020/2021 through 2024/2025.

Sponsors: Assistant City Manager Michael Blay

PUBLIC HEARING

6. PY 2018-2019 Community Development Block Grant (CDBG), Consolidated Annual Performance and Evaluation Report (CAPER)

Recommended Action:

It is recommended that the City Council conduct a public hearing and upon accepting public testimony: 1) Approve the Program Year 2018-2019 Consolidated Annual Performance Evaluation Report ("CAPER"); and 2) Authorize the City Manager or his designee to submit the Program Year 2018-2019 CAPER to the U.S. Department of Housing and Urban Development ("HUD"), along with any public testimony and changes thereto as directed by the City Council.

Sponsors: Economic Development Manager Rod Yahnke

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

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

Aye: 4 - Bird, Holland, Gregg and Swanson

Nay: 0

7. Public Hearing for the Approval of the Draft 2020-2024 Citizen Participation Plan in Connection with the City's Federal CDBG Program

Recommended Action:

It is recommended that the City Council conduct a public hearing and upon accepting public testimony: 1) Adopt Resolution No. 2019-052 approving the Draft 2020-2024 Citizen Participation Plan including any modifications or amendments thereto by the City Council; and 2) Authorize the City Manager or his designee to execute and transmit all necessary documents, including the adopted 2020-2024 Citizen Participation Plan and any amendments, to the U.S. Department of Housing and Urban Development ("HUD").

Sponsors: Economic Development Manager Rod Yahnke

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

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

Aye: 4 - Bird, Holland, Gregg and Swanson

Nay: 0

8. Joint Resolution Amending the City-Wide Fee Schedule

Recommended Action:

It is recommended that the City Council and respective subsidiary Boards conduct a public hearing and adopt Joint Resolution No. 2019-47, Resolution No. HCDC 2019-06, Resolution No. HHA 2019-06, Resolution No. HWD 2019-10 amending Joint Resolution No. 2018-21, Resolution No. HCDC 2018-04, Resolution No. HHA 2018-04, Resolution No. HWD 2018-07, amending the City-Wide fee schedule.

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

The public hearing was opened. James Blocker commented on the audit component of the proposed fees. There being no further public comments, the public hearing was closed.

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

Aye: 4 - Bird, Holland, Gregg and Swanson

Nay: 0

9. Amendments to Title 6 of Hesperia Municipal Code - Animal Keeping

Recommended Action:

It is recommended that the City Council introduce and place on first reading Ordinance No. 2019-12 amending Title 6 of the Hesperia Municipal Code modifying Animal Keeping regulations for mandatory spay and neuter requirements.

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

The public hearing was opened. The following individuals commented on item 9:

Jerri Pike commented in support of staff recommendation.

Kelly Gregg commented on the fee proposed for impound.

Kim Jones commented proper care of animals.

Daniel Krist commented on euthanization of animals.

Carolyn Tahari commented on business violations.

There being no further public comments, the public hearing was closed.

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

Aye: 4 - Bird, Holland, Gregg and Swanson

Nay: 0

NEW BUSINESS

10. Commercial Cannabis Program Update

Recommended Action:

It is recommended that the Council receive and file the report on the Commercial Cannabis program after one year of operation.

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

No action was taken on this item. Report received and filed.

11. Adopt Phase I Speed Surveys to Update Speed Limits

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-051 approving an update to speed limits based on updated speed surveys for various thoroughfares throughout the City.

Sponsors: Assistant City Manager Michael Blay

Al Vogler commented on Rock Springs Road speed.

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

Aye: 4 - Bird, Holland, Gregg and Swanson

Nay: 0

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

Jerri Pike commented on free-range poultry quarantine within San Bernardino County.

Kim Jones commented on missing last council meeting.

COUNCIL COMMITTEE REPORTS AND COMMENTS

Council Member Gregg commented on Hesperia Days Parade, upcoming Tri-Agency meeting, and attendance at the Veterans Tribute Breakfast event at Hesperia High School.

Council Member Swanson commented on attendance at the Veterans Tribute Breakfast event at Hesperia High School, attendance Association of San Bernardino County Special Districts water meeting, and attendance at the Tri-Agency meeting.

Mayor Pro Tem Holland commented on the memorial service for Bob Rogers, attendance at MDAQMD and VVWRA meetings, and Hesperia Days Parade.

Mayor Bird commented on Hesperia Days Parade, the memorial service for Bob Rogers, Patriots Day event at Hesperia High School, upcoming VVWRA and VVTA operations meetings, and appointed Sophie Steeno to the Planning Commission and Earl Hodson to the City Council Advisory Committee, asked that an item be brought forward discussing recusal for an advisory committee member during a meeting, requested a resolution in support of the Mojave River Valley Rebranding Project be brought forward for council consideration, and requested an item discussing options for filling the vacant council member seat be agendaized for the October 15 meeting.

CITY MANAGER/CITY ATTORNEY/STAFF REPORTS

None

ADJOURNMENT

Adjourned in honor of resident Trish Lilard at 8:54 pm.

*Melinda Sayre,
City Clerk*

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City of Hesperia STAFF REPORT



DATE: October 1, 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 Water District.

BACKGROUND

The Warrant Run totals represented below are for the period August 24, 2019 through September 6, 2019.

<u>Agency/District</u>	<u>Accounts Payable*</u>	<u>Payroll</u>	<u>Wires</u>	<u>Totals</u>
City of Hesperia	\$1,382,157.44	\$240,073.72	\$0.00	\$1,622,231.16
Successor Agency	0.00	0.00	0.00	0.00
Housing Authority	6.00	265.40	0.00	271.40
Community Development Commission	51,379.17	6,727.25	0.00	58,106.42
Water	523,101.51	103,148.27	35,756.80	662,006.58
Totals	\$1,956,644.12	\$350,214.64	\$35,756.80	\$2,342,615.56

* Includes debt service payments made via Automated Clearing House (ACH) electronic deposit of funds.

The wire amounts are as follows:

- \$22,947.33 to Bank of America, N.A. for Hesperia Water Swap Interest Payment.
- \$12,809.47 to U.S. Bank Trust N.A. for Hesperia Water 1998A Interest Payment.

ATTACHMENT(S)

1. Warrant Runs

City of Hesperia
WARRANT RUNS
08/24/2019 - 09/06/2019

		W/E		W/E	WARRANT			YEAR-TO	PRIOR FY YTD	
FUND #	FUND NAME	8/30/2019	9/6/2019	TOTALS		Wires		DATE	DATE	
		TOTALS *								TOTALS
Accounts Payable										
100	GENERAL	\$ 41,893.26	\$ 63,245.84	\$ 105,139.10	\$ -	\$ -	\$ 5,707,400.79	\$ 5,152,198.58		
200	HESPERIA FIRE DISTRICT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,652,058.14		
204	MEASURE I - RENEWAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,712.50	\$ 212,802.50		
205	GAS TAX	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,795.00		
207	LOCAL TRANSPORT-SB 325	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 142,052.11	\$ 101,747.87		
209	GAS TAX-RMRA	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 765,219.62	\$ -		
210	HFPD (PERS)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 874,510.00	\$ -		
251	CDBG	\$ -	\$ 15.47	\$ 15.47	\$ -	\$ -	\$ 452,653.83	\$ 56,128.91		
254	AB2766 - TRANSIT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
256	ENVIRONMENTAL PROGRAMS GRANT	\$ 47.46	\$ 15.95	\$ 63.41	\$ -	\$ -	\$ 3,594.41	\$ 9,968.50		
257	NEIGHBORHOOD STABILIZATION PROG	\$ 155.25	\$ -	\$ 155.25	\$ -	\$ -	\$ 47,325.55	\$ 12,575.95		
260	DISASTER PREPARED GRANT	\$ -	\$ 76.02	\$ 76.02	\$ -	\$ -	\$ 1,242.06	\$ 766.66		
263	STREETS MAINTENANCE	\$ 34,129.30	\$ 8,772.89	\$ 42,902.19	\$ -	\$ -	\$ 673,401.63	\$ 657,715.92		
300	DEV. IMPACT FEES - STREET	\$ 2,862.18	\$ -	\$ 2,862.18	\$ -	\$ -	\$ 24,791.40	\$ 111,320.74		
301	DEV. IMPACT FEES - STORM DRAIN	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,800.25	\$ 17,560.00		
402	WATER RIGHTS ACQUISITION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
403	2013 REFUNDING LEASE REV BONDS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
501	CFD 91-3 BELGATE	\$ 837,793.25	\$ -	\$ 837,793.25	\$ -	\$ -	\$ 837,793.25	\$ -		
502	FIRE STATION BUILDING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,766.87		
504	CITY WIDE STREETS - CIP	\$ -	\$ 331.01	\$ 331.01	\$ -	\$ -	\$ 13,578.51	\$ 22,117.23		
509	CITY FACILITIES CIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
800	EMPLOYEE BENEFITS	\$ 159,344.76	\$ 199,537.81	\$ 358,882.57	\$ -	\$ -	\$ 1,596,531.87	\$ 1,315,053.29		
801	TRUST/AGENCY	\$ 25,460.39	\$ 8,476.60	\$ 33,936.99	\$ -	\$ -	\$ 261,949.57	\$ 447,258.41		
802	AD 91-1 AGENCY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
804	TRUST-INTEREST BEARING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 67.50		
807	CFD 2005-1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,436.79	\$ 805,613.09		
808	HFPD (TRANSITION)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 856,727.95	\$ -		
CITY		\$ 1,101,685.85	\$ 280,471.59	\$ 1,382,157.44	\$ -	\$ -	\$ 12,320,722.09	\$ 11,582,515.16		
160	REDEVELOP OBLIG RETIREMENT - PA1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,302,466.20		
161	REDEVELOP OBLIG RETIREMENT - PA2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 426,245.91		
162	REDEVELOP OBLIG RETIREMENT-HOUSING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,473,243.59		
163	REDEVELOP OBLIG RETIREMENT-2018	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,740,765.38	\$ -		
173	SUCCESSOR AGENCY ADMINISTRATION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,005.00		
SUCCESSOR AGENCY		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,740,765.38	\$ 8,205,960.70		
370	HOUSING AUTHORITY	\$ 6.00	\$ -	\$ 6.00	\$ -	\$ -	\$ 22,207.66	\$ 74,389.65		
HOUSING AUTHORITY		\$ 6.00	\$ -	\$ 6.00	\$ -	\$ -	\$ 22,207.66	\$ 74,389.65		
170	COMMUNITY DEVELOPMENT COMMISSION	\$ 51,267.50	\$ 111.67	\$ 51,379.17	\$ -	\$ -	\$ 120,143.04	\$ 113,376.66		
COMMUNITY DEVELOPMENT COMMISSION		\$ 51,267.50	\$ 111.67	\$ 51,379.17	\$ -	\$ -	\$ 120,143.04	\$ 113,376.66		
700	WATER OPERATING	\$ 86,449.33	\$ 225,242.97	\$ 311,692.30	\$ 35,756.80	\$ -	\$ 1,672,038.48	\$ 1,287,575.96		
701	WATER CAPITAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 543,436.71	\$ 941,226.37		
710	SEWER OPERATING	\$ 2,415.27	\$ 208,993.94	\$ 211,409.21	\$ -	\$ -	\$ 725,901.97	\$ 305,201.83		
711	SEWER CAPITAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,052.50	\$ 46,626.30		
WATER		\$ 88,864.60	\$ 434,236.91	\$ 523,101.51	\$ 35,756.80	\$ -	\$ 2,961,429.66	\$ 2,580,630.46		
ACCOUNTS PAYABLE TOTAL		\$ 1,241,823.95	\$ 714,820.17	\$ 1,956,644.12	\$ 35,756.80	\$ -	\$ 23,165,267.83	\$ 22,556,872.63		
REG. PAYROLL										
City		\$ -	\$ 240,073.72	\$ 240,073.72	\$ -	\$ -	\$ 1,191,395.35	\$ 1,176,873.45		
Housing Authority		\$ -	\$ 265.40	\$ 265.40	\$ -	\$ -	\$ 1,495.49	\$ 11,890.47		
Community Development Commission		\$ -	\$ 6,727.25	\$ 6,727.25	\$ -	\$ -	\$ 36,693.86	\$ 19,676.96		
Water		\$ -	\$ 103,148.27	\$ 103,148.27	\$ -	\$ -	\$ 509,777.13	\$ 491,531.79		
PAYROLL TOTAL		\$ -	\$ 350,214.64	\$ 350,214.64	\$ -	\$ -	\$ 1,739,361.83	\$ 1,699,972.67		

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

City of Hesperia STAFF REPORT



DATE: October 1, 2019
TO: Mayor and City Council
FROM: Nils Bentsen, City Manager
BY: Rod Yahnke, Economic Development Manager
SUBJECT: Purchase and Sale Agreement – APNs 0398-304-25 and 26

RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. 2019-052: (i) approving the “Agreement For The Purchase And Sale Of Real Property And Joint Escrow Instructions” (PSA) for real property located at the east end of the Temecula Avenue cul-de-sac just east of Lassen Avenue, Assessor’s Parcel Numbers 0398-304-25 & 26 (Property) by and between The Douglas and Nancy Coats Trust, Dated April 13, 1995 (Seller) and the City of Hesperia (Buyer); and (ii) authorizing the City Manager to execute all documents necessary to consummate the transaction.

BACKGROUND

The C-01 drainage course is a natural regional drainage channel on the Master Plan of Drainage in the southeast area of the City. This earthen channel conveys stormwater to a storm drain pipe. Because this is an earthen channel, significant amounts of sediment are transported with the stormwater into the storm drain pipe. The quantity of sediment is such that the storm drain pipe is nearly impossible to maintain.

Installation of a retention basin west of the storm drain pipe will regulate the flow of stormwater and allow the sediment to settle into the basin rather than dispersing into the storm drain pipe.

ISSUES

The purchase price is \$120,000, slightly below the appraised value; Smothers Appraisal determined fair market value to be \$124,000. The Purchase and Sale Agreement includes industry standard terms including Seller paying for commission and title insurance, as well as escrow costs being split between Buyer and Seller.

FISCAL IMPACT

Funding in the amount of \$200,000 in C.O. project number 7140 in Fund 301 is currently budgeted in the approved Fiscal Year 2019-20 Capital Improvement Program (CIP) Budget for this transaction.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Resolution No. 2019-052
2. Purchase & Sale Agreement

RESOLUTION NO. 2019-052

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA: (I) APPROVING A PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (PSA) FOR REAL PROPERTY LOCATED AT THE EAST END OF TEMECULA AVENUE CUL-DE-SAC JUST EAST OF LASSEN AVENUE, ASSESSOR'S PARCEL NUMBERS 0398-304-25 & 26 (PROPERTY) BY AND BETWEEN THE DOUGLAS AND NANCY COATS TRUST (SELLER), DATED APRIL 13, 1995 AND THE CITY OF HESPERIA (BUYER); (II) AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO CARRY OUT THE INTENT OF THESE RESOLUTIONS; AND (III) MAKING THE APPROPRIATE FINDINGS HEREWITH

WHEREAS, the C-01 drainage course is a natural regional earthen drainage channel; and

WHEREAS, significant amounts of sediment are transported along with the stormwater into a stormwater pipe thereby blocking the pipe; and

WHEREAS, construction of a water retention basin west of the storm drain pipe will regulate the flow of stormwater and allow for the sediment to settle into the basin rather than dispersing into the drain pipe; and

WHEREAS, Property was appraised at \$124,000 by Smothers Appraisal; and

WHEREAS, City tendered an offer of \$120,000 on August 2, 2019.

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

- Section 1. The facts set forth above in this Resolution is true and correct.
- Section 2. The PSA for purchase of the Property is hereby approved and the City Manager is authorized to execute the PSA on behalf of the Buyer.
- Section 3. The City Manager is hereby authorized to sign all documents necessary and appropriate to carry out the PSA and implement this Resolution, including making minor, non-material amendments to the PSA and/or related documents.
- Section 4. If any section, sentence, clause or phrase of this Resolution is determined to be invalid, void or unconstitutional by a decision or order of a court of competent jurisdiction, then such decision or order shall not affect the validity or enforceability of the remaining portions of this Resolution, and the City Council hereby declares that it would have passed the remainder of this Resolution if such invalid portion thereof had been declared invalid or unconstitutional.
- Section 5. This activity is not a "project" and therefore exempt from CEQA pursuant to CEQA Guidelines §15060(c)(3).
- Section 6. This Resolution shall go into effect immediately upon its adoption.

Section 7. The City Clerk shall certify to the passage and adoption hereof and enter it into the book of original resolutions.

ADOPTED AND APPROVED this 1st day of October, 2019 by the following vote:

Larry Bird, Mayor

ATTEST:

Melinda Sayre, City Clerk



STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE

(Vacant Land)

Dated: 7/15/2019 8/2/19

1. Buyer.

1.1 City of Hesperia, ("Buyer") hereby offers to purchase the real property, hereinafter described, from the owner thereof ("Seller") (collectively, the "Parties" or individually, a "Party"), through an escrow ("Escrow") to close 30 or _____ days after the waiver or expiration of the Buyer's Contingencies, ("Expected Closing Date") to be held by Commonwealth Land Title Company ("Escrow Holder") whose address is 888 S. Figueroa Street, Suite 2100, Los Angeles, Phone No. _____, Facsimile No. _____ upon the terms and conditions set forth in this agreement ("Agreement"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless Seller expressly releases Buyer.

1.2 The term "Date of Agreement" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document or a subsequent counteroffer thereto, Buyer and Seller have reached agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property upon terms accepted by both Parties.

2. Property.

2.1 The real property ("Property") that is the subject of this offer consists of (insert a brief physical description) 2 parcels ±3.79 acres vacant land. Is located in the County of San Bernardino, is commonly known as (street address, city, state, zip) Temecula Ave, Hesperia, CA 92345 and is legally described as: _____ (APN: 0398-304-25 & 0398-304-26.)

2.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of Lawyers Title-Inland Empire, 10801 Foothill Blvd., Suite 108, Rancho Cucamonga, CA 91730 ("Title Company"), which shall issue the title policy hereinafter described.

2.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which pursuant to applicable law are a part of the property, as well as the following items, if any, owned by Seller and at present located on the Property: _____ (collectively, the "Improvements").

2.4 Except as provided in Paragraph 2.3, the Purchase Price does not include Seller's personal property, furniture and furnishings, and _____ all of which shall be removed by Seller prior to Closing.

3. Purchase Price.

3.1 The purchase price ("Purchase Price") to be paid by Buyer to Seller for the Property shall be ☒ \$120,000.00, or ☐ (complete only if purchase price will be determined based on a per unit cost instead of a fixed price) _____ per unit. The unit used to determine the Purchase Price shall be: ☐ lot ☐ acre ☐ square foot ☐ other _____ prorating areas of less than a full unit. The number of units shall be based on a calculation of total area of the Property as certified to the Parties by a licensed surveyor in accordance with paragraph 9.1(g). However, the following rights of way and other areas will be excluded from such calculation: _____. The Purchase Price shall be payable as follows:

(Strike any not applicable)

(a) Cash down payment, including the Deposit as defined in paragraph 4.3 (or if an all cash transaction, the Purchase Price):

\$120,000.00

(b) Amount of "New Loan" as defined in paragraph 5.1, if any:

(c) Buyer shall take title to the Property subject to and/or assume the following existing deed(s) of trust ("Existing Deed(s) of Trust") securing the existing promissory note(s) ("Existing Note(s)"): _____

(i) An Existing Note ("First Note") with an unpaid principal balance as of the Closing of approximately: _____

Said First Note is payable at _____ per month, including interest at the rate of _____ % per annum until paid (and/or the entire unpaid balance is due on _____).

(ii) An Existing Note ("Second Note") with an unpaid principal balance as of the Closing of approximately: _____

Said Second Note is payable at _____ per month, including interest at the rate of _____ % per annum until paid (and/or the entire unpaid balance is due on _____).

(d) Buyer shall give Seller a deed of trust ("Purchase Money Deed of Trust") on the property, to secure the promissory note of Buyer to Seller described in paragraph 5 ("Purchase Money Note") in the amount of: _____

3.2 If Buyer is taking title to the Property subject to, or assuming, an Existing Deed of Trust and such deed of trust permits the beneficiary to demand payment of fees including, but not limited to, points, processing fees, and appraisal fees as a condition to the transfer of the Property, Buyer agrees to pay such fees up to a maximum of 1.5% of the unpaid principal balance of the applicable Existing Note.

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4. Deposits.

4.1 ☐ Buyer has delivered to Broker a check in the sum of _____, payable to Escrow Holder, to be delivered by Broker to Escrow Holder within 2 or _____ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder, or ☒ within ~~2 or~~ 5 business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder. Buyer shall deliver to Escrow Holder a check in the sum of \$3,600. If said check is not received by Escrow Holder within said time period then Seller may elect to unilaterally terminate this transaction by giving written notice of such election to Escrow Holder whereupon neither Party shall have any further liability to the other under this Agreement. Should Buyer and Seller not enter into an agreement for purchase and sale, Buyer's check or funds shall, upon request by Buyer, be promptly returned to Buyer.

4.2 Additional deposits:

(a) Within 5 business days after the Date of Agreement, Buyer shall deposit with Escrow Holder the additional sum of _____ to be applied to the Purchase Price at the Closing.

(b) Within 5 business days after the contingencies discussed in paragraph 9.1 (a) through (m) are approved or waived, Buyer shall deposit with Escrow Holder the additional sum of _____ to be applied to the Purchase Price at the Closing.

(c) If an Additional Deposit is not received by Escrow Holder within the time period provided then Seller may notify Buyer, Escrow Holder, and Brokers, in writing that, unless the Additional Deposit is received by Escrow Holder within 2 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.

4.3 Escrow Holder shall deposit the funds deposited with it by Buyer pursuant to paragraphs 4.1 and 4.2 (collectively the "Deposit"), in a State or Federally chartered bank in an interest bearing account whose term is appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall accrue to the benefit of Buyer, who hereby acknowledges that there may be penalties or interest forfeitures if the applicable instrument is redeemed prior to its specified maturity. Buyer's Federal Tax Identification Number is _____. NOTE: Such interest bearing account cannot be opened until Buyer's Federal Tax Identification Number is provided.

4.4 Notwithstanding the foregoing, within 5 days after Escrow Holder receives the monies described in paragraph 4.1 above, Escrow Holder shall release \$100 of said monies to Seller as and for independent consideration for Seller's execution of this Agreement and the granting of the contingency period to Buyer as herein provided. Such independent consideration is non-refundable to Buyer but shall be credited to the Purchase Price in the event that the purchase of the Property is completed.

4.5 Upon waiver of all of Buyer's contingencies the Deposit shall become non-refundable but applicable to the Purchase Price except in the event of a Seller breach, or in the event that the Escrow is terminated pursuant to the provisions of Paragraph 9.1(n) (Destruction, Damage or Loss) or 9.1(o) (Material Change).

~~5. Financing Contingency. (Strike if not applicable)~~

~~5.1 This offer is contingent upon Buyer obtaining from an insurance company, financial institution or other lender, a commitment to lend to Buyer a sum equal to at least _____ % of the Purchase Price, on terms reasonably acceptable to Buyer. Such loan ("New Loan") shall be secured by a first deed of trust or mortgage on the Property. If this Agreement provides for Seller to carry back junior financing, then Seller shall have the right to approve the terms of the New Loan. Seller shall have 7 days from receipt of the commitment setting forth the proposed terms of the New Loan to approve or disapprove of such proposed terms. If Seller fails to notify Escrow Holder in writing, of the disapproval within said 7 days it shall be conclusively presumed that Seller has approved the terms of the New Loan.~~

~~5.2 If Buyer shall fail to notify its Broker, Escrow Holder and Seller, in writing within _____ days following the Date of Agreement, that the New Loan has not been obtained, it shall be conclusively presumed that Buyer has either obtained said New Loan or has waived this New Loan contingency.~~

~~5.3 If Buyer shall notify its Broker, Escrow Holder and Seller, in writing, within the time specified in paragraph 5.2 hereof, that Buyer has not obtained said New Loan, this Agreement shall be terminated, and Buyer shall be entitled to the prompt return of the Deposit, plus any interest earned thereon, less only Escrow Holder and Title Company cancellation fees and costs, which Buyer shall pay.~~

~~6. Seller Financing. (Purchase Money Note). (Strike if not applicable)~~

~~6.1 If Seller approves Buyer's financials (see paragraph 6.5) the Purchase Money Note shall provide for interest on unpaid principal at the rate of _____ % per annum, with principal and interest paid as follows: _____. The Purchase Money Note and Purchase Money Deed of Trust shall be on the current forms commonly used by Escrow Holder, and be junior and subordinate only to the Existing Note(s) and/or the New Loan expressly called for by this Agreement.~~

~~6.2 The Purchase Money Note and/or the Purchase Money Deed of Trust shall contain provisions regarding the following (see also paragraph 10.3 (b)):~~

~~(a) Prepayment. Principal may be prepaid in whole or in part at any time without penalty, at the option of the Buyer.~~
~~(b) Late Charge. A late charge of 6% shall be payable with respect to any payment of principal, interest, or other charges, not made within 10 days after it is due.~~

~~(c) Due On Sale. In the event the Buyer sells or transfers title to the Property or any portion thereof, then the Seller may, at Seller's option, require the entire unpaid balance of said Note to be paid in full.~~

~~6.3 If the Purchase Money Deed of Trust is to be subordinate to other financing, Escrow Holder shall, at Buyer's expense, prepare and record on Seller's behalf a request for notice of default and/or sale with regard to each mortgage or deed of trust to which it will be subordinate.~~

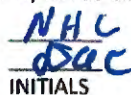
~~6.4 WARNING: CALIFORNIA LAW DOES NOT ALLOW DEFICIENCY JUDGEMENTS ON SELLER FINANCING. IF BUYER ULTIMATELY DEFAULTS ON THE LOAN, SELLER'S SOLE REMEDY IS TO FORECLOSE ON THE PROPERTY.~~

~~6.5 Seller's obligation to provide financing is contingent upon Seller's reasonable approval of Buyer's financial condition. Buyer to provide a current financial statement and copies of its Federal tax returns for the last 2 years to Seller within 10 days following the Date of Agreement. Seller has 10 days following receipt of such documentation to satisfy itself with regard to Buyer's financial condition and to notify Escrow Holder as to whether or not Buyer's financial condition is acceptable. If Seller fails to notify Escrow Holder, in writing, of the disapproval of this contingency within said time period, it shall be conclusively presumed that Seller has approved Buyer's financial condition. If Seller is not satisfied with Buyer's financial condition or if Buyer fails to deliver the required documentation then Seller may notify Escrow Holder in writing that Seller Financing will not be available, and Buyer shall have the option, within 10 days of the receipt of such notice, to either terminate this transaction or to purchase the Property without Seller financing. If Buyer fails to notify Escrow Holder within said time period of its election to terminate this transaction then Buyer shall be conclusively presumed to have elected to purchase the Property without Seller financing. If Buyer elects to terminate, Buyer's Deposit shall be refunded less Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation.~~

7. Real Estate Brokers.

7.1 Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in


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this transaction with the following real estate brokers ("Brokers") and/or their agents ("Agent(s)"): _____

Seller's Brokerage Firm _____ License No. _____ is the broker of (check one): ☐ the Seller; or ☐ both the Buyer and Seller (dual agent).

Seller's Agent _____ License No. _____ is (check one): ☐ the Seller's Agent (salesperson or broker associate); or ☐ both the Seller's Agent and the Buyer's Agent (dual agent).

Buyer's Brokerage Firm Coldwell Banker Commercial-Res License No. 01857050 is the broker of (check one): ☒ the Buyer; or ☐ both the Buyer and Seller (dual agent).

Buyer's Agent Coldwell Banker Commercial-RES License No. 01963261, 00344191 is (check one): ☒ the Buyer's Agent (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent (dual agent).

The Parties acknowledge that other than the Brokers and Agents listed above, there are no other brokers or agents representing the Parties or due any fees and/or commissions under this Agreement. See paragraph 24 regarding the nature of a real estate agency relationship. Buyer shall use the services of Buyer's Broker exclusively in connection with any and all negotiations and offers with respect to the Property for a period of 1 year from the date inserted for reference purposes at the top of page 1.

7.2 Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker, agent or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Brokers and Agents named in paragraph 7.1, and no broker, agent or other person, firm or entity, other than said Brokers and Agents is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, agent, finder or other similar party, other than said named Brokers and Agents by reason of any dealings or act of the indemnifying Party.

8. Escrow and Closing.

8.1 Upon acceptance hereof by Seller, this Agreement, including any counteroffers incorporated herein by the Parties, shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through the Escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending the Agreement unless specifically so instructed by the Parties or a Broker herein. Subject to the reasonable approval of the Parties, Escrow Holder may, however, include its standard general escrow provisions. In the event that there is any conflict between the provisions of the Agreement and the provisions of any additional escrow instructions the provisions of the Agreement shall prevail as to the Parties and the Escrow Holder.

8.2 As soon as practical after the receipt of this Agreement and any relevant counteroffers, Escrow Holder shall ascertain the Date of Agreement as defined in paragraphs 1.2 and 20.2 and advise the Parties and Brokers, in writing, of the date ascertained.

8.3 Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law and custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code. In the event of a conflict between the law of the state where the Property is located and the law of the state where the Escrow Holder is located, the law of the state where the Property is located shall prevail.

8.4 Subject to satisfaction of the contingencies herein described, Escrow Holder shall close this escrow (the "Closing") by recording a general warranty deed (a grant deed in California) and the other documents required to be recorded, and by disbursing the funds and documents in accordance with this Agreement.

8.5 Buyer and Seller shall each pay one-half of the Escrow Holder's charges and Seller shall pay the usual recording fees and any required documentary transfer taxes. Seller shall pay the premium for a standard coverage owner's or joint protection policy of title insurance. (See also paragraph 11.)

8.6 Escrow Holder shall verify that all of Buyer's contingencies have been satisfied or waived prior to Closing. The matters contained in paragraphs 9.1 subparagraphs (b), (c), (d), (e), (g), (i), (n), and (o), 9.4, 12, 13, 14, 16, 18, 20, 21, 22, and 24 are, however, matters of agreement between the Parties only and are not instructions to Escrow Holder.

8.7 If this transaction is terminated for non-satisfaction and non-waiver of a Buyer's Contingency, as defined in Paragraph 9.2 or disapproval of any other matter subject to Buyer's approval, then neither of the Parties shall thereafter have any liability to the other under this Agreement, except to the extent of a breach of any affirmative covenant or warranty in this Agreement. In the event of such termination, Buyer shall, subject to the provisions of paragraph 8.10, be promptly refunded all funds deposited by Buyer with Escrow Holder, less only the \$100 provided for in paragraph 4.4 and the Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation. If this transaction is terminated as a result of Seller's breach of this Agreement then Seller shall pay the Title Company and Escrow Holder cancellation fees and costs.

8.8 The Closing shall occur on the Expected Closing Date, or as soon thereafter as the Escrow is in condition for Closing; provided, however, that if the Closing does not occur by the Expected Closing Date and said Date is not extended by mutual instructions of the Parties, a Party not then in default under this Agreement may notify the other Party, Escrow Holder, and Brokers, in writing that, unless the Closing occurs within 5 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.

8.9 Except as otherwise provided herein, the termination of Escrow shall not relieve or release either Party from any obligation to pay Escrow Holder's fees and costs or constitute a waiver, release or discharge of any breach or default that has occurred in the performance of the obligations, agreements, covenants or warranties contained therein.

8.10 If this sale of the Property is not consummated for any reason other than Seller's breach or default, then at Seller's request, and as a condition to any obligation to return Buyer's deposit (see paragraph 21), Buyer shall within 5 days after written request deliver to Seller, at no charge, copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for Buyer that pertain to the Property. Provided, however, that Buyer shall not be required to deliver any such report if the written contract which Buyer entered into with the consultant who prepared such report specifically forbids the dissemination of the report to others.

9. Contingencies to Closing.

9.1 The Closing of this transaction is contingent upon the satisfaction or waiver of the following contingencies. IF BUYER FAILS TO NOTIFY ESCROW HOLDER, IN WRITING, OF THE DISAPPROVAL OF ANY OF SAID CONTINGENCIES WITHIN THE TIME SPECIFIED THEREIN, IT SHALL BE CONCLUSIVELY PRESUMED THAT BUYER HAS APPROVED SUCH ITEM, MATTER OR DOCUMENT. Buyer's conditional approval shall constitute disapproval, unless provision is made by the Seller within the time specified therefore by the Buyer in such conditional approval or by this Agreement, whichever is later, for the satisfaction of the condition imposed by the Buyer. Escrow Holder shall promptly provide all Parties with copies of any written disapproval or conditional approval which it receives. With regard to subparagraphs (a) through (m) the pre-printed time periods shall control unless a different number of days is inserted in the spaces provided.

(a) Disclosure. Seller shall make to Buyer, through Escrow, all of the applicable disclosures required by law (See AIR CRE ("AIR") standard form entitled


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"Seller's Mandatory Disclosure Statement") and provide Buyer with a completed Property Information Sheet ("Property Information Sheet") concerning the Property, duly executed by or on behalf of Seller in the current form or equivalent to that published by the AIR within 10 or _____ days following the Date of Agreement. Buyer has 10 days from the receipt of said disclosures to approve or disapprove the matters disclosed.

(b) **Physical Inspection.** Buyer has 10 or _____ days following the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the physical aspects and size of the Property.

(c) **Hazardous Substance Conditions Report.** Buyer has 30 or _____ days following the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the environmental aspects of the Property. Seller recommends that Buyer obtain a Hazardous Substance Conditions Report concerning the Property and relevant adjoining properties. Any such report shall be paid for by Buyer. A "Hazardous Substance" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "Hazardous Substance Condition" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

(d) **Soil Inspection.** Buyer has 30 or _____ days following the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the condition of the soils on the Property. Seller recommends that Buyer obtain a soil test report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any soils report that Seller may have within 10 days following the Date of Agreement.

(e) **Governmental Approvals.** Buyer has 30 or 30 days following the Date of Agreement to satisfy itself with regard to approvals and permits from governmental agencies or departments which have or may have jurisdiction over the Property and which Buyer deems necessary or desirable in connection with its intended use of the Property, including, but not limited to, permits and approvals required with respect to zoning, planning, building and safety, fire, police, handicapped and Americans with Disabilities Act requirements, transportation and environmental matters.

NOTE: Past uses of the Property may no longer be allowed. In the event that the Property must be rezoned, it is Buyer's responsibility to obtain the rezoning from the appropriate government agencies. Seller shall sign all documents Buyer is required to file in connection with rezoning, conditional use permits and/or other development approvals.

(f) **Conditions of Title.** Escrow Holder shall cause a current commitment for title insurance ("Title Commitment") concerning the Property issued by the Title Company, as well as legible copies of all documents referred to in the Title Commitment ("Underlying Documents"), and a scaled and dimensioned plot showing the location of any easements to be delivered to Buyer within 10 or _____ days following the Date of Agreement. Buyer has 10 days from the receipt of the Title Commitment, the Underlying Documents and the plot plan to satisfy itself with regard to the condition of title. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this contingency, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing.

(g) **Survey.** Buyer has 30 or 30 days following the receipt of the Title Commitment and Underlying Documents to satisfy itself with regard to any ALTA title supplement based upon a survey prepared to American Land Title Association ("ALTA") standards for an owner's policy by a licensed surveyor, showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within 10 feet of either side of the Property boundary lines. Any such survey shall be prepared at Buyer's direction and expense. If Buyer has obtained a survey and approved the ALTA title supplement, Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto.

(h) **Existing Leases and Tenancy Statements.** Seller shall within 10 or _____ days following the Date of Agreement provide both Buyer and Escrow Holder with legible copies of all leases, subleases or rental arrangements (collectively, "Existing Leases") affecting the Property, and with a tenancy statement ("Estoppel Certificate") in the latest form or equivalent to that published by the AIR, executed by Seller and/or each tenant and subtenant of the Property. Seller shall use its best efforts to have each tenant complete and execute an Estoppel Certificate. If any tenant fails or refuses to provide an Estoppel Certificate then Seller shall complete and execute an Estoppel Certificate for that tenancy. Buyer has 10 days from the receipt of said Existing Leases and Estoppel Certificates to satisfy itself with regard to the Existing Leases and any other tenancy issues.

(i) **Owner's Association.** Seller shall within 10 or _____ days following the Date of Agreement provide Buyer with a statement and transfer package from any owner's association servicing the Property. Such transfer package shall at a minimum include: copies of the association's bylaws, articles of incorporation, current budget and financial statement. Buyer has 10 days from the receipt of such documents to satisfy itself with regard to the association.

(j) **Other Agreements.** Seller shall within 10 or _____ days following the Date of Agreement provide Buyer with legible copies of all other agreements ("Other Agreements") known to Seller that will affect the Property after Closing. Buyer has 10 days from the receipt of said Other Agreements to satisfy itself with regard to such Agreements.

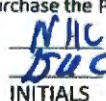
(k) **Financing.** If paragraph 5 hereof dealing with a financing contingency has not been stricken, the satisfaction or waiver of such New Loan contingency.

(l) **Existing Notes.** If paragraph 3.1(c) has not been stricken, Seller shall within 10 or _____ days following the Date of Agreement provide Buyer with legible copies of the Existing Notes, Existing Deeds of Trust and related agreements (collectively, "Loan Documents") to which the Property will remain subject after the Closing. Escrow Holder shall promptly request from the holders of the Existing Notes a beneficiary statement ("Beneficiary Statement") confirming: (1) the amount of the unpaid principal balance, the current interest rate, and the date to which interest is paid, and (2) the nature and amount of any impounds held by the beneficiary in connection with such loan. Buyer has 10 or _____ days following the receipt of the Loan Documents and Beneficiary Statements to satisfy itself with regard to such financing. Buyer's obligation to close is conditioned upon Buyer being able to purchase the Property without acceleration or change in the terms of any Existing Notes or charges to Buyer except as otherwise provided in this Agreement or approved by Buyer, provided, however, Buyer shall pay the transfer fee referred to in paragraph 3.2 hereof. Likewise if Seller is to carry back a Purchase Money Note then Seller shall within 10 or _____ days following the Date of Agreement provide Buyer with a copy of the proposed Purchase Money Note and Purchase Money Deed of Trust. Buyer has 10 or _____ days from the receipt of such documents to satisfy itself with regard to the form and content thereof.

(m) **Personal Property.** In the event that any personal property is included in the Purchase Price, Buyer has 10 or _____ days following the Date of Agreement to satisfy itself with regard to the title condition of such personal property. Seller recommends that Buyer obtain a UCC-1 report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any liens or encumbrances affecting such personal property that it is aware of within 10 or _____ days following the Date of Agreement.

(n) **Destruction, Damage or Loss.** Subsequent to the Date of Agreement and prior to Closing there shall not have occurred a destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, which would cost more than \$10,000.00 to repair or cure. If the cost of repair or cure is \$10,000.00 or less, Seller shall repair or cure the loss prior to the Closing. Buyer shall have the option, within 10 days after receipt of written notice of a loss costing more than \$10,000.00 to repair or cure, to either terminate this Agreement or to purchase the Property notwithstanding such loss, but without deduction or offset


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against the Purchase Price. If the cost to repair or cure is more than \$10,000.00, and Buyer does not elect to terminate this Agreement, Buyer shall be entitled to any insurance proceeds applicable to such loss. Unless otherwise notified in writing, Escrow Holder shall assume no such destruction, damage or loss has occurred prior to Closing.

(o) **Material Change.** Buyer shall have 10 days following receipt of written notice of a Material Change within which to satisfy itself with regard to such change. "Material Change" shall mean a substantial adverse change in the use, occupancy, tenants, title, or condition of the Property that occurs after the date of this offer and prior to the Closing. Unless otherwise notified in writing, Escrow Holder shall assume that no Material Change has occurred prior to the Closing.

(p) **Seller Performance.** The delivery of all documents and the due performance by Seller of each and every undertaking and agreement to be performed by Seller under this Agreement.

(q) **Brokerage Fee.** Payment at the Closing of such brokerage fee as is specified in this Agreement or later written instructions to Escrow Holder executed by Seller and Brokers ("Brokerage Fee"). It is agreed by the Parties and Escrow Holder that Brokers are a third party beneficiary of this Agreement insofar as the Brokerage Fee is concerned, and that no change shall be made with respect to the payment of the Brokerage Fee specified in this Agreement, without the written consent of Brokers.

9.2 All of the contingencies specified in subparagraphs (a) through (m) of paragraph 9.1 are for the benefit of, and may be waived by, Buyer, and may be elsewhere herein referred to as "Buyer's Contingencies."

9.3 If any of Buyer's Contingencies or any other matter subject to Buyer's approval is disapproved as provided for herein in a timely manner ("Disapproved Item"), Seller shall have the right within 10 days following the receipt of notice of Buyer's disapproval to elect to cure such Disapproved Item prior to the Expected Closing Date ("Seller's Election"). Seller's failure to give to Buyer within such period, written notice of Seller's commitment to cure such Disapproved Item on or before the Expected Closing Date shall be conclusively presumed to be Seller's Election not to cure such Disapproved Item. If Seller elects, either by written notice or failure to give written notice, not to cure a Disapproved Item, Buyer shall have the right, within 10 days after Seller's Election to either accept title to the Property subject to such Disapproved Item, or to terminate this Agreement. Buyer's failure to notify Seller in writing of Buyer's election to accept title to the Property subject to the Disapproved Item without deduction or offset shall constitute Buyer's election to terminate this Agreement. The above time periods only apply once for each Disapproved Item. Unless expressly provided otherwise herein, Seller's right to cure shall not apply to the remediation of Hazardous Substance Conditions or to the Financing Contingency. Unless the Parties mutually instruct otherwise, if the time periods for the satisfaction of contingencies or for Seller's and Buyer's elections would expire on a date after the Expected Closing Date, the Expected Closing Date shall be deemed extended for 3 business days following the expiration of: (a) the applicable contingency period(s), (b) the period within which the Seller may elect to cure the Disapproved Item, or (c) if Seller elects not to cure, the period within which Buyer may elect to proceed with this transaction, whichever is later.

9.4 The Parties acknowledge that extensive local, state and Federal legislation establish broad liability upon owners and/or users of real property for the investigation and remediation of Hazardous Substances. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical and beyond the expertise of Brokers. The Parties acknowledge that they have been advised by Brokers to consult their own technical and legal experts with respect to the possible presence of Hazardous Substances on the Property or adjoining properties, and Buyer and Seller are not relying upon any investigation by or statement of Brokers with respect thereto. The Parties hereby assume all responsibility for the impact of such Hazardous Substances upon their respective interests herein.

10. Documents Required at or Before Closing.

10.1 Five days prior to the Closing date Escrow Holder shall obtain an updated Title Commitment concerning the Property from the Title Company and provide copies thereof to each of the Parties.

10.2 Seller shall deliver to Escrow Holder in time for delivery to Buyer at the Closing:

- (a) Grant or general warranty deed, duly executed and in recordable form, conveying fee title to the Property to Buyer.
- (b) If applicable, the Beneficiary Statements concerning Existing Note(s).
- (c) If applicable, the Existing Leases and Other Agreements together with duly executed assignments thereof by Seller and Buyer. The assignment of Existing Leases shall be on the most recent Assignment and Assumption of Lessor's Interest in Lease form published by the AIR or its equivalent.
- (d) If applicable, Estoppel Certificates executed by Seller and/or the tenant(s) of the Property.
- (e) An affidavit executed by Seller to the effect that Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Internal Revenue Service such sum as is required by applicable Federal law with respect to purchases from foreign sellers.

(f) If the Property is located in California, an affidavit executed by Seller to the effect that Seller is not a "nonresident" within the meaning of California Revenue and Tax Code Section 18662 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Franchise Tax Board such sum as is required by such statute.

(g) If applicable, a bill of sale, duly executed, conveying title to any included personal property to Buyer.

(h) If the Seller is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the sale of the Property.

10.3 Buyer shall deliver to Seller through Escrow:

(a) The cash portion of the Purchase Price and such additional sums as are required of Buyer under this Agreement shall be deposited by Buyer with Escrow Holder, by federal funds wire transfer, or any other method acceptable to Escrow Holder in immediately collectable funds, no later than 2:00 P.M. on the business day prior to the Expected Closing Date provided, however, that Buyer shall not be required to deposit such monies into Escrow if at the time set for the deposit of such monies Seller is in default or has indicated that it will not perform any of its obligations hereunder. Instead, in such circumstances in order to reserve its rights to proceed Buyer need only provide Escrow with evidence establishing that the required monies were available.

(b) If a Purchase Money Note and Purchase Money Deed of Trust are called for by this Agreement, the duly executed originals of those documents, the Purchase Money Deed of Trust being in recordable form, together with evidence of fire insurance on the improvements in the amount of the full replacement cost naming Seller as a mortgage loss payee, and a real estate tax service contract (at Buyer's expense), assuring Seller of notice of the status of payment of real property taxes during the life of the Purchase Money Note.

(c) The Assignment and Assumption of Lessor's Interest in Lease form specified in paragraph 10.2(c) above, duly executed by Buyer.

(d) Assumptions duly executed by Buyer of the obligations of Seller that accrue after Closing under any Other Agreements.

(e) If applicable, a written assumption duly executed by Buyer of the loan documents with respect to Existing Notes.

(f) If the Buyer is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the purchase of the Property.

10.4 At Closing, Escrow Holder shall cause to be issued to Buyer a standard coverage (or ALTA extended, if elected pursuant to 9.1(g)) owner's form policy of title insurance effective as of the Closing, issued by the Title Company in the full amount of the Purchase Price, insuring title to the Property vested in Buyer, subject only to the exceptions approved by Buyer. In the event there is a Purchase Money Deed of Trust in this transaction, the policy of title insurance shall be a joint protection


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policy insuring both Buyer and Seller.

IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.

11. Prorations and Adjustments.

11.1 *Taxes.* Applicable real property taxes and special assessment bonds shall be prorated through Escrow as of the date of the Closing, based upon the latest tax bill available. The Parties agree to prorate as of the Closing any taxes assessed against the Property by supplemental bill levied by reason of events occurring prior to the Closing. Payment of the prorated amount shall be made promptly in cash upon receipt of a copy of any supplemental bill.

11.2 *Insurance.* **WARNING:** Any insurance which Seller may have maintained will terminate on the Closing. Buyer is advised to obtain appropriate insurance to cover the Property.

11.3 *Rentals, Interest and Expenses.* Scheduled rentals, interest on Existing Notes, utilities, and operating expenses shall be prorated as of the date of Closing. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

11.4 *Security Deposit.* Security Deposits held by Seller shall be given to Buyer as a credit to the cash required of Buyer at the Closing.

11.5 *Post Closing Matters.* Any item to be prorated that is not determined or determinable at the Closing shall be promptly adjusted by the Parties by appropriate cash payment outside of the Escrow when the amount due is determined.

11.6 *Variations in Existing Note Balances.* In the event that Buyer is purchasing the Property subject to an Existing Deed of Trust(s), and in the event that a Beneficiary Statement as to the applicable Existing Note(s) discloses that the unpaid principal balance of such Existing Note(s) at the closing will be more or less than the amount set forth in paragraph 3.1(c) hereof ("Existing Note Variation"), then the Purchase Money Note(s) shall be reduced or increased by an amount equal to such Existing Note Variation. If there is to be no Purchase Money Note, the cash required at the Closing per paragraph 3.1(a) shall be reduced or increased by the amount of such Existing Note Variation.

11.7 *Variations in New Loan Balance.* In the event Buyer is obtaining a New Loan and the amount ultimately obtained exceeds the amount set forth in paragraph 5.1, then the amount of the Purchase Money Note, if any, shall be reduced by the amount of such excess.

11.8 *Owner's Association Fees.* Escrow Holder shall: (i) bring Seller's account with the association current and pay any delinquencies or transfer fees from Seller's proceeds, and (ii) pay any up front fees required by the association from Buyer's funds.

12. Representations and Warranties of Seller and Disclaimers.

12.1 Seller's warranties and representations shall survive the Closing and delivery of the deed for a period of 3 years, and any lawsuit or action based upon them must be commenced within such time period. Seller's warranties and representations are true, material and relied upon by Buyer and Brokers in all respects. Seller hereby makes the following warranties and representations to Buyer and Brokers:

(a) *Authority of Seller.* Seller is the owner of the Property and/or has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder.

(b) *Maintenance During Escrow and Equipment Condition At Closing.* Except as otherwise provided in paragraph 9.1(n) hereof, Seller shall maintain the Property until the Closing in its present condition, ordinary wear and tear excepted.

(c) *Hazardous Substances/Storage Tanks.* Seller has no knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence on the Property of any Hazardous Substance, nor of the existence or prior existence of any above or below ground storage tank.

(d) *Compliance.* Seller has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency or casualty insurance company requiring any investigation, remediation, repair, maintenance or improvement be performed on the Property.

(e) *Changes in Agreements.* Prior to the Closing, Seller will not violate or modify any Existing Lease or Other Agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval, which approval will not be unreasonably withheld.

(f) *Possessory Rights.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of the Property, except as disclosed by this Agreement or otherwise in writing to Buyer.

(g) *Mechanics' Liens.* There are no unsatisfied mechanics' or materialmen's lien rights concerning the Property.

(h) *Actions, Suits or Proceedings.* Seller has no knowledge of any actions, suits or proceedings pending or threatened before any commission, board, bureau, agency, arbitrator, court or tribunal that would affect the Property or the right to occupy or utilize same.

(i) *Notice of Changes.* Seller will promptly notify Buyer and Brokers in writing of any Material Change (see paragraph 9.1(o)) affecting the Property that becomes known to Seller prior to the Closing.

(j) *No Tenant Bankruptcy Proceedings.* Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy or insolvency proceeding.

(k) *No Seller Bankruptcy Proceedings.* Seller is not the subject of a bankruptcy, insolvency or probate proceeding.

(l) *Personal Property.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of any personal property included in the Purchase Price nor knowledge of any liens or encumbrances affecting such personal property, except as disclosed by this Agreement or otherwise in writing to Buyer.

12.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the occupational safety and health laws, Hazardous Substance laws, or any other act, ordinance or law, have been made by either Party or Brokers, or relied upon by either Party hereto.

12.3 In the event that Buyer learns that a Seller representation or warranty might be untrue prior to the Closing, and Buyer elects to purchase the Property anyway then, and in that event, Buyer waives any right that it may have to bring an action or proceeding against Seller or Brokers regarding said representation or warranty.

12.4 Any environmental reports, soils reports, surveys, feasibility studies, and other similar documents which were prepared by third party consultants and provided to Buyer by Seller or Seller's representatives, have been delivered as an accommodation to Buyer and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which Buyer relies on at its own risk. Seller believes said documents to be accurate, but Buyer is advised to retain appropriate consultants to review said documents and investigate the Property.

13. Possession.


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Possession of the Property shall be given to Buyer at the Closing subject to the rights of tenants under Existing Leases.

14. Buyer's Entry.

At any time during the Escrow period, Buyer, and its agents and representatives, shall have the right at reasonable times and subject to rights of tenants, to enter upon the Property for the purpose of making inspections and tests specified in this Agreement. No destructive testing shall be conducted, however, without Seller's prior approval which shall not be unreasonably withheld. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to the condition it was in prior to such entry or work, including the recompaction or removal of any disrupted soil or material as Seller may reasonably direct. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify, defend, protect and hold harmless Seller and the Property of and from any and all claims, liabilities, losses, expenses (including reasonable attorneys' fees), damages, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith.

15. Further Documents and Assurances.

The Parties shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement. The Parties agree to provide all further information, and to execute and deliver all further documents, reasonably required by Escrow Holder or the Title Company.

16. Attorneys' Fees.

If any Party or Broker brings an action or proceeding (including arbitration) involving the Property whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees and costs. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

17. Prior Agreements/Amendments.

- 17.1 This Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property.
17.2 Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller.

18. Broker's Rights.

18.1 If this sale is not consummated due to the default of either the Buyer or Seller, the defaulting Party shall be liable to and shall pay to Brokers the Brokerage Fee that Brokers would have received had the sale been consummated. If Buyer is the defaulting party, payment of said Brokerage Fee is in addition to any obligation with respect to liquidated or other damages.

18.2 Upon the Closing, Brokers are authorized to publicize the facts of this transaction.

19. Notices.

19.1 Whenever any Party, Escrow Holder or Brokers herein shall desire to give or serve any notice, demand, request, approval, disapproval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger, or by mail, postage prepaid, to the address set forth in this agreement or by facsimile transmission, electronic signature, digital signature, or email.

19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered, or transmitted by facsimile transmission, electronic signature, digital signature, or email. Any such communication sent by regular mail shall be deemed given 48 hours after the same is mailed. Communications sent by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed delivered 24 hours after delivery of the same to the Postal Service or courier. If such communication is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

19.3 Any Party or Broker hereto may from time to time, by notice in writing, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made.

20. Duration of Offer.

20.1 If this offer is not accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of Hesperia, CA on the date of 7/19/2019, it shall be deemed automatically revoked.

20.2 The acceptance of this offer, or of any subsequent counteroffer hereto, that creates an agreement between the Parties as described in paragraph 1.2, shall be deemed made upon delivery to the other Party or either Broker herein of a duly executed writing unconditionally accepting the last outstanding offer or counteroffer.

21. LIQUIDATED DAMAGES. (This Liquidated Damages paragraph is applicable only if initialed by both Parties).

THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, PRIOR TO SIGNING THIS AGREEMENT, THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR THE BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF deposit. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.



Buyer's Initials



Seller's Initials

22. ARBITRATION OF DISPUTES. (This Arbitration of Disputes paragraph is applicable only if initialed by both Parties.)

22.1 ANY CONTROVERSY AS TO WHETHER SELLER IS ENTITLED TO THE LIQUIDATED DAMAGES AND/OR BUYER IS ENTITLED TO THE RETURN OF DEPOSIT MONEY, SHALL BE DETERMINED BY BINDING ARBITRATION BY, AND UNDER THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("COMMERCIAL RULES"). ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. THE NUMBER OF ARBITRATORS SHALL BE AS PROVIDED IN THE COMMERCIAL RULES AND EACH SUCH ARBITRATOR SHALL BE AN IMPARTIAL REAL ESTATE BROKER WITH AT LEAST 5 YEARS OF FULL TIME EXPERIENCE IN BOTH THE


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AREA WHERE THE PROPERTY IS LOCATED AND THE TYPE OF REAL ESTATE THAT IS THE SUBJECT OF THIS AGREEMENT. THE ARBITRATOR OR ARBITRATORS SHALL BE APPOINTED UNDER THE COMMERCIAL RULES AND SHALL HEAR AND DETERMINE SAID CONTROVERSY IN ACCORDANCE WITH APPLICABLE LAW, THE INTENTION OF THE PARTIES AS EXPRESSED IN THIS AGREEMENT AND ANY AMENDMENTS THERETO, AND UPON THE EVIDENCE PRODUCED AT AN ARBITRATION HEARING. PRE-ARBITRATION DISCOVERY SHALL BE PERMITTED IN ACCORDANCE WITH THE COMMERCIAL RULES OR STATE LAW APPLICABLE TO ARBITRATION PROCEEDINGS. THE AWARD SHALL BE EXECUTED BY AT LEAST 2 OF THE 3 ARBITRATORS, BE RENDERED WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, AND MAY INCLUDE ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY PER PARAGRAPH 16 HEREOF. JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT OF COMPETENT JURISDICTION NOTWITHSTANDING THE FAILURE OF A PARTY DULY NOTIFIED OF THE ARBITRATION HEARING TO APPEAR THEREAT.

22.2 BUYER'S RESORT TO OR PARTICIPATION IN SUCH ARBITRATION PROCEEDINGS SHALL NOT BAR SUIT IN A COURT OF COMPETENT JURISDICTION BY THE BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE UNLESS AND UNTIL THE ARBITRATION RESULTS IN AN AWARD TO THE SELLER OF LIQUIDATED DAMAGES, IN WHICH EVENT SUCH AWARD SHALL ACT AS A BAR AGAINST ANY ACTION BY BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE.

22.3 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Buyer's Initials

Seller's Initials

23. Miscellaneous.

23.1 **Binding Effect.** Buyer and Seller both acknowledge that they have carefully read and reviewed this Agreement and each term and provision contained herein. In addition, this Agreement shall be binding on the Parties without regard to whether or not paragraphs 21 and 22 are initialed by both of the Parties. Paragraphs 21 and 22 are each incorporated into this Agreement only if initialed by both Parties at the time that the Agreement is executed. Signatures to this Agreement accomplished by means of electronic signature or similar technology shall be legal and binding.

23.2 **Applicable Law.** This Agreement shall be governed by, and paragraph 22.3 is amended to refer to, the laws of the state in which the Property is located. Any litigation or arbitration between the Parties hereto concerning this Agreement shall be initiated in the county in which the Property is located.

23.3 **Time of Essence.** Time is of the essence of this Agreement.

23.4 **Counterparts.** This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

23.5 **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

23.6 **Conflict.** Any conflict between the printed provisions of this Agreement and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions. Seller and Buyer must initial any and all handwritten provisions.

23.7 **1031 Exchange.** Both Seller and Buyer agree to cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear all costs of such exchange. The cooperating Party shall not have any liability (special or otherwise) for damages to the exchanging Party in the event that the sale is delayed and/or that the sale otherwise fails to qualify as a 1031 exchange.

23.8 **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days.

24. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

24.1 The Parties and Brokers agree that their relationship(s) shall be governed by the principles set forth in the applicable sections of the California Civil Code, as summarized in paragraph 24.2.

24.2 When entering into a discussion with a real estate agent regarding a real estate transaction, a Buyer or Seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by the Brokers in this transaction, as follows:

(a) **Seller's Agent.** A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or subagent has the following affirmative obligations: (1) *To the Seller:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(b) **Buyer's Agent.** A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations. (1) *To the Buyer:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(c) **Agent Representing Both Seller and Buyer.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. (1) In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer. b. Other duties to the Seller and the Buyer as stated above in their respective sections (a) or (b) of this paragraph 24.2. (2) In representing both Seller and Buyer, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but


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not limited to, facts relating to either Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including Seller's willingness to accept a price less than the listing price or Buyer's willingness to pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. Buyer and Seller should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Buyer has the duty to exercise reasonable care to protect Buyer, including as to those facts about the Property which are known to Buyer or within Buyer's diligent attention and observation. Both Seller and Buyer should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(d) **Further Disclosures.** Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure. Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer representation agreement or separate document. Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties that may be of interest to this Buyer. Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this transaction may be brought against Broker more than one year after the Date of Agreement and that the liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Agreement shall not exceed the fee received by such Broker pursuant to this Agreement; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

24.3 **Confidential Information.** Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

25. **Construction of Agreement.** In construing this Agreement, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Agreement. Whenever required by the context, the singular shall include the plural and vice versa. This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

26. **Additional Provisions.**

Additional provisions of this offer, if any, are as follows or are attached hereto by an addendum or addenda consisting of paragraphs _____ through None. (If there are no additional provisions write "NONE".)

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS AGREEMENT.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PROPERTY. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE INTEGRITY AND CONDITION OF ANY STRUCTURES AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE.

WARNING: IF THE PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THIS AGREEMENT MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

NOTE:

1. THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.
2. IF EITHER PARTY IS A CORPORATION, IT IS RECOMMENDED THAT THIS AGREEMENT BE SIGNED BY TWO CORPORATE OFFICERS.

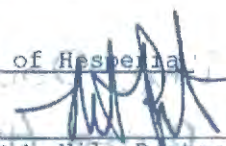
The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.

BROKER

Coldwell Banker Commercial-Res
Attn: Coldwell Banker Commerical-RES
Title: Vice President, Senior Vice President
Address: 15500 West Sand St. 2nd floor.,
Victorville, CA 92392
Phone: 760-684-800
Fax: 760-243-9700
Email: steven.thompson@cbsinland.com
Federal ID No.: _____
Broker DRE License #: 01857050
Agent DRE License #: 01963261, 00344191


INITIALS

BUYER

Date: 8-1-19
City of Hesperia
By: 
Name Printed: Nils Bentzen
Title: City Manager
Phone: 760-947-1025
Fax: _____
Email: nbentzen@cityofhesperia.us
By: _____
Name Printed: Susie Flores
Title: Administrative Secretary
Phone: 760-947-1909
Fax: _____


INITIALS

Email: _____
Address: _____
Federal ID No.: _____

27. Acceptance.

27.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions therein specified.

27.2 In consideration of real estate brokerage service rendered by Brokers, Seller agrees to pay Brokers a real estate Brokerage Fee in a sum equal to 5 % of the Purchase Price to be divided between the Brokers as follows: Seller's Broker _____ % and Buyer's Broker 5 %. This Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such Brokerage Fee to Brokers out of the proceeds accruing to the account of Seller at the Closing.

27.3 Seller acknowledges receipt of a copy hereof and authorizes Brokers to deliver a signed copy to Buyer.

NOTE: A PROPERTY INFORMATION SHEET IS REQUIRED TO BE DELIVERED TO BUYER BY SELLER UNDER THIS AGREEMENT.

BROKER

Attn: _____
Title: _____

Address: _____
Phone: _____
Fax: _____
Email: _____
Federal ID No.: _____
Broker DRE License #: _____
Agent's DRE License #: _____

SELLER

Date: 8/6/2019
~~Douglas Coats, Nancy Coats~~
By: Douglas A. Coats
Name Printed: Douglas Coats, Nancy Coats
Title: Owner Trustee
Phone: 805 218 3662
Fax: _____
Email: Marine@Rain.org
By: Nancy H. Coats
Name Printed: Nancy H. Coats
Title: Trustee
Phone: _____
Fax: } see Above
Email: _____
Address: _____
Federal ID No.: _____

AIR CRE * <https://www.aircre.com> * 213-687-8777 * contracts@aircre.com
NOTICE: No part of these works may be reproduced in any form without permission in writing.

→ The Douglas and Nancy Coats Trust,
Dated April 13, 1995


INITIALS


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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salesperson and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

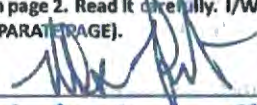
In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

☒ Buyer ☐ Seller ☐ Lessor ☐ Lessee
☐ Buyer ☒ Seller ☐ Lessor ☐ Lessee

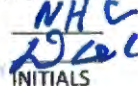

Douglas A. Cox Monica H. Coats Date: 8-1-19
8/6/19

Agent: Coldwell Banker Commercial-RES DRE Lic. #: 01857050
Real Estate Broker (Firm)

By: _____ DRE Lic. #: 01963261 Date: _____
(Salesperson or Broker-Associate)

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.


INITIALS


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**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

(c) **CONFIRMATION:** The following agency relationships are confirmed for this transaction.

Seller's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): ☐ the seller; or ☐ both the buyer and seller. (dual agent)

Seller's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): ☐ the Seller's Agent. (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent. (dual agent)

Buyer's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)

Buyer's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): ☐ the Buyer's Agent. (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically


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City of Hesperia

STAFF REPORT



DATE: October 1, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Mark Faherty, Public Works Manager
SUBJECT: Vehicle Procurement

RECOMMENDED ACTION

It is recommended that the City Council authorize the City Manager to approve the procurement of a new Freightliner Dump Truck and award the bid to Valew Quality Truck Bodies in the not-to-exceed amount of \$123,930.

BACKGROUND

The Fiscal Year 2019-20 adopted budget includes funds for the replacement of a 10-yard dump truck, which was purchased in 1999 and has over 167,000 miles.

ISSUES/ANALYSIS

Bids were solicited both locally and out of the area in order to maximize the bid response; one vendor submitted a bid package, which met the guidelines of the purchasing ordinance. In accordance with the guidelines of the City's Purchasing Ordinance, the City would like to award the bid to Valew Quality Truck Bodies.

FISCAL IMPACT

Funding in the amount of \$135,000 is allocated in the Public Works Division adopted Fiscal Year 2019-20 Budget.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Bid Comparison

Bid Comparison Type: **Taxable**

Bid Comparison Completed By: **Robert Worby**

Date: **8/26/2019**

				Valew Quality Truck Bodies Adelanto, CA		
Item No.	UOM	Qty	Description	Bidder Part #	Unit Cost	Extended Amount
1	EA	1	New/Unused Freightliner Dump Truck	N/A	\$114,900.00	\$114,900.00
				Subtotal		\$114,900.00
				Sales Tax (7.75%)		\$8,904.75
Bid Included Federal Excise Tax But State and Local Government are Exempt				Federal Excise Tax		\$0.00
				Bid Amount (with tax)		\$123,804.75
				License and Document Fees		\$107.00
				Tire Fee <i>(not subject to Sales Tax per Cal BOE)</i>		\$17.50
				TOTAL BID		\$123,929.25
				Submitted Bid Amount		\$137,717.25
				Difference		(\$13,788.00)

*Per Hesperia Ordinance 2014-09, Section 3.08.080, Sub-section E, "For purposes of determining the lowest responsible, responsive bidder, there shall be deducted from the bid(s) submitted by a local bidder all sales taxes which will be apportioned to and received by the City" (1%).

City of Hesperia STAFF REPORT



DATE: October 1, 2019

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager

BY: Michael Blay, Assistant City Manager
David Burkett, Project Construction Manager

SUBJECT: Approve and Accept Construction of FY 2018-19 CDBG Street Improvements

RECOMMENDED ACTION

It is recommended that the City Council accept the work constructed under FY 2018-19 CDBG Street Improvements (C.O. No. 7150) and authorize staff to record a "Notice of Completion" and release all withheld retention amounts after 35 calendar days from the date of recordation.

BACKGROUND

The City Council has continuously expressed a desire to improve existing roadways within the city. As a result, staff has sought innovative ways to fund such improvements. Annually the City receives Community Development Block Grant (CDBG) funding from the U.S. Department of Housing and Urban Development (HUD). In the past a large part of this funding was directed to programs, which left small amounts available for capital projects. In order to accomplish the Council's goal of improving more streets throughout the City, staff designated a larger amount of the CDBG funding towards the CDBG Capital Fund.

The FY 2018-19 CDBG Street Improvement Project consisted of construction of new 26-foot wide asphaltic-concrete (AC) pavement within the middle of each street's existing 60-foot wide right-of-way. The work also included construction of pavement to connect all existing driveways on private property to the new street paving. All improvements matched existing lines and grade; no additional new improvements were constructed. The existing dirt roadways paved under this project included the following:

- Wells Fargo Street – between Seventh Avenue and Eleventh Avenue
- Larch Street – between Seventh Avenue and Eleventh Avenue
- Ash Street – between Seventh Avenue and Eleventh Avenue

These roads were selected because infrastructure upgrades to waterlines have been completed within the last five years and the number of existing residences on the roads (i.e., the roadway is near build-out). This project was originally included in the adopted FY 2018-19 Capital Improvement Program (CIP) Budget and \$655,727 was carried over into the FY 2019-20 Budget.

ISSUES/ANALYSIS

Staff issued a "Notice Inviting Sealed Bids" for this project on April 8, 2019. A total of three bids were accepted and publicly read on May 2, 2019. Subsequently, the Council awarded a contract to Match Corporation at its May 21, 2019 meeting to construct the roadway improvements for the

amount of \$848,265 and approved a contract contingency amount of \$84,000. The total expenditure authorization for the Work was \$932,265.

A Notice to Proceed was issued to Match Corporation to commence work on June 17, 2019. During construction, one contract change order in the net amount of \$19,036.05 was requested by the City to provide additional driveway approaches in order to connect existing driveways to the new paved roadway. Contingency funds were also utilized in the amount of \$5,749.27 to compensate the contractor for actual, measured quantities of work completed in excess of the quantities estimated in the Bid Documents. The final contract amount for work completed by Match Corporation, with the two described change orders, was \$873,050.32. The final contract amount exceeded the original contract amount by \$24,785.32, but was considerably less than the total authorized for expenditures by the Council. Staff only utilized 2.92% of the 10% contingency amount authorized by Council for this project. The project was completed on time and within budget.

On August 30, 2019 all work on the project was complete to the satisfaction of the City's construction inspector and project manager. Staff is recommending acceptance of the completed work and requesting authorization to release the final retention payment. Retention funds for this project, in the amount of \$43,652.51 will be available for release to the contractor after recordation of the Notice of Completion pursuant to California Public Contract Code § 7107.

FISCAL IMPACT

The FY 2019-20 CIP Budget includes \$655,727 in Fund 251 – CDBG Grant Fund for the FY 2018-19 CDBG Street Improvement Project (C.O. No. 7150), which is sufficient to fund the remaining project costs. Any balance of CDBG funding remaining from this project, including unused contingency funds, will be re-allocated to other CDBG projects.

ALTERNATIVE(S)

1. Do not approve and accept the project.
2. Provide alternative direction to staff.

ATTACHMENT(S)

1. None



sxi

DATE: October 1, 2019

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager

BY: Michael Blay, Assistant City Manager
Tina Souza, Senior Management Analyst

SUBJECT: Award Professional Services Agreement for the I Avenue Corridor Enhancement Study, C.O. No. 7151

RECOMMENDED ACTION

It is recommended that the City Council award a Professional Services Agreement (PSA) for Sustainable Transportation Planning Services for the I Avenue Corridor Enhancement Study, C.O. No. 7151 to KOA Corporation in the amount of \$255,455; and authorize City Manager to execute said PSA.

BACKGROUND

The City applied for Senate Bill 1, Road Maintenance & Rehabilitation Account – Sustainable Communities transportation planning grant funds for a corridor enhancement study for I Avenue in February of 2018. The grant was intended to encourage multimodal transportation and land use planning as well as greenhouse gas (GHG) emissions reductions. With the forthcoming Tapestry project and increased development in the industrial and eastern portions of the City, it is prudent for the City to review options and begin planning for increased capacity and how to provide various means of transportation to better serve the community. The enhancement study will provide analysis of existing conditions along with how to leverage improvements to benefit the greatest number of the City's constituents. The end product will be a tool that the City can utilize to achieve its goals of providing enhanced capacity and safety for motorists, pedestrians, and bicyclists; as well as provide a healthy, livable, and sustainable community, with improved public mobility and connection to destinations for residents and enhanced commerce.

Notification of Award of \$238,146 in Sustainable Communities grant funds was issued to the City on May 11, 2018. The City Council adopted Resolution No. 2018-48 accepting said grant funds on August 7 2018.

On June 18, 2019, the City Council adopted the Fiscal Year 2019-20 Capital Improvement Program (CIP) Budget which included the I Avenue Corridor Enhancement Study, C.O. No. 7151.

ISSUES/ANALYSIS

Caltrans has oversight of the administration of Sustainable Communities grants. Accordingly, certain milestones throughout the process require Caltrans review and approval. Caltrans reviewed and approved the City's Request for Proposal package. On May 2, 2019, staff released a Request for Proposal (RFP) solicitation to invite experienced professional firms to submit technical proposals for sustainable transportation services for the I Avenue Corridor

Enhancement Study. Proposals were received from six firms. The proposals were reviewed and ranked by an evaluation panel of five City staff members based on the criteria identified in the RFP. After thorough review, the consulting firms were ranked as follows:

- | | |
|---|------------|
| 1. KOA Corporation | 469 Points |
| 2. AnGenious Engineering Services, Inc. | 460 Points |
| 3. IBI Group | 438 Points |
| 4. Iteris, Inc. | 432 Points |
| 5. KTUA | 426 Points |
| 6. Quantum Quality Consulting, Inc. | 313 Points |

Professional services are awarded through a qualifications-based selection process. KOA Corporation was selected by the evaluation panel to perform the requested services. Further, this is consistent with Caltrans selection process. Caltrans has received copies of the ranking summary and all proposals received; and has authorized the City to move forward with the award process. Staff is recommending award of a PSA to the top ranked firm, KOA Corporation in the amount of \$255,455.

FISCAL IMPACT

Funding for the project is budgeted in account 207-29-700-7151-7500 and 504-29-700-7151-8000 under the adopted Fiscal Year 2019-20 CIP Budget of \$234,000. Remaining expenditures are anticipated to occur in Fiscal Year 2020-21 and will be budgeted accordingly.

ALTERNATIVE(S)

1. Provide alternative direction to staff

ATTACHMENT(S)

None.



DATE: October 1, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Michael Blay, Assistant City Manager
Jamie Carone, Administrative Analyst
SUBJECT: Parcel Map No. 20020

RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. 2019-049 approving Parcel Map No. 20020 to create two parcels from 2.1 gross acres within the R1-18,000 zone located 600 feet south of Cromdale Street on the east side of Maple Avenue (Applicant: Mas Tierra, Inc; APN: 0405-441-32).

BACKGROUND

On February 6, 2019, the Development Review Committee approved Tentative Parcel Map No. 20020 to create two parcels from 2.1 gross acres within the R1-18,000 zone located 600 feet south of Cromdale Street on the east side of Maple Avenue (APN: 0405-441-32).

Staff has reviewed the map and determined that it complies with all General Plan and zoning regulations, all required conditions of approval, and with all local ordinances related to the creation of these parcels.

ISSUES/ANALYSIS

There are no issues identified with this item.

FISCAL IMPACT

There are no significant fiscal impacts to the City related to this action.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Resolution No. 2019-049
2. Parcel Map No. 20020

RESOLUTION NO. 2019-049

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, APPROVING PARCEL MAP NO. 20020 TO CREATE TWO PARCELS FROM 2.1 GROSS ACRES WITHIN THE R1-18,000 ZONE LOCATED 600 FEET SOUTH OF CROMDALE STREET ON THE EAST SIDE OF MAPLE AVENUE (APPLICANT: MAS TIERRA, INC.; APN: 0405-441-32).

WHEREAS, On February 6, 2019, the Development Review Committee approved Tentative Parcel Map No. 20020 to create two parcels from 2.1 gross acres within the R1-18,000 zone located 600 feet south of Cromdale Street on the east side of Maple Avenue (APN: 0405-441-32);

WHEREAS, Parcel Map No. 20020 is to create two parcels from 2.1 gross acres within the R1-18,000 zone located 600 feet south of Cromdale Street; and

WHEREAS, all legal prerequisites to the adoption of this resolution have occurred.

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

Section 1. Parcel Map No. 20020 is hereby approved and the City Clerk is authorized to present same to the County Recorder to be filed for record.

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 1st day of October, 2019.

Larry Bird
Mayor

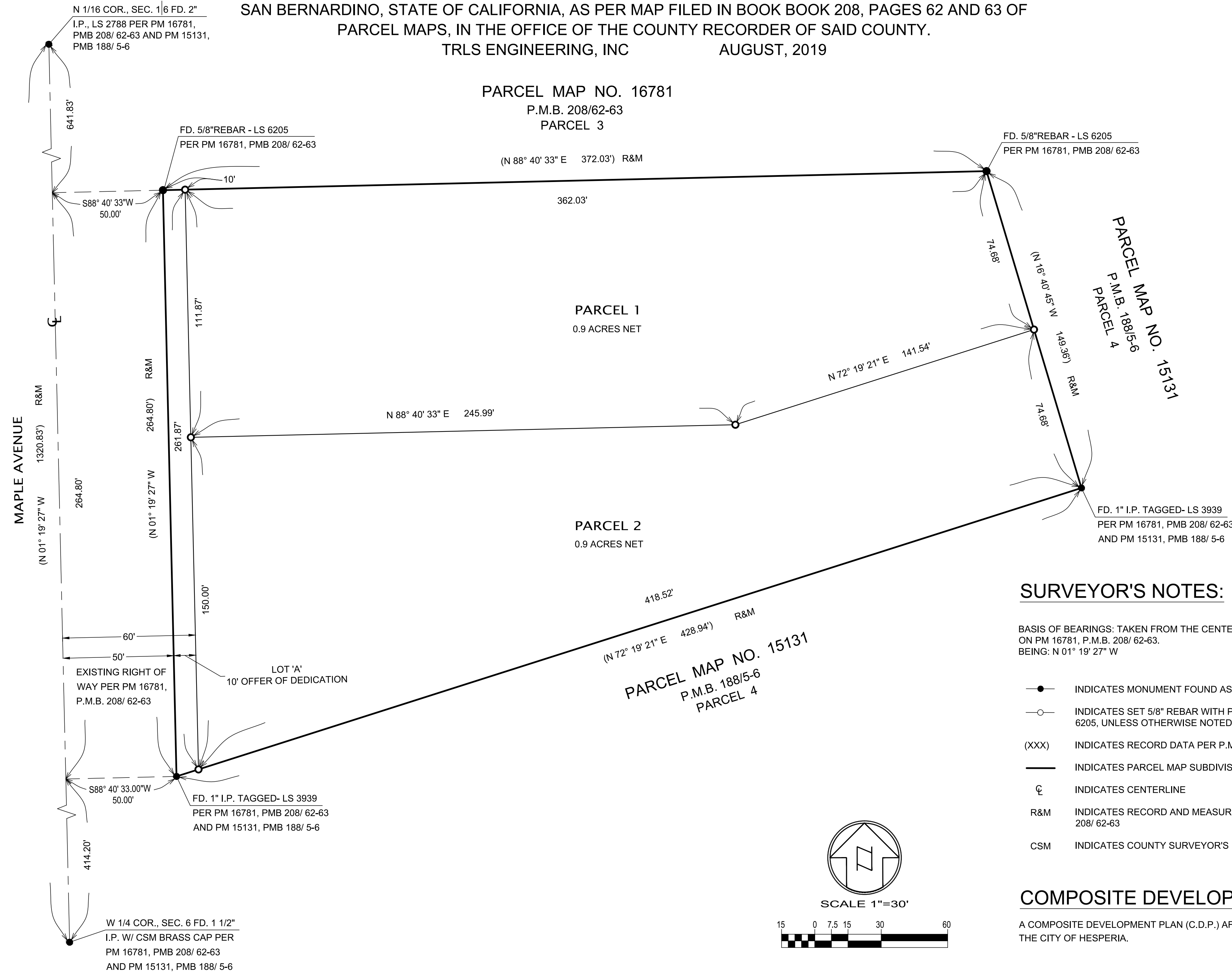
ATTEST:

Melinda Sayre
City Clerk

PARCEL MAP NO. 20020

BEING A SUBDIVISION OF PARCEL 4 OF PARCEL MAP NO. 16781, IN THE CITY OF HESPERIA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK BOOK 208, PAGES 62 AND 63 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
TRLS ENGINEERING, INC AUGUST, 2019

SHEET 2 OF 2



SURVEYOR'S NOTES:

BASIS OF BEARINGS: TAKEN FROM THE CENTER OF MAPLE AVENUE AS SHOWN ON PM 16781, P.M.B. 208/ 62-63.
BEING: N 01° 19' 27" W

- INDICATES MONUMENT FOUND AS NOTED.
- INDICATES SET 5/8" REBAR WITH PLASTIC PLUG STAMPED L.S. 6205, UNLESS OTHERWISE NOTED
- (XXX) INDICATES RECORD DATA PER P.M. 16781, P.M.B. 208/ 62-63
- INDICATES PARCEL MAP SUBDIVISION BORDER LINE
- ⊕ INDICATES CENTERLINE
- R&M INDICATES RECORD AND MEASURED DATUM PER P.M. 16781, P.M.B. 208/ 62-63
- CSM INDICATES COUNTY SURVEYOR'S MONUMENT

COMPOSITE DEVELOPMENT PLAN NOTE:

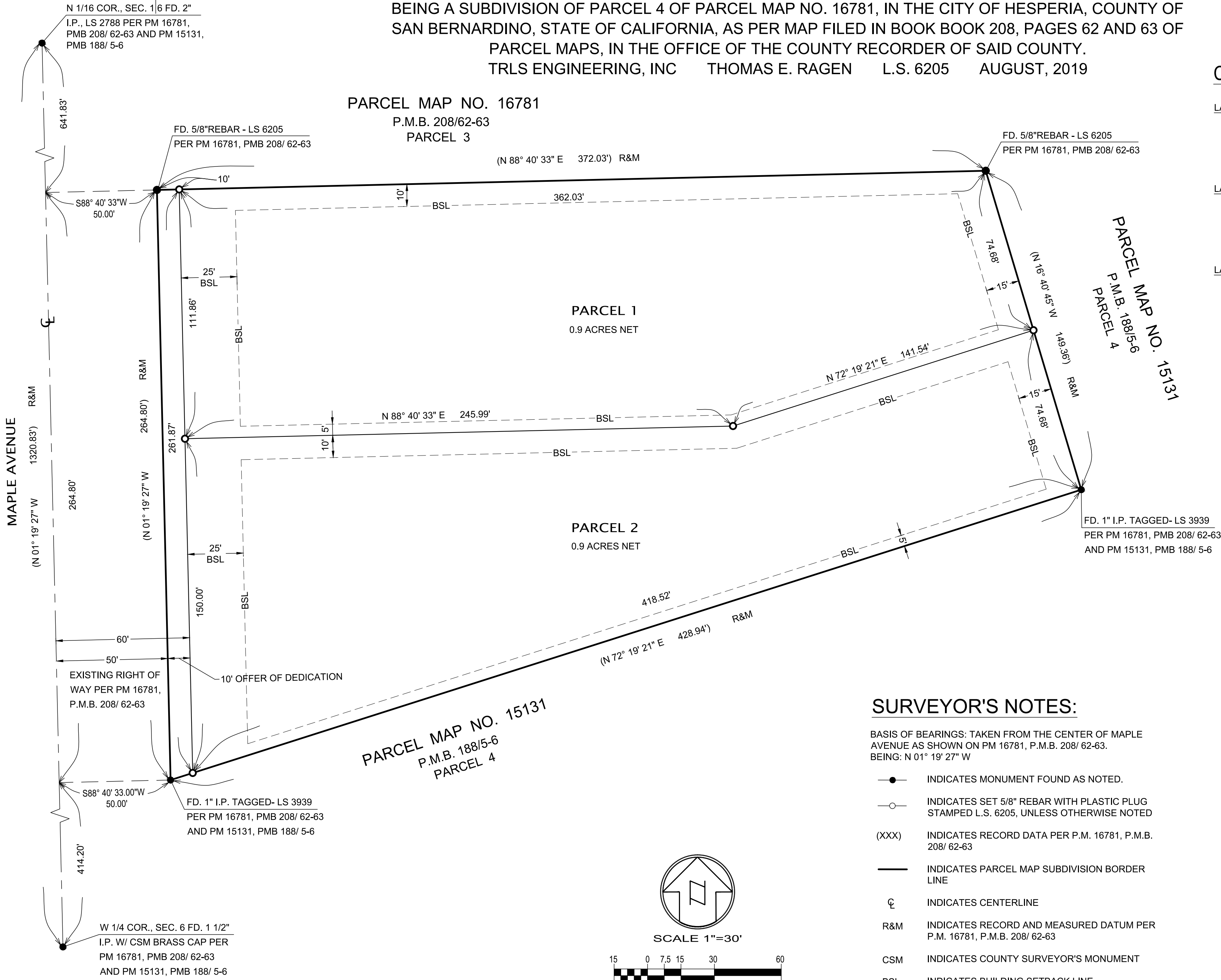
A COMPOSITE DEVELOPMENT PLAN (C.D.P.) AFFECTING THIS MAP IS ON FILE IN THE CITY OF HESPERIA.

COMPOSITE DEVELOPMENT PLAN HESPERIA,
CALIFORNIA - SECTION 6, T3N, R4W, SBM

PARCEL MAP NO. 20020

BEING A SUBDIVISION OF PARCEL 4 OF PARCEL MAP NO. 16781, IN THE CITY OF HESPERIA, COUNTY OF
SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK BOOK 208, PAGES 62 AND 63 OF
PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
TRLS ENGINEERING, INC THOMAS E. RAGEN L.S. 6205 AUGUST, 2019

SHEET 1 OF 1



COMPOSITE DEVELOPMENT PLAN NOTES:

LAND USE SERVICES/ ENGINEERING DIVISION -760.947.1476
UTILITIES: EACH PARCEL SHALL BE SERVED BY A SEPARATE WATER
METER, SERVICE LINE, AND SEWER LATERAL CONNECTION WHERE
AVAILABLE. AN AUTOMATIC METER READER SHALL BE INCLUDED ON
ALL METER CONNECTIONS.

LAND USE SERVICES/ PLANNING DIVISION- 760.947.1200
PRE-CONSTRUCTION SURVEY: A PRE-CONSTRUCTION SURVEY FOR
THE BURROWING OWL SHALL BE CONDUCTED BY A CITY APPROVED
AND LICENSED BIOLOGIST, NO MORE THAN 30 DAYS PRIOR TO
GROUND DISTURBANCE.

LAND USE SERVICES/ BUILDING DIVISION- 760.947.1300
CONSTRUCTION WASTE: THE DEVELOPER OR BUILDER SHALL
CONTRACT WITH THE CITY'S FRANCHISED SOLID WASTE HAULER TO
PROVIDE BINS AND HAUL WASTE FROM THE PROPOSED
DEVELOPMENT. AT ANY TIME DURING CONSTRUCTION, SHOULD
SERVICES BE DISCONTINUED, THE FRANCHISE WILL NOTIFY THE CITY
AND ALL BUILDING PERMITS WILL BE SUSPENDED UNTIL SERVICE IS
REESTABLISHED. THE CONSTRUCTION SITE SHALL BE MAINTAINED
AND ALL TRASH AND DEBRIS CONTAINED IN A METHOD CONSISTENT
WITH THE REQUIREMENTS SPECIFIED IN HESPERIA MUNICIPAL CODE
CHAPTER 15.12. ALL CONSTRUCTION DEBRIS, INCLUDING GREEN
WASTE, SHALL BE RECYCLED AT ADVANCE DISPOSAL AND RECEIPTS
FOR SOLID WASTE DISPOSAL SHALL BE PROVIDED PRIOR TO FINAL
APPROVAL OF ANY PERMIT.

DUST CONTROL: DUST CONTROL SHALL BE MAINTAINED BEFORE,
DURING, AND AFTER ALL GRADING OPERATIONS.

COUNTY SURVEYOR'S STATEMENT

THIS PLAN HAS BEEN EXAMINED FOR CONFORMANCE WITH THE REQUIREMENTS
OF SECTION 66434.2 OF THE SUBDIVISION MAP ACT AND SECTION 87.03110 OF
THE COUNTY CODE AND IS HEREBY APPROVED.

DATE: _____ THOMAS P. HERRIN, COUNTY SURVEYOR
COUNTY OF SAN BERNARDINO
BY: _____ DEPUTY
L.S. NO. _____

SURVEYOR'S STATEMENT

NOTES ON THIS PLAN ARE FOR INFORMATIONAL PURPOSES, TO
INDICATE CONDITIONS OF DEVELOPMENT THAT EXIST ON THIS
SUBDIVISION THAT ARE KNOWN AND IDENTIFIED AS OF DECEMBER,
2015 AND ARE NOT INTENDED TO EFFECT RECORD TITLE INTEREST.
THIS INFORMATION IS DERIVED FROM PUBLIC RECORDS OR REPORTS
AND THE UNDERSIGNED IS NOT RESPONSIBLE FOR THE CORRECTNESS
OR SUFFICIENCY OF THOSE RECORDS AND REPORTS.

DATED: 08/19/2019 SIGNATURE *Thomas E. Ragen*
L.S. NO. 6205



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City of Hesperia STAFF REPORT



DATE: October 1, 2019

TO: Chair and Board Members, Hesperia Water District

FROM: Nils Bentsen, City Manager

BY: Michael Blay, Assistant City Manager
David R. Burkett, Project Construction Manager

SUBJECT: Approve Contract Change Orders and Increase Contract Amount for Recycled Water System – Phase 1B, C.O. No. 8087

RECOMMENDED ACTION

It is recommended that the Board of Directors of the Hesperia Water District approve the proposed Contract Change Orders to the contract with R.I.C. Construction Company, Inc. for Recycled Water System – Phase 1B (C.O. No. 8087) in the amount of \$235,828.97; approve an additional 10% contingency in the amount of \$23,580.00; and authorize a revised total construction budget of \$5,404,540.34.

BACKGROUND

The Victor Valley Wastewater Reclamation Authority (VWVRA) has completed construction on the Hesperia Sub-regional Water Reclamation Plant and is currently proceeding with testing and start-up procedures. The Sub-regional Plant will be capable of supplying up to one million gallons per day (MGD) of reclaimed (or recycled) water, which can be used for irrigation purposes. In order to utilize this resource, the District has commenced construction on a distribution system to convey the recycled water to potential users. Using the District's Recycled Water Master Plan as a guide, staff has defined an alignment for the first phase of the distribution system. The primary user under this first phase will be the Hesperia Golf Course, but many other users can be served as well, including parks, schools, and the Hesperia Civic Center Complex.

The first phase of the recycled water system, which is currently under construction, includes approximately 12 miles of "purple" distribution pipe, a storage reservoir, and a booster station necessary to provide the required pressures to operate large irrigation systems. This phase was separated into two sub-phases as the distribution system (Phase 1A) was designed in-house by City engineering staff while the 2.5 MG water tank and pump station (Phase 1B) was designed by an engineering consultant.

ISSUES/ANALYSIS

The Board awarded a contract for construction of Phase 1B of the project to R.I.C. Construction Company, Inc. on August 21, 2018. Construction commenced on Phase 1B in October 2018 and is now approximately 60% complete. As this phase of the project nears completion, staff initiated a discussion with the Contractor about adding additional scope of work to their contract that would be beneficial to the City. However, proceeding with this additional work would increase the construction costs considerably above the current approved contract amount.

Phase 1B of the project includes installation of a new 2.5 million gallon water storage tank, pump station and miscellaneous site improvements. The new Plant Site RW1 is located at 13502 Live Oak Street. The primary transmission pipeline installed under Phase 1A will be able to provide recycled water to the golf course upon completion of all work. The plan was to connect the golf course to the new recycled water system upon completion of both Phase 1A and Phase 1B. However, the work under Phase 1A and Phase 1B did not include modifications to existing facilities at the golf course or command and control infrastructure necessary to begin receiving recycled water. Staff initiated discussions with R.I.C. Construction Company and their sub-contractor Tesco to determine what additional infrastructure and what additional Supervisory Control and Data Acquisition (SCADA) would be required in order to control the flow of recycled water delivered to the golf course and in order to monitor and operate the system remotely.

Ultimately, the additional scope of work was submitted in three separate change orders totaling \$235,828.97 and includes additional hardware and SCADA engineering services at the VVWRA plant site, additional hardware and SCADA services at the golf course to control when water is to be delivered and how much water is to be delivered for irrigation purposes and the addition of an altitude valve, underground vault and miscellaneous appurtenances at the new Hesperia Plant Site RW1 required to prevent an accidental overflow of the 2.5 million gallon water tank. With these additions, staff will be able to operate the recycled water system on an interim basis until Phase 1B of the project is complete and will ensure efficient delivery of recycled water to the golf course in the future.

Therefore, staff is requesting that the Board approve the three proposed Contract Change Orders to the contract with R.I.C. Construction Company, Inc. for the total amount of \$235,828.97 and approve an additional 10% contingency for the project in the amount of \$23,580.00. The original contract amount is \$4,677,391.37 with an approved contingency amount of \$467,740 for a current total construction budget of \$5,145,131.37. Board approval of staff's request would increase the contract amount to \$4,913,220.34 and the contingency amount to \$491,320.00 for a revised total construction budget of \$5,404,540.34.

FISCAL IMPACT

On June 18, 2019, the City Council and Board of Directors of the Hesperia Water District adopted the Fiscal Year 2019-20 Capital Improvement Program (CIP) Budget that included \$6,900,000 in funding for the Recycled Water System Project (C.O. No. 8087). This project is being funded by two state grants and a State Revolving Fund loan, as well as from Hesperia's Fund 701 – Water Capital. There is ample funding available to cover the additional costs of the proposed Contract Change Orders.

ALTERNATIVE(S)

1. Do not approve the proposed Contract Change Orders
2. Provide alternative direction to staff

ATTACHMENT(S)

None.

City of Hesperia STAFF REPORT



DATE: September 17, 2019

TO: Mayor and City Council members

FROM: Nils Bentsen, City Manager **SECOND READING AND ADOPTION**

BY: Mike Blay, Assistant City Manager
Tina Bulgarelli, Administrative Analyst

SUBJECT: Amendments to Title 6 of Hesperia Municipal Code – Animal Keeping

RECOMMENDED ACTION

It is recommended that the City Council adopt Ordinance No. 2019-12 amending Title 6 of the Hesperia Municipal Code modifying Animal Keeping regulations for mandatory spay and neuter requirements.

BACKGROUND

On August 19, 2014, the City Council adopted Ordinance No. 2014-14 amending the Animal Keeping Regulations contained in Title 6 of the Municipal Code. One of the amendments dealt with the mandatory spay or neuter of dogs running loose or found unrestrained off the owners property. The adopted regulations require the mandatory spay or neuter of unlicensed dogs found off property. Since that time new situations have arisen that require a possible amendment to the regulations.

ISSUES/ANALYSIS

Staff met with Animal Control staff to assess the situation regarding licensed and unlicensed dogs found off property who were subject to the mandatory spay and neuter regulations. In nearly every case, when the owner was adamant about not allowing their dog to be spayed or neutered it was due to the fact that the animal was kept for breeding purposes. Staff believes that by modifying the code to include an exemption in the form of a reclaiming fee, persons who are legitimately breeding the animal or who simply are opposed to having the animal sterilized, and who take care to keep the animal on their property for the most part, meaning they likely will not be a second time offender, will be more cognizant of the regulations and ensure that their animal is kept on property.

The fee proposed is to encourage owners to keep their animals on property and recover the costs of administering the keeping of animals at the shelter while waiting retrieval by the owner, while still allowing the City to manage the animal population when dealing with repeat offenders whose animals habitually leave their property.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Ordinance No. 2019-12
2. Exhibit A – Chapter 6.08 - Track Changes Copy
3. Exhibit B – Chapter 6.08 - Clean Copy

ORDINANCE NO. 2019-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, AMENDING TITLE 6, CHAPTER 6.08 OF THE HESPERIA MUNICIPAL CODE, RELATED TO ANIMAL CONTROL REGULATIONS

WHEREAS, the City of Hesperia has the authority and responsibility to regulate the control of animals to protect the public health, safety, and welfare; and

WHEREAS, Title 6 of the Hesperia Municipal Code contains regulations related to animal care, keeping, and control; and

WHEREAS, in 2014 the City Council adopted amendments to the animal control regulations, including a provision for the mandatory spay or neuter of animals found off property or running loose if they were unlicensed, or licensed and repeat offenders; and

WHEREAS, since that time there have been situations where it is apparent that the owner is acting in good faith to keep their animal on property and is willing to pay a reclaiming fee to have the animal returned unaltered to them for purposes of breeding the animal; and

WHEREAS, there are provisions to allow breeding of dogs in the City; and

WHEREAS, having a fee available to owners to encourage them to keep their breeding animals on their property in order to avoid mandatory spay or neuter of the animal can continue the ultimate goal of animal population control in the City, and allow for legitimate breeders to continue to breed animals responsibly; and

WHEREAS, this fee shall recoup the costs related to administering the keeping of the animal at the shelter until retrieval by the owner; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE HESPERIA CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1. All of the facts set forth in the forgoing recitals are true, correct and are adopted as findings.

Section 3. Title 6, Chapter 6.08 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "B", attached hereto.

Section 6. This Ordinance shall take effect on November 17, 2019.

Section 7. The City Council of the City of Hesperia hereby declares that should any provision, section, paragraph, sentence, or word of this Ordinance hereby adopted be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by any reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, and words shall remain in full force and effect.

Section 8. The City Clerk shall certify to the adoption of the Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Resolution 93-78.

ADOPTED AND APPROVED this 17th day of September, 2019

Larry Bird, Mayor

ATTEST _____
Melinda Sayre, City Clerk

ATTACHMENT 2

6.08.020 - Control of animals.

D. Any dog found at large, running loose, or unrestrained off the owner's property may be impounded by the animal control officer for a period as prescribed by law. -

1. ~~If the such dog is properly licensed, the first such offense shall allow the dog to be returned to the owner without being spayed or neutered The animal shall be microchipped by the Animal Control Department (or Designee) prior to return to the owner, at the owner's expense. The second such violation shall require such dogthe dog to be spayed or neutered at the owner's expense.~~

2. ~~If the such dog is not properly licensed, upon the first violation, the such dog shall be returned to the owner only after the dog is properly licensed, microchipped, and spayed or neutered by the Animal Control Department (or designee) at the owner's expense. The City Manager or Designee, may approve a one-time exception to spaying or neutering the animal if the owner shows good cause to the Manager that such an action is not warranted. Should the exception be granted, the animal shall be licensed, and microchipped at the owner's expense, and the owner shall pay the reclaiming fee, as adopted by the City Council. The second violation shall require the dog to be required to be spayed or neutered and properly licensed at the owner's expense. Any dog impounded to enforce this requirement, and left unclaimed shall become the property of the city.~~

Any dog impounded to enforce this requirement, and left unclaimed shall become the property of the City.

6.08.020 - Control of animals.

- D. Any dog found at large, running loose, or unrestrained off the owner's property may be impounded by the animal control officer for a period as prescribed by law.
1. If the dog is properly licensed, the first offense shall allow the dog to be returned to the owner without being spayed or neutered. The animal shall be microchipped by the Animal Control Department (or Designee) prior to return to the owner, at the owner's expense. The second violation shall require the dog to be spayed or neutered at the owner's expense.
 2. If the dog is not properly licensed, upon the first violation, the dog shall be returned to the owner only after the dog is properly licensed, microchipped, and spayed or neutered by the Animal Control Department (or designee) at the owner's expense. The City Manager, or Designee, may approve a one-time exception to spaying or neutering the animal if the owner shows good cause to the Manager that such an action is not warranted. Should the exception be granted, the animal shall be licensed, and microchipped at the owner's expense, and the owner shall pay the reclaiming fee, as adopted by City Council, before the animal is returned to them. The second violation shall require the dog to be spayed or neutered at the owner's expense.

Any dog impounded to enforce this requirement, and left unclaimed shall become the property of the City.

City of Hesperia STAFF REPORT



DATE: October 1, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Chris Borchert, Principal Planner
SUBJECT: Planned Development PPD18-00001, Conditional Use Permit CUP18-00007 (Americana-Hesperia Retirement Project, LLC; APN: 0405-062-56 & 70)

RECOMMENDED ACTION

It is recommended that the City Council introduce and place on first reading Ordinance 2019-11 approving Planned Development PPD18-00001, and adopt Resolution 2019-046, approving Conditional Use Permit CUP18-00007 for the development of the project.

PROJECT SUMMARY

Proposal: The project represents an expansion of previously approved Planned Development PPD15-00001, based on the City's sale of approximately 10 additional acres of adjacent land to the applicant. It consists of Planned Development PPD18-00001 and Conditional Use Permit CUP18-00007, to construct a two-story, 160 unit, 55+ senior apartment development; a two-story, 192 unit assisted living facility; a 13,462 square foot and 14,820 square foot commercial retail buildings in six phases on 21.55 acres.

Location: On the north side of Main Street, approximately 250 feet east of the California Aqueduct.

Environmental: A Mitigated Negative Declaration (MND) has been prepared for the project pursuant to the California Environmental Quality Act (CEQA).

Planning Commission Review: On July 11, 2019, the Planning Commission voted 4-0 to forward these items to the City Council with a recommendation for approval. Commissioner Cody Leis was absent.

Conclusion: Where the zoning is/was Medium Density Residential, the project proposes multi-family senior apartments (permitted) and assisted living (CUP). Where the zoning was Neighborhood Commercial, commercial buildings are proposed. Staff finds that the amount and quality of the amenities and architecture justifies the proposed deviations to parking, density and unit sizes.

ATTACHMENT(S)

1. Ordinance No. 2019-11
2. Planned Development PPD18-00001 document
3. Resolution No. 2019-046
4. Attachment A - List of Conditions
5. Planning Commission Staff Report
6. Planning Commission Minutes

ORDINANCE NO. 2019-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, TO ADOPT A PLANNED DEVELOPMENT WHICH CREATES DEVELOPMENT STANDARDS FOR SENIOR APARTMENTS, ASSISTED LIVING AND TWO COMMERCIAL BUILDINGS IMPLEMENTED THROUGH CONDITIONAL USE PERMIT CUP18-00007 AND AMENDING THE OFFICIAL GENERAL PLAN AND ZONING MAP BY RECLASSIFYING CERTAIN REAL PROPERTY HEREIN DESCRIBED WITHIN THE MAIN STREET AND FREEWAY CORRIDOR SPECIFIC PLAN FROM PPD15-00001 AND MEDIUM DENSITY RESIDENTIAL (MDR) ZONES TO PLANNED DEVELOPMENT PPD18-00001 ON 21.5 GROSS ACRES LOCATED ON THE NORTH SIDE OF MAIN STREET, APPROXIMATELY 250 FEET EAST OF THE CALIFORNIA AQUEDUCT (PPD18-00001)

WHEREAS, On January 5, 1998, the City Council of the City of Hesperia adopted Ordinance No. 250, thereby adopting the Hesperia Municipal Code; and

WHEREAS, On September 2, 2008, the City Council of the City of Hesperia adopted Ordinance No. 2008-12, thereby adopting the Main Street and Freeway Corridor Specific Plan; and

WHEREAS, Americana-Hesperia Retirement Project, LLC has filed an application requesting approval of Planned Development PPD18-00001, to create senior-oriented development standards implemented through Conditional Use Permit CUP18-00007 described herein (hereinafter referred to as "Application"); and

WHEREAS, the Application applies to 21.5 gross acres within PPD15-00001 and Medium Density Residential (MDR) Zones of the Main Street and Freeway Corridor Specific Plan located on the north side of Main Street, approximately 250 feet east of the California Aqueduct and consists of Assessor's Parcel Number 0405-062-56 & 70; and

WHEREAS, the Application, as contemplated, proposes to change the General Plan Land Use designation and zoning of the subject property within the Main Street and Freeway Corridor Specific Plan (Specific Plan) from PPD15-00001 and Medium Density Residential (MDR) Zone to Planned Development PPD18-00001. This Planned Development will create senior-oriented development standards implemented through Conditional Use Permit CUP18-00007; and

WHEREAS, Americana-Hesperia Retirement Project, LLC has also filed applications requesting approval of Conditional Use Permit CUP18-00007 in conjunction with Tentative Parcel Map TPMN18-00002 (PM-19940), to create four parcels, to construct a 2-story, 160- senior apartment development, a 2-story, 192-unit senior assisted living facility including kitchen and dining facilities with the sale of beer and wine, along with two commercial buildings of 13,462 square feet and 14,820 square feet in six phases; and

WHEREAS, the subject property as well as the properties to the north and east, are currently vacant. A restaurant and a multi-tenant retail building exist to the south and a commercial mini-storage exists to the west; and

WHEREAS, the western half of the subject property is currently Planned Development PPD15-00001 and the eastern portion is in the Medium Density Residential (MDR) Zone of the Main Street & Freeway Corridor Specific Plan. The properties to the west are also zoned MDR, however, the Extra Space storage facility is the adjacent property. The properties to the north and east are within the Low Density Residential (LDR) and the properties to the south are within the Regional Commercial (RC) Zone of the Specific Plan; and

WHEREAS, an environmental Initial Study for the proposed project was completed and the review period closed on March 20, 2019 with no agencies commenting. It determined that no significant adverse environmental impacts to either the man-made or physical environmental setting would occur with the inclusion of mitigation measures. A Mitigated Negative Declaration was subsequently prepared and is included and a part of the approvals; and

WHEREAS, on July 11, 2019, the Planning Commission of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Application, and concluded said hearing on that date, recommending approval of both PPD18-00001 and CUP18-00007 to the City Council; and

WHEREAS, on October 1, 2019, the City Council of the City of Hesperia conducted a hearing on the Application and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HESPERIA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council hereby specifically finds that all of the facts set forth in this Ordinance are true and correct.

Section 2. Based upon substantial evidence presented to the City Council during the above-referenced October 1, 2019 hearing, including public testimony and written and oral staff reports, this Council specifically finds as follows:

- (a) The City Council has independently reviewed and analyzed the Mitigated Negative Declaration ND18-00002 and finds that it reflects the independent judgement of the Council, and that there is no substantial evidence, in light of the whole record, that the project may have a significant effect on the environment.
- (b) The site of the proposed Planned Development is adequate in size and shape to accommodate the land uses permitted within the proposed Planned Development, because the land uses can meet the standards for setbacks, parking, circulation, and access within the proposed Zone District.
- (c) The overall benefits of the project as proposed outweigh the reductions in code requirements in the areas of parking space number, 226 spaces provided while 248 are required; the one-bedroom units being 618 square feet, below the minimum of 650 square feet; the second floor patios are 86 square feet which is 14 square feet below the minimum of 100; and the density of the senior apartments is 18.2 units per acre, above the maximum of 15 found in the Medium Density Residential district. The benefits of the project include: quality architecture, materials & design; numerous amenities in the apartment common area including a clubhouse, pool, shuffleboard and garden areas; mixed uses with apartment tenants able to use dining and activity areas in the assisted living facility and easily access commercial as well, adds to quality of life; garages add security and peace of mind for

tenants; abundance of open space and landscaped areas also adds aesthetic quality; increased property taxes; and a potential to spur additional development in the area.

- (d) The improvements required to build the development contained in the conditions of approval adequately address the natural and manmade hazards associated with development of the site.
- (e) The proposed Planned Development will not have a significant adverse impact on surrounding properties or the community in general, because the project will be subject to policies governing design and the mitigation measures.
- (f) The proposed project is consistent with the adopted General Plan of the City of Hesperia, with approval of this Planned Development.

Section 3. Based on the findings and conclusions set forth in this Ordinance, this Council hereby approves Planned Development PPD18-00001, amending the Official General Plan and Zoning Map of the City of Hesperia as shown on Exhibit "A;" approving the Mitigated Negative Declaration, which is attached to the staff report for this item; and establishing the Planned Development standards shown on Exhibit "B."

Section 4. This Ordinance shall take effect thirty (30) days from the date of adoption.

Section 5. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Resolution No. 2007-101.

ADOPTED AND APPROVED on this 1st day of October 2019.

Larry Bird, Mayor

ATTEST:

Melinda Sayre
City Clerk

ATTACHMENT 2

PLANNED DEVELOPMENT

PPD18-00001

IN THE CITY OF HESPERIA, SAN BERNARDINO COUNTY

ASSESSOR PARCEL NUMBERS:

0405-062-56 and 0405-062-70

LEGAL DESCRIPTIONS:

The East 1/2 Of The West 1/2 Of The Southeast 1/4 Of The Southeast 1/4 Of Section 14, Township 4 North Range 5 West, San Bernardino Base And Meridian, In The City Of Hesperia, County Of San Bernardino, State Of California, According To The Official Plat Of Said Land On File In The District Land Office.

and

Parcel 1 Of Parcel Map No. 18444, In The City Of Hesperia, County Of San Bernardino, State Of California, As Per Plat Recorded In Book 225, Pages 7-9 Of Parcel Maps, Records Of Said County.

PREPARED FOR:

AMERICANA-HESPERIA RETIREMENT
PROJECT, LLC C/O AGNES Y. SINCLAIR
150 N. SANTA ANITA AVE.,
#888 ARCADIA, CA 91006

April 21, 2018

REV June 26, 2019

I. PURPOSE

The purpose of this Planned Development (PD) for Americana-Hesperia Retirement Project is to promote public health, safety and welfare for senior residents and adult clients by allowing increased land use flexibility to serve their needs. This age-restricted community is within the boundaries of the Main Street and Freeway Corridor Specific Plan (SP or Specific Plan) in the City of Hesperia (City). This Planned Development will promote neighborhood diversity without ignoring possible concerns regarding potential impacts on surrounding residential uses.

An age-restricted Planned Development strictly for senior residents and adult clients will allow specific development standards that fit the goals and objectives of this unique project, as supported by applications for a Conditional Use Permit, Site Plan, Tentative Parcel Map and Tract Map, Planned Development and numerous other appurtenant maps, reports and documents. Specific tables in this document identify issues addressed as part of this PD project, per request by City of Hesperia.

This PD is a mix of Permitted and Conditionally Permitted land uses. The intent is to create a cohesive and well-planned Adult Senior Living Community with complementary residential and commercial uses for senior residents and adult clients that encourage pedestrian oriented opportunities on-site. All standards for land use and development criteria within this PD are delineated in the following:

II. PROJECT PROPOSAL SUMMARY

This Planned Development is a mixed-use two-story Adult Senior Living Community on 21.78 gross acres of land to be constructed in six phases. The project site is located on the north side of Main Street, about 1 mile east of Interstate-15 Freeway and situated on two lots: Assessor Parcel Numbers (APNs) 0405-062-56 and 0405-062-70. This PD project includes development of the following:

- 160-unit Senior Apartment development for 55-plus-year-old seniors in (4) two-story structures with a total of 38,582 square feet per building x 4 Bldg. =154,328 sf.
 - 3,621 square-foot Clubhouse within the Senior Apartment community;
- 192-unit Assisted Living Facility with a maximum of 264 beds in a 197,832 square-foot two-story structure. One hundred twenty (120) Studio Units will include one bed per Studio Unit, while the seventy-two (72) 1-Bedroom Units could allow up to 2 beds per unit for a total bed occupancy of 264 (120 + 144 = 264), pending State approval;
 - Multi-Purpose Rooms with a total of 9,323 square feet in the 2nd floor of the Assisted Living Building;
 - 9,323 square foot Restaurant centrally located in the 1st floor of the Assisted Living Building;

All uses are exclusively for residents of the Senior Apartments and clients of the Assisted Living and Adult Day Care Facilities, inclusive of family and friends.

- Commercial Pad “A” for 14,820 square feet of single-story retail space on Main Street.
- Commercial Pad “B” for 13,462 square feet of single-story retail space Main Street.

III. APPLICABILITY AND CONFORMITY WITH THE PLANNED DEVELOPMENT

Provisions of this Planned Development shall apply only to the following parcels:

- APN 0405-062-56 - Legal Description:

The East 1/2 Of The West 1/2 Of The Southeast 1/4 Of The Southeast 1/4 Of Section 14, Township 4 North Range 5 West, San Bernardino Base And Meridian, In The City Of Hesperia, County Of San Bernardino, State Of California, According To The Official Plat Of Said Land On File In The District Land Office.

- APN 0405-062-70 - Legal Description:

Parcel 1 Of Parcel Map No. 18444, In The City Of Hesperia, County Of San Bernardino, State Of California, As Per Plat Recorded In Book 225, Pages 7-9 Of Parcel Maps, Records Of Said County.

- A. Regulations in this Planned Development document replace those set forth in the Main Street and Freeway Corridor Specific Plan (SP PPD15-00001), planning and zoning provisions of the Hesperia Development Code, and any other applicable ordinances. Where land use regulations and/or development standards of the SP, Development Code (Title 16) of the Hesperia Municipal Code are inconsistent with this Planned Development, the standards and regulations of this Planned Development shall prevail and supersede the applicable provisions of the Specific Plan and Development Code.
- B. This Planned Development does not convey any rights not otherwise granted under the provisions and procedures contained in the Specific Plan and/or Development Code and the other applicable ordinances, except as specifically provided herein after approval. Any issue not specifically covered in this Planned Development shall be subject to the Specific Plan and/or Hesperia Municipal Code, or to subject to interpretation by the Development Services Director or his/her designee if not specifically covered in the City's existing regulations.

TABLE 1A: NON-RESIDENTIAL USES			
Phase I Recreational @Senior Apartme nts	Clubhouse		3,621 sq. ft. total
Phase III Wing D @Assisted Living	1 st Floor: Restaurant/Kitchen/Dining Rooms	9,323 sq. ft.	18,646 sq. ft. total
	2 nd Floor: Multipurpose Rooms	9,323 sq. ft.	

TABLE 1B: RESIDENTIAL USES			
Phase III & IV Assisted Living	1 st Floor: 96 units	98,916 square feet	197,832 sq. ft. total (192 units)
	2 nd Floor: 96 units	98,916 square feet	
Phase I & II Senior Apartments	1 st Floor: 80 Units	77,812 square feet	154,328 sq. ft. total (160 Units)
	2 nd Floor: 80 Units	76,516 square feet	

Assisted Living Units: 192 Total Units
 Studio Units (120) - 565 square feet
 1-Bedroom Units (72) - 792 square feet

Senior Apartments: 160 Total Units

1ST FLOOR

1 Bedroom Units (64) - 618 square feet
 100 square feet patio
 Total: 718 square feet

2 Bedroom Units (16)- 967 square feet
 100 square feet patio
 Total: 1,067 square feet

2nd FLOOR

1 Bedroom Units (64)- 618 square feet
 86 square feet patio
 Total: 704 Square feet

2 Bedroom Units (16)-	967 square feet
	<u>78 square feet patio</u>
Total:	1,045 square feet

IV. PROJECT DISCUSSION

The Americana-Hesperia Retirement Project Planned Development (PD) consisting of age-restricted mixed-uses will be completed in six phases on 21.78 gross acres (APNs: 0405-062-56 and 0405-062-70) in the City of Hesperia. All uses are exclusively for residents of the Senior Apartments and clients of Assisted Living and Adult Day Care Facilities, inclusive of family and friends, and not open to the public.

Phase I to be completed and occupied by Year 2023

- 80 Senior Apartment dwelling units
- 3,621 square-foot Clubhouse
- Parking Requirements
 - Parking Required: 1.41 x 80 = 113 spaces
 - Parking Provided: = 125 spaces
 - 47 Garage Spaces
 - 78 stalls

Phase II to be completed and occupied by Year 2025

- Remaining 80 Senior Apartment dwelling units.
- Parking Requirements:
 - Parking Required: 1.41 x 80 =113 spaces
 - Parking Provided: =101 spaces
 - 49 Garage Spaces
 - 52 spaces

Phase III to be completed and occupied by 2027-2028 tentatively

- 104 Assisted Living dwelling units; (Wings A & B)
 - Multi-Purpose Rooms with a total of 9,323 square feet in the 2nd floor of the Assisted Living Building;
 - 9,323 square-foot Restaurant; (Wing D)
-
- Parking Requirements:
 - Parking Required: 62 Studios /3 =21 spaces
 - 42 (1) bedroom
 - 42 x 2=84 /3 =28 spaces
 - Employees =8 spaces
 - Total: =57 spaces
 - Parking Provided: =77 spaces

Phase IV to be completed and occupied by 2027-2028 tentatively

- 88 Assisted Living dwelling units; (Wing C)
- Parking Requirements:

➤	Parking Required: 58 Studios/3	=19 spaces
➤	30 (1) bedroom	
➤	30 x 2=60/3	=20 spaces
➤	Employees	= 7 spaces
➤	<hr/>	
➤	Total	=46 spaces
➤	Parking Provided	=107 spaces

Phase V to be completed and occupied by 2027-2028 tentatively

- Commercial Pad “B” for 13,462 square feet of single-story retail space
- Parking requirements: 4 space/1,000 SF of area
 $13,462/1,000=13.46 \times 4 = 54$ spaces
- Parking Provided: = 112 spaces

Phase VI to be completed and occupied by 2027-2028 tentatively

- Commercial Pad “A” for 14,820 square feet of single-story retail space
- Parking requirements: 4 spaces/1,000 SF of area
 $14,820/1,000=14.82 \times 4 =60$ spaces
- Parking provided =84 spaces

A. Commercial Land Uses

The project is located within the Main Street and Freeway Corridor Specific Plan and allowing for the following uses:

Assisted Living Facility

The restaurant within the assisted living facility is approved for on-site beer and wine sales as approved through CUP 18-00007.

NC – Neighborhood Commercial

This zone is intended to provide opportunities for immediate day-to-day convenience shopping and services for the residents of the immediate neighborhood.

Proposed uses for bakeries, florist or gift shops, barber shops or beauty parlors, laundry and dry-cleaning establishments, Senior Service placement agencies, ATM, 7-Eleven store, restaurants (one restaurant approved for on-site consumption of beer, wine and liquor through CUP18-00007), etc. And all other uses allowed under the Neighborhood commercial zone.

C2- General Commercial

This zone is intended to provide opportunities for the full range of retail and service businesses accessible from all area of the city and surrounding communities for the purchase of primary shopper's goods.

Desired uses for the medical clinics, drugstores such as CVS, Rite Aid and Walgreen, discount stores such as Dollar Tree or Dollar Max. One license for off-site sale of beer, wine and liquor is permitted at a drugstore similar to the above through CUP18-00007.

C3- Service commercial

This zone is intended to be primarily supportive to the commercial oriented consumer, business to business retail and wholesale sales and services, and to provide convenient services for those people employed in the immediate area.

Proposed uses for retail/professional offices, training schools and various type of businesses permitted under the Service commercial zoning.

PROHIBITED USES

Any issue not specifically covered in the ~~CPD~~ ^{CPD} document shall be subject to the Main

Street and Freeway Corridor Specific Plan and applicable portions of the Hesperia Municipal Code, or subject to interpretation by the Development Services Director or his/her designee if not specifically covered in the City's existing regulations.

This PD does not allow the following uses for the Commercial Pads:

- ☐ VAPE or smoke shops and similar retail uses.
- ☐ Automotive Repair
- ☐ Nightclub.
- ☐ Equipment Sales
- ☐ Adult oriented businesses and similar uses
- ☐ Cash Checking and Advance and similar uses
- ☐ Tattoo Parlor and similar uses
- ☐ Pawnshops and similar uses
- ☐ Gold Sales and Exchange and similar use
- ☐ Liquor stores and small scale conveniences stores selling alcohol

B. Parking Information:

- Off-Site based "Private Transportation Services" will be available to meet the residents' needs;
- On-site grooming, medical, retail and dining services are proposed;
- Any changes to the proposed uses will be subject to additional review for compliance and legal entitlement processes with City, including Off-Street parking and other requirements;
- The combination of on-site uses minimizes vehicular transportation needs;
- The combination of on-site uses provides a major concept of in-lieu amenities for the integrated design of this project;
- 96 garages are designed for ease of parking in the Apartment complex.
- All Parking and Driveways shall have a "Reciprocal Access and Parking Easement," as delineated on the Site Plan under "Information" Note; and
- The project does not propose a Bus Stop in front of this site due to the limited frontage and lack of larger commercial retail uses. NOTE: Kevin Kane, G.M. of the Victor Valley Transit Agency (VVTa) was contacted regarding this issue.

1. Wing D in Assisted Living Building

a. Restaurant, Kitchen, and Dining Rooms

Restaurant services will be limited to use by on-site residents, inclusive of family and friends. This use does not require additional off-street parking because these services are for internal use only and will not be made available to the public.

b. Multipurpose Rooms

Any activities in the Multipurpose Rooms will be limited to use by on-site residents, inclusive of family and friends. This use does not require additional off-street parking because these services are for internal use only and will not be made available to the public.

2. Clubhouse

All activities in the Clubhouse will be limited to on-site senior residents or adult clients, inclusive of family and friends. This use does not require additional off-street parking because these services are for internal use only and will not be made available to the public.

3. Recreational Area

All activities in the Recreational Area will be limited to on-site senior residents or adult clients, inclusive of family and friends. This use does not require additional off- street parking because these services are for internal use only and will not be made available to the public.

4. Loading Zones

There are 2 designated Loading Zones (1 each for institutional uses at the Assisted Living Buildings) as requested by City Staff. Additionally, a ten (10) minute limited parking zone is provided.

Parking Summary Chart

Table 4			
USE	Required Resident/Client Parking	Required Staff Parking	Total Parking Provided
Apartments	226	Not Applicable	226
Assisted Living Facility	88	15	184
Retail Building "A"	60		84
Retail Building "B"	54		112
Sub-Total Required	428	15	443
		Total Spaces Provided	606

ADA Parking Summary Chart

Table 5						
USE	Parking Spaces Required	ADA Parking	Van Accessible Parking	Total ADA Required Parking	ADA Parking Provided Std. Van	Requirement Met
Apartments	226	6	1	7	5 5	Yes
Assisted Living Facility	103	5	1	6	8 8	Yes
Retail Building "A"	60	2	1	3	2 2	Yes
"B"	54	2	1	3	2 2	Yes
Total	443	15	4	19	17 17	Yes

Notes:

- ☐ Van Accessible ADA Parking requirements are a minimum of 1 and 1 for every 6 ADA parking spaces, or portion thereof. Retail Buildings requiring less than 25 spaces are required to have at least 1 ADA Van Accessible space.
- ☐ City staff requested one ADA Van-Accessible parking space for each primary use, a minimum of 18 van-accessible parking spaces will be provided, as shown on Table 6.

RESOLUTION NO. 2019-046

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT TO CONSTRUCT A 2-STORY, 160-UNIT SENIOR APARTMENT DEVELOPMENT, A 2-STORY, 192-UNIT SENIOR ASSISTED LIVING FACILITY INCLUDING KITCHEN AND DINING FACILITIES WITH THE SALE OF BEER AND WINE, AND TWO COMMERCIAL RETAIL BUILDINGS OF APPROXIMATELY 28,000 SQUARE FEET ON 21.5 GROSS ACRES LOCATED ON THE NORTH SIDE OF MAIN STREET, APPROXIMATELY 250 FEET EAST OF THE CALIFORNIA AQUEDUCT (CUP18-00007)

WHEREAS, Americana-Hesperia Retirement Project, LLC has filed an application requesting approval of CUP18-00007 described herein (hereinafter referred to as "Application"); and

WHEREAS, the Application applies to 21.5 gross acres which the western portion is currently PPD15-00001 and the eastern portion is within the Medium Density Residential (MDR) Zone of the Main Street and Freeway Corridor Specific Plan located on the north side of Main Street, approximately 250 feet east of the California Aqueduct and consists of Assessor's Parcel Number 0405-062-56 & 70; and

WHEREAS, the Application, as contemplated, proposes to construct a 2-story, 160-unit senior apartment development, a 2-story, 192-unit senior assisted living facility including kitchen and dining facilities with the sale of beer and wine, and approximately 28,000 square feet in two commercial buildings with on-site and off-site alcohol sales allowed, in six phases; and

WHEREAS, Americana-Hesperia Retirement Project, LLC has also filed an application requesting approval of Planned Development PPD18-00001, which will replace the existing zoning to provide specific development standards allowing this unique mix of senior uses at the proposed intensity/density of development; and

WHEREAS, the subject property as well as the properties to the north and east, are currently vacant. A restaurant and a multi-tenant retail building exist to the south and a commercial mini-storage exists to the west; and

WHEREAS, approximately 10 acres of the subject property is currently within the Medium Density Residential (MDR) Zone of the Specific Plan. The properties to the north and east are within the Low Density Residential (LDR) and the properties to the south are within the Regional Commercial (RC) Zone of the Specific Plan; and

WHEREAS, the review period for the environmental Initial Study for the proposed project was completed on March 20, 2019, which determined that no significant adverse environmental impacts to either the man-made or physical environmental setting would occur with the inclusion of mitigation measures. Mitigated Negative Declaration ND18-02 was subsequently prepared; and

WHEREAS, on July 11, 2019, the Planning Commission of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Application, and concluded said hearing on that date, the unanimous approval to recommend to the City Council the adoption and approval of both cases; and

WHEREAS, on October 1, 2019, the City Council of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

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.

Section 2. Based upon substantial evidence presented to the City Council during the above-referenced October 1, 2019 hearing, including public testimony and written and oral staff reports, this Council specifically finds as follows:

- (a) Based upon Negative Declaration ND18-02 and the initial study which supports the Mitigated Negative Declaration, the City Council finds that there is no substantial evidence that the proposed General Plan Amendment will have a significant effect on the environment;
- (b) The City Council has independently reviewed and analyzed the Negative Declaration, and finds that it reflects the independent judgement of the Council, and that there is no substantial evidence, in light of the whole record, that the project may have a significant effect on the environment.
- (c) The site for the proposed use is adequate in size and shape to accommodate the proposed project subject to approval of the regulations within Planned Development PPD18-00001 and Conditional Use Permit CUP18-00007. The proposed assisted living facility as well as the sale of alcoholic beverages are allowed, pursuant to PPD18-00001. This conditional use permit also allows the 2-story, 160-unit senior apartment development, uses including kitchen and dining facilities. The use would not impair the integrity and character of the surrounding neighborhood, and is consistent with the Planned Development as well as the Main Street and Freeway Corridor Specific Plan. The sale of alcoholic beverages associated with the dining area is restricted to the sale of beer and wine for on-site consumption for the seniors who stay within the apartments or assisted living unit or friends and family of those. Additionally, a restaurant in one of the commercial buildings would also be allowed to have alcohol sales, as well as a drug or grocery store, not including small scale convenience stores, would be allowed to sell beer, wine and liquor for off-site consumption. This project will meet all regulations of Planned Development PPD18-00001, which is consistent with the objectives of the General Plan and the Specific Plan.
- (d) The proposed conditional use permit is consistent with the goals, policies, standards and maps of the adopted Zoning, Specific Plan, Development Code and all applicable codes and ordinances adopted by the City of Hesperia with approval of PPD18-00001. The project also complies with the Americans with Disabilities Act (ADA), as the required accessible parking spaces and paths of

travel meet the standards within the ADA as well as state and federal handicapped accessible regulations. The development will be constructed pursuant to the California Building and Fire Codes and adopted amendments as well.

- (e) The site for the proposed use will have adequate access based upon its access from Fuente Avenue, La Rosa Street and Main Street. There are also adequate provisions for sanitation, water and public utilities and general services to ensure the public convenience, health, safety and general welfare. The residential and nonresidential buildings will have adequate infrastructure to operate with the extension of La Rosa Street and Fuente Avenue to Main Street and an approximately 1,350 foot extension of sewer line to connect with the existing sewer line to the north.

Section 3. Based on the findings and conclusions set forth in this Resolution, the City Council hereby approves Conditional Use Permit CUP18-00007 subject to the conditions of approval as shown in Attachment "A" and Negative Declaration ND18-02, which is attached to the staff report for this item.

Section 4. That 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 1st day of October 2019.

Larry Bird, Mayor

ATTEST:

Melinda Sayre
City Clerk

ATTACHMENT 4

ATTACHMENT "A" List of Conditions for CUP18-00007

Approval Date: September 17, 2019
Effective Date: September 17, 2019
Expiration Date: September 17, 2022

This list of conditions applies to: Consideration of Planned Development PPD18-00001 and Conditional Use Permit CUP18-00007 to construct a two-story, 160 unit senior apartment development, a two-story, 192 unit senior assisted living facility, a 13,462 square foot commercial building, and a 14,820 square foot commercial building on 22 gross acres within the PPD (15-00001) and the Medium Density Residential (MDR) zones of the Main Street and Freeway Corridor Specific Plan located on the north side of Main Street, approximately 250 feet east of the California Aqueduct (Applicant: Apollo Construction, LLC; APN: 0405-062-56 & 70)

The use shall not be established until all conditions of this land use approval application have been met. This approved land use shall become null and void if all conditions have not been completed by the expiration date noted above. Extensions of time may be granted upon submittal of the required application and fee prior to the expiration date.

(Note: the "COMPLETED" and "COMPLIED BY" spaces are for internal City use only).

ADDITIONAL CONDITIONS

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

PRE-CONSTRUCTION SURVEY. ACDFW 30-day pre-construction survey be performed immediately prior (i.e. 30 days or less) to the start of any future construction activities to determine if any owls have moved onto the site since the May 2018 surveys. (P)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

PROTECTED PLANTS. Three copies of a protected plant plan shall be submitted to the Building Division showing the present location and proposed treatment of all smoke tree, species in the Agavaceae family, mesquite, large creosote bushes, Joshua Trees, and other plants protected by the State Desert Native Plant Act. Prior to issuance of a grading permit, the grading plan shall require transplanting of all protected plants as specified in the approved protected plant plan. (P)

CONDITIONS REQUIRED AS PART OF SUBMITTAL OF PUBLIC IMPROVEMENT PLANS

COMPLETED
IN COMPLIANCE

COMPLIED BY

THESE CONDITIONS SHALL APPLY TO EACH SEPARATE AND INDIVIDUAL PHASE OF DEVELOPMENT (IF APPLICABLE TO THAT PHASE).

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

SPECIALTY PLANS. The following additional plans/reports shall be required for businesses with special environmental concerns: (B)

A. Restaurants and food handling facilities shall submit plans to the San Bernardino County Department of Environmental Health Services. One set of the approved plans shall be submitted to the Building Division with the required application fees.

B. Submit two (2) sets of engineered plans for the proposed

swimming pool to the Building Division for review and construction permits with the required application fees. The plans shall have prior review and approval by the San Bernardino County Department of Environmental Health Services.

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

CONSTRUCTION PLANS. Five complete sets of construction plans prepared and wet stamped by a California licensed Civil or Structural Engineer or Architect shall be submitted to the Building Division with the required application fees for review. (B)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

PARCEL MAP. A Parcel Map shall be prepared by or under the direction of a registered civil engineer or licensed land surveyor, based upon a survey, and shall conform to all provisions as outlined in article 66444 of the Subdivision Map Act as well as the San Bernardino County Surveyors Office Map Standards. (E)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

TRAFFIC STUDY. The applicant shall be required to provide a traffic study prepared by a California licensed traffic engineer. (E)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

GEOTECHNICAL REPORT. The Developer shall provide two copies of the soils report to substantiate all grading building and public improvement plans. Include R value testing and pavement recommendations for public streets. (E B)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

TITLE REPORT. The Developer shall provide a complete title report 90 days or newer from the date of submittal. (E)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

UTILITY NON INTERFERE/QUITCLAIM DOCS. The Developer shall provide non interference and or quitclaim letter(s) from any applicable utility agencies for any utility easements that affect the proposed project. All documents shall be subject to review and approval by the Engineering Department and the affected utility agencies. The improvement plans will not be accepted without the required documents and approval from the affected agencies. (E)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

PLAN CHECK FEES. Plan checking fees must be paid in conjunction with the improvement plan submittal. All required plans, maps, requested studies, CFD annexations, etc. must be submitted as a package. The Developer shall coordinate with the City's Engineering Analyst, Jamie Carone at (760)947-1149 or jcarone@cityofhesperia.us, to obtain the fee calculation form which shall be completed and submitted, along with fee payment, at time of plan submittal. Any outstanding fees must be paid before final inspection and the release of bonds. (E)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

IRREVOCABLE OFFERS OF DEDICATION. The Developer shall submit an Offer of Dedication to the City's Engineering Department for review and approval. At time of submittal the developer shall complete the City's application for document review and pay all applicable fees. (E)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

COVERED PARKING. The applicant shall provide covered parking over the 62 parking spaces shown adjacent to La Rosa Street.

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

INDEMNIFICATION. As a further condition of approval, the Applicant agrees to and shall indemnify, defend, and hold the City and its officials, officers, employees, agents, servants, and contractors harmless from and against any claim, action or proceeding (whether legal or administrative), arbitration, mediation, or alternative dispute resolution process), order, or judgment and from and against any liability, loss, damage, or costs and expenses (including, but not limited to, attorney's fees, expert fees, and court costs), which arise out of, or are in any way related to, the approval issued by the City (whether by the City Council, the Planning Commission, or other City reviewing authority), and/or any acts and omissions of the Applicant or its employees, agents, and contractors, in utilizing the approval or otherwise carrying out and performing work on Applicants project. This provision shall not apply to the sole negligence, active negligence, or willful misconduct of the City, or its officials, officers, employees, agents, and contractors. The Applicant shall defend the City with counsel reasonably acceptable to the City. The City's election to defend itself, whether at the cost of the Applicant or at the City's own cost, shall not relieve or release the Applicant from any of its obligations under this Condition. (P)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

ON SITE IMPROVEMENTS. All on site improvements as recorded in these conditions, and as shown on the approved site plan shall be completed in accordance with all applicable Title 16 requirements. Due to the small scale of the site plan, these requirements could result in minor changes to parking spaces and landscape planters. The building shall be designed consistent with the design shown upon the approved elevations, materials board and color exterior building elevations. Any exceptions shall be approved by the Director of Development Services. (P)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

RECREATIONAL FACILITIES. The Developer shall submit two sets of plans to develop the recreational facilities to the Building Division with the required application fees. The recreational facilities shall be developed in a similar fashion as shown on the approved plans and any changes to the amenities shall be approved by the director. (P)

CONDITIONS REQUIRED PRIOR TO GROUND DISTURBING ACTIVITY

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

PRE-CONSTRUCTION MEETING. Pre-construction meetings shall be held between the City the Developer grading contractors and special inspectors to discuss permit requirements monitoring and other applicable environmental mitigation measures required prior to ground disturbance and prior to development of improvements within the public right-of-way. (B)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

APPROVAL OF IMPROVEMENT PLANS. All required improvement plans shall be prepared by a registered Civil

Engineer per City standards and per the City's improvement plan checklist to the satisfaction of the City Engineer. Five sets of improvement plans shall be submitted to the Development Services Department and Engineering Department for plan review with the required plan checking fees. All Public Works plans shall be submitted as a complete set. (E)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

DEDICATION(S). The Developer shall grant to the City an Irrevocable Offer of Dedication for Main Street. The right of way full width for Main Street shall be one-hundred (100') feet. The Developer shall also grant to the City an Irrevocable Offer of Dedication for La Rosa Street. The right of way full width for La Rosa Street shall be sixty (60') feet. The Developer shall also grant to the City an Irrevocable Offer of Dedication for any part of the Path of Travel located behind any commercial drive approaches that encroach onto private property. It is the Developers responsibility to obtain any additional Right of Way dedication needed to satisfy the 26 minimum paving requirement at no cost to the City. Corner cut off right of way dedication per City standards is required at all intersections. (E)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

UTILITY NON INTERFERE/QUITCLAIM DOCS. The Developer shall provide non-interference and or quitclaim letter(s) from any applicable utility agencies for any utility easements that affect the proposed project. All documents shall be subject to review and approval by the Engineering Department and the affected utility agencies. Grading permits will not be issued until the required documents are reviewed and approved by all applicable agencies. Any fees associated with the required documents are the Developer's responsibility. (E)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

GRADING PLAN. The Developer shall submit a Grading Plan with existing contours tied to an acceptable City of Hesperia benchmark. The grading plan shall indicate building footprints and proposed development of the retention basin(s) as a minimum. Site grading and building pad preparation shall include recommendations provided per the Preliminary Soils Investigation. All proposed walls shall be indicated on the grading plans showing top of wall (tw) and top of footing (tf) elevations along with finish grade (fg) elevations. Wall height from finish grade (fg) to top of wall (tw) shall not exceed 6.0 feet in height. Grading Plans are subject to a full review by the City of Hesperia and the City Engineer upon submittal of the Improvement Plans. (E)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

OFF-SITE GRADING LETTER(S). It is the Developers responsibility to obtain signed Off-Site Grading Letters from any adjacent property owner(s) who are affected by any Off-Site Grading that is needed to make site work. The Off-Site Grading letter(s) along with the latest grant deed(s) must be submitted and appropriate fees paid to the City's Engineering Department for plan check approval. (E)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

STREET IMPROVEMENTS. The Developer shall design street improvements in accordance with City standards and these conditions. (E)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

MAIN STREET: Saw-cut (2-foot min.) and match-up asphalt pavement on Main Street across the project frontage, based on City's 120-foot Main Street Corridor "A" Roadway Standard. The curb face is to be located at 44' from the approved construction centerline. The design shall be based upon an acceptable centerline profile extending a minimum of three hundred (300) feet beyond the project boundaries where applicable. These improvements shall consist of:

- A. 8" Curb and Gutter per City standards.
- B. Sidewalk (width = 6 feet) per City standards.
- C. Roadway drainage device(s).
- D. Streetlights per City standards.
- E. Intersection improvements including handicapped ramps per City standards.
- F. Commercial driveway approaches per City standards.
- G. Pavement transitions per City Standards.
- H. Design roadway sections per existing, approved street sections and per "R" value testing with a traffic index of 12 and per the soils report.
- I. Cross sections every 50-feet per City standards.
- J. Traffic control signs and devices as required by the traffic study and/or the City Engineer.
- K. Provide a signage and striping plan per City standards.
- L. Relocate existing utilities as required. The Developer shall coordinate with affected utility companies.
- M. Provide signage and striping for a Class 2 bike trail, per City's adopted non-motorized transportation plan.

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

FUENTE AVENUE. Construct 26' minimum paving on Fuent Avenue across the project frontage, based on City's 80-foot Secondary Arterial Roadway Standard. The curb face is to be located at 25' from the approved centerline. The design shall be based upon an acceptable centerline profile extending a minimum of three hundred (300) feet beyond the project boundaries where applicable. These improvements shall consist of:

- A. 8" Curb and Gutter per City standards.
- B. Sidewalk (width = 6 feet) per City standards.
- C. Roadway drainage device(s).
- D. Street lights per City standards.
- E. Intersection improvements including handicapped ramps per City standards.
- F. Commercial driveway approaches per City standards.
- G. Pavement transitions per City Standards.
- H. Design roadway sections per existing, approved street sections and per "R" value testing with a traffic index of 10 and per the soils report.
- I. Traffic control signs and devices as required by the traffic study and/or the City Engineer.
- J. Provide a signage and striping plan per City standards.
- K. It is the Developer's responsibility to obtain any off-site dedications for transition tapers including acceleration / deceleration tapers per City standards. It is also the Developer's responsibility to obtain any additional Right-of-Way dedication needed to satisfy the 26' minimum

paving requirement at no cost to the City.

L. Relocate existing utilities as required. The Developer shall coordinate with affected utility companies.

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

LA ROSA STREET. Construct 26' paving minimum on La Rosa Street across the project frontage, based on City's 60-foot Local Roadway Standard. The curb face is to be located at 20' from the approved centerline. The design shall be based upon an acceptable centerline profile extending a minimum of three hundred (300) feet beyond the project boundaries where applicable. These improvements shall consist of:

- A. 8" Curb and Gutter per City standards.
- B. Sidewalk (width = 6 feet) per City standards.
- C. Roadway drainage device(s).
- D. Streetlights per City standards.
- E. Intersection improvements including handicapped ramps per City standards.
- F. Commercial driveway approaches per City standards.
- G. Pavement transitions per City Standards.
- H. Design roadway sections per existing, approved street sections and per "R" value testing with a traffic index of 8 and per the soils report.
- I. Traffic control signs and devices as required by the traffic study and/or the City Engineer.
- J. Provide a signage and striping plan per City standards.
- K. It is the Developer's responsibility to obtain any off-site dedications for transition tapers including acceleration / deceleration tapers per City standards. It is also the Developer's responsibility to obtain any additional Right-of-Way dedication needed to satisfy the 26' minimum paving requirement at no cost to the City.
- L. Relocate existing utilities as required. The Developer shall coordinate with affected utility companies.

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

UTILITY PLAN. The Developer shall design a Utility Plan for service connections and / or private hydrant and sewer connections. Any existing water, sewer, or storm drain infrastructures that are affected by the proposed development shall be removed / replaced or relocated and shall be constructed per City standards at the Developer's expense.
(E)

- A. A remote read automatic meter reader shall be added on all meter connections as approved by the City Engineer.
- B. The Developer shall design a Utility Plan for service connections and / or private water and sewer connections. The Developer will be required to design and construct 8" (min.) PVC water main in Fuente Avenue and La Rosa Street per City standards.
- C. It is the Developer's responsibility to connect to sewer and pay the appropriate fees. The Developer will be required to design and construct 8" (min.) PVC sewer main and tie proposed sewer into existing sewer in Live Oak Street per City standards.
- D. Complete V.V.W.R.A.'s "Wastewater Questionnaire for Commercial / Industrial Establishments" and submit to the

Engineering Department. Complete the "Certification Statement for Photographic and X-ray Processing Facilities" as required.

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

WATER IMPR. PLAN. The Developer shall design and construct an 8 minimum PVC water main in Fuente Avenue from Main Street to La Rosa Street and in La Rosa Street from Fuente Avenue to westerly property line. Design shall consist of plan and profile per City standards. (E)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

WATER/SEWER IMPR. PLAN. The Developer shall design water and sewer improvements in accordance with City standards, and as indicated below. (E)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

SEWER IMPROVEMENT PLAN: The Developer shall design and construct an 8 minimum PVC SDR 35 sewer main in La Rosa Street from Fuente Avenue to westerly property line and north to Live Oak Street where Developer will tie into existing sewer main. Design shall consist of plan and profile per City standards. (E)

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

CULTURAL RESOURCES. In the event that pre-contact cultural resources are discovered during project activities, all work in the immediate vicinity of the find (within a 60-foot buffer) shall cease and a qualified archaeologist meeting Secretary of Interior standards shall be hired to assess the find. Work on the other portions of the project outside of the buffered area may continue during this assessment period. Additionally, the San Manuel Band of Mission Indians Cultural Resources Department will be contacted if any such find occurs and be provided information after the archaeologist makes his/her initial assessment of the nature of the find, so as to provide Tribal input with regards to significance and treatment. The archaeologist shall complete an isolate/site record for the find and submit this document to the applicant and Lead Agency for dissemination to the San Manuel Band of Mission Indians.

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

CULTURAL RESOURCES. If pre-contact cultural resources are discovered and avoidance cannot be ensured, an SOI-qualified archaeologist shall be retained to develop a cultural resources Treatment Plan, as well as a Discovery and Monitoring Plan, the drafts of which shall be provided to San Manuel Band of Mission Indians Cultural Resources Department for review and comment. The Lead Agency and/or applicant shall, in good faith, consult with San Manuel Band of Mission Indians Cultural Resources Department on the disposition and treatment of any other cultural materials encountered during the project.

COMPLETED **COMPLIED BY**
NOT IN COMPLIANCE

CULTURAL RESOURCES. If human remains or funerary objects are encountered during any activities associated with the project, work in the immediate vicinity (within a 100-foot buffer of the find) shall cease and the County Coroner shall be contacted pursuant to State Health and Safety Code §7050.5 and that code enforced for the duration of the project.

COMPLETED **COMPLIED BY**

LOT MERGER. A lot merger shall be submitted, approved,

NOT IN COMPLIANCE

and recorded if construction occurs before the recordation of the Parcel Map. The lot merger and the required application and fees shall be submitted to the Planning Division prior to review and approval by the City for recordation. (P)

COMPLETED COMPLIED BY
NOT IN COMPLIANCE

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE FEE. The applicant shall submit a check to the City in the amount of \$2,404.75 payable to the Clerk of the Board of Supervisors of San Bernardino County to enable the filing of a Notice of Determination. (P)

COMPLETED COMPLIED BY
NOT IN COMPLIANCE

The applicant/developer shall coordinate with the San Bernardino County Fire Department for plan check purposes prior to submittal to the City.

CONDITIONS REQUIRED PRIOR TO BUILDING PERMIT ISSUANCE

COMPLETED COMPLIED BY
NOT IN COMPLIANCE

CONSTRUCTION WASTE. The developer or builder shall contract with the City's franchised solid waste hauler to provide bins and haul waste from the proposed development. At any time during construction, should services be discontinued, the franchise will notify the City and all building permits will be suspended until service is reestablished. The construction site shall be maintained and all trash and debris contained in a method consistent with the requirements specified in Hesperia Municipal Code Chapter 15.12. All construction debris, including green waste, shall be recycled at Advance Disposal and receipts for solid waste disposal shall be provided prior to final approval of any permit. (B)

COMPLETED COMPLIED BY
NOT IN COMPLIANCE

DEVELOPMENT FEES. The Developer shall pay required development fees as follows:

A. School Fees (B)

COMPLETED COMPLIED BY
NOT IN COMPLIANCE

LANDSCAPE PLANS. The Developer shall submit three sets of landscape and irrigation plans including water budget calculations, required application fees, and completed landscape packet to the Building Division. Plans shall utilize xeriscape landscaping techniques in conformance with the Landscaping Ordinance. The number, size, type and configuration of plants approved by the City shall be maintained in accordance with the Development Code. (P)

CONDITIONS REQUIRED PRIOR TO CERTIFICATE OF OCCUPANCY

COMPLETED COMPLIED BY
NOT IN COMPLIANCE

DEVELOPMENT FEES. The Developer shall pay required development fees as follows:

A. Development Impact Fees (B)

B. Park Fees (Not applicable to commercial portion) (B)

C. Utility Fees (E)

COMPLETED COMPLIED BY
NOT IN COMPLIANCE

UTILITY CLEARANCE AND C OF O. The Building Division will provide utility clearances on individual buildings after required permits and inspections and after the issuance of a

Certificate of Occupancy on each building. Utility meters shall be permanently labeled. (B)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

DIRECTORY ADDRESSING. Apartments with more than three separate buildings on site shall have a building directory. Directories are to be posted at the main entrance(s) to the complex on the entry driveway side. Directories shall not be located in the public right-of-way or clear sight triangle areas. Directories shall be of sufficient size to be clearly visible from the public roadway serving the entrance driveway but in no case less than two feet in either dimension or six square feet. The directory shall be lighted from a power source dedicated to the general premises. (B)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

AS BUILT PLANS. The Developer shall provide as built plans, Notice of Completion, and One Year Maintenance Bonds to the Engineering / Water Sewer Departments. (E)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

ELECTRONIC COPIES. The Developer shall provide electronic copies of the approved project in AutoCAD format Version 2007 to the City's Engineering Department. (E)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

PUBLIC IMPROVEMENTS. All public improvements shall be completed by the Developer and approved by the Engineering Department. Existing public improvements determined to be unsuitable by the City Engineer shall be removed and replaced. (E)

COMPLETED
NOT IN COMPLIANCE

COMPLIED BY

CFD ANNEXATION. The applicant shall annex the property into Community Facilities District CFD 94-01 prior to occupancy of any building or concurrent with recordation of the parcel map. (F)

NOTICE TO DEVELOPER: IF YOU NEED ADDITIONAL INFORMATION OR ASSISTANCE REGARDING THESE CONDITIONS, PLEASE CONTACT THE APPROPRIATE DIVISION LISTED BELOW:

(B) Building Division	947-1300
(E) Engineering Division	947-1476
(F) Fire Prevention Division	947-1603
(P) Planning Division	947-1200
(RPD) Hesperia Recreation and Park District	244-5488



ATTACHMENT 5

DATE: July 11, 2019

TO: Planning Commission

FROM: Chris Borchert, Principal Planner

SUBJECT: Planned Development PPD18-00001, Conditional Use Permit CUP18-00007 (Americana-Hesperia Retirement Project, LLC; APN: 0405-062-56 & 70)

RECOMMENDED ACTION

It is recommended that the Planning Commission adopt Resolution No. PC-2019-11, recommending that the City Council introduce and place on first reading an ordinance approving PPD18-00001 and adopt Resolution No. PC-2019-12, recommending approval of CUP18-00007 for the entire development including assisted living facility and alcohol sales.

BACKGROUND

Proposal: The project consists of Planned Development PPD18-00001 and Conditional Use Permit CUP18-00007, to construct a two-story, 160 unit 55+ senior apartment development; a two-story, 192 unit assisted living facility; a 13,462 square foot and 14,820 square foot commercial retail buildings in six phases on 21.55 acres.

Tentative Parcel Map TPMN18-00002 (PM-19940) will create four parcels within the 21 acre site, allowing separate ownership of the senior apartments, the assisted living facility and the two separate retail buildings. An easement will be recorded as part of the parcel map to provide reciprocal access across all parcels within the project. The parcel map was unable to be completed in time to include it with the approvals, it will go through the Development Review Committee process in the near future.

This project is unique in that it will attempt to provide an independent adult senior living community (only persons 55 years or older qualify), where residents have access to many needed services without leaving the development. The project is designed to provide meals, exercise and recreational facilities, medical care, and hair care for those residing within the apartments and assisted living facilities and those seniors visiting. After gaining approval of the western portion of the project in 2015, the City sold the neighboring 10 acres to the applicant for the expansion of the Planned Development. The project required/requires approval of a Planned Development, as the Main Street and Freeway Corridor Specific Plan (Specific Plan) does not allow the proposed intensity of residential development nor the proposed reductions in development standards.

Location: On the north side of Main Street, approximately 250 feet east of the California Aqueduct. (Attachment 1)

Current General Plan, Zoning and Land Uses: The western portion of the property is currently zoned PPD15-00001, and the northern/eastern portion is Medium Density Residential within the Specific Plan. The surrounding land is designated as noted on Attachment 2. The project site, as well as the properties to the north and east are currently vacant. A restaurant and a multi-tenant retail building exist to the south and a commercial mini-storage exists to the west.

ISSUES/ANALYSIS

Planned Development

A Planned Development is similar to a Specific Plan, but on a smaller scale. It allows a submittal based on the following purpose:

The planned development review procedure shall be used for large scale development projects generally below one thousand (1,000) dwelling units where, because of a mixture of uses or because of site constraints, flexibility in design and cohesive planning of the entire site is deemed necessary. Projects exceeding one thousand (1,000) dwelling units, or commercial, industrial or mixed-use projects of size or impacts should be filed as a specific plan. The planned development process provides an alternative site planning process that encourages creative and imaginative design of large-scale, multi-phased residential, commercial or industrial developments, or a mixture of such uses, within the framework of a single development plan. The procedure permits greater regulatory and design flexibility than conventional zoning, in order to achieve a more economical and efficient use of land and a high quality of design.

The project is proposing commercial where it was previously Neighborhood Commercial, and the assisted living and senior apartments are within the Medium Density Residential zone which is appropriate. As stated above, you are allowed “greater regulatory” flexibility in order to “achieve a more economical and efficient use of land and a high quality of design.”

Senior Apartments

The northern 8.78 acres of the subject property will be for 160 senior apartments restricted to those 55 years and older. 128 units are 1 bedroom utilizing the same floor plan, just reversed or “flipped” throughout the buildings. 32 of the units are two-bedroom. Each 1-bedroom unit is listed as 618 square feet, when the minimum living area for a one bedroom is required to be 650 square feet. The 2-bedroom unit is 967 square feet whereas the minimum required is 950 square feet with 2 bathrooms. The Planned Development justifies the reduced floor area since seniors do not require as much additional space for the belongings of children and young adults. Each second story unit has an 86 square foot patio, 14 square feet below the 100 s.f. minimum. The first story units have 100 s.f. patios.

A central driveway and parking in the original design were removed in order to increase the open space and centralize the pool and clubhouse location. The clubhouse is proposed to be 3,621 s.f. and provides a fitness room, bathrooms, office and a large multi-function room with kitchen. The multi-function room opens onto a trellis covered patio, the pool deck, and a 21' by 41' pool. The large open space areas between the units will have various activity areas such as shuffleboard, bocce ball, putting greens and gazebos with picnic tables.

The municipal code requires 1.5 parking spaces for each one bedroom senior apartment and 1.75 spaces for two bedroom units, which equates to 248 spaces. The proposal includes 226 parking spaces, or 1.41 spaces per unit. Additionally, each unit is supposed to have a covered parking stall with storage area. The proposal has 96 full garages, which is 64 short of the code requirement, however, each unit has a storage room accessed from the patio. A condition of approval requires covered parking over the parking on the north side of the project (La Rosa Street) which is an additional 62 spaces.

The Medium Density Residential district has a maximum density of 15 units per acre, the proposal would allow for 18.2 units per acre. This can also be approved through the Planned Development.

The Specific Plan requires a minimum 15-foot separation between buildings. The Planned Development provides 15-foot separations between habitable buildings, but allows garages and other non-habitable structures to be only 10 feet apart.

The architectural design of the apartment buildings comply with many of the guidelines, the main inconsistencies are relating to the length of the buildings and the lack of roof plane variation.

Assisted Living

The center 8.95 acres of the site will be the two story 192 unit senior assisted living facility which will house residents with some type of disability that prevents them from safely living on their own. The facility offers 120 studio and 72 one bedroom options interspersed throughout the building. The studio units are 565 square feet (550 sf required) and the one bedrooms are 792 square feet (650 sf required) and both offer a full kitchen. Nursing stations are strategically located to provide access to the different wings of the building.

The central portion of the facility, or "Wing D", will consist of 9,342 square feet which will house a restaurant, kitchen and dining area on the first floor, and 9,342 square feet of multi-purpose rooms for various activities on the second floor. This facility will be for both residents in the assisted living as well as the senior apartments. Friends and family of the seniors may also dine within the facility during visiting hours.

The conditional use permit approval would allow beer and wine to be sold for on premise consumption within the restaurant/dining areas of Wing D as part of the Planned Development.

The design of the buildings creates centralized landscaped courtyards and the southeast portion of the site is a very large landscaped area that helps to beautify and buffer the units from the adjacent commercial property and Main Street. The buildings exhibit changes in wall and roof planes which contain decorative tile roofing, complimentary earth tone stucco wall colors with columns, arches, insets with decorative tile, corbels, and other enhancements as shown on Attachments 11 and 12.

Review and approval of the project is required from the City as well as from the Office of Statewide Health Planning and Development (OSHPOD) for the assisted living facility.

Commercial / Retail Buildings

The final buildout of the site will include two retail buildings of 13,462 and 14,820 square feet. These sizes, and the building layouts, are assumptions since no tenants are planned at this time. The original plan involved an adult day care and a potential retail pharmacy such as a CVS or Walgreens type use.

The Main Street entrance onto the site will provide access to the retail buildings as well as the Assisted Living facility and will be installed in Phase 1. Both buildings would require the same parking ratio of 1 space per 200 s.f. of building area, and both exceed the minimum requirement.

The conditional use permit approval would also acknowledge the Planned Development to allow beer, wine and liquor sales in the future in one of the buildings, more than likely the retail

pharmacy tenant. Language in the PUD document does not allow liquor stores or small scale convenience store which sell alcohol.

Alcohol Sales

The applicant will file an application for a Type 41 (On-Sale beer and wine) license with the State Department of Alcoholic Beverage Control (ABC) for the proposed restaurant/dining area within phase III. Approval of the Planned Development will take the place of a CUP for the sale of alcoholic beverages.

Table 1 identifies two existing on-sale alcoholic beverage licenses within Census Tract 100.16 (Attachment 13). ABC authorizes this census tract to have four on-sale licenses. Consequently, this area is not over concentrated and the City is not required to make a finding of public convenience and necessity.

Table 1: Existing On-Sale Licenses in Census Tract 100.16

Status	Business Name	Business Address	Type of License
Active	Chipotle Mexican Grill	9770 Mariposa Road	47-Beer, Wine, and Liquor
Active	Shabang Seafood	14466 Main Street	41-Beer and Wine

The commercial buildings may also have a restaurant with alcohol sales located in them as part of the Planned Development document. Having this in the document now, guarantees this right regardless of future development within the census tract.

The Planned Development would also allow for the off-site sales of alcoholic beverages in one of the front commercial/retail buildings, but not in a “liquor” store fashion. Language stating that the alcohol sales cannot be with a small scale convenience store is provided in the Planned Development document. There are currently 5 off-sale alcohol licenses as shown in Table 2.

Table 2: Existing Off-Sale Licenses in Census Tract 100.16

Status	Business Name	Business Address	Type of License
Active	Shell gas station	13100 Main Street	20-Beer and Wine
Active	Chevron gas station	13188 Main Street	21-Beer, Wine, Liquor
Active	Aldi grocery store	13360 Main Street	20-Beer and Wine
Active	Stater Bros grocery store	14466 Main Street	21-Beer, Wine, Liquor
Active	Mobil gas station (Shop n Go)	14518 Main Street	20-Beer and Wine

ABC authorizes this census tract to have 3 off-sale licenses. By approving an alcohol use through the Planned Development, it will be allowed regardless of future development in the census tract. Due to this reasoning, a condition has been added to require the PUD document to be modified to restrict the commercial buildings to only one off-sale alcohol business.

Project Phasing

The entire project is planned to be built over a period of about 8-10 years, depending on many variables. The project is phased from north to south as shown in Table 3, with the senior

apartments being the first two phases, the assisted living facility being phases three and four, and the commercial buildings being phases five and six.

Table 3: Phasing Information

Phase	Use	Number of Dwelling Units/Rooms	Parking Provided
1	Senior Apartments	80 units	47 garages/35 covered/60 uncovered spaces
2	Senior Apartments	80 units	49 garages/27 covered/25 uncovered spaces
3	Assisted Living Facility Wings A, B & D	104 rooms	76 uncovered spaces
4	Assisted Living Facility Wing C	88 rooms	39 uncovered spaces
5	13,462 S.F. Retail		119 uncovered spaces
6	14,820 S.F. Retail		77 uncovered spaces

Drainage: The project shall retain the drainage created on-site beyond that which has occurred historically within an approved drainage system in accordance with City standards. Further, the proposed development is not allowed to concentrate or redirect stormwater flow. Although the site is approximately 800 feet upstream of a major regional drainage flow, the project site is not impacted. Therefore, the site is not impacted by drainage and will not impact properties downstream.

Water and Sewer: The development will be installing and connecting to an existing 8-inch water line in Main Street. The nearest sewer line is located approximately 1,500 feet to the north in Live Oak Street. Therefore, prior to issuance of a grading permit, improvement plans for this sewer connection shall be submitted.

Traffic Impact: Due to the size and nature of the project, a traffic study was prepared and analyzed by the Engineering Division. The requirements for street widths, turn lanes and the future traffic signal at the intersection of Main Street and Fuente Avenue were all based on the traffic study and Circulation Element requirements.

Schools and Parks: Topaz Elementary is located approximately one-mile to the northeast and Hesperia Community Park (Datura) is located approximately one mile to the north.

Environmental: Approval of this development requires adoption of a mitigated negative declaration pursuant to the California Environmental Quality Act (CEQA). The mitigated negative declaration and initial study (Attachment 10) prepared for the development conclude that there are no significant adverse impacts resulting from the project if adhering to five mitigation measures. After consultation with the San Manuel Band of Mission Indians, the mitigated negative declaration and initial study were routed through the State Clearinghouse as SCH# 2019029096 and the review period closed on March 20, 2019 with no agencies commenting. The mitigation measures address the following: a pre-construction survey for the burrowing owl will be conducted prior to issuance of a grading permit; a protected plant plan was also submitted, which ensures

that all transplantable plants protected by the City's Ordinance will be handled in accordance with the City's Protected Plant Ordinance; and cultural resources, if found during grading, will be handled as requested by the San Manuel Band of Mission Indians.

Conclusion: The project proposes multi-family senior apartments (permitted) and assisted living (CUP) where the zoning is/was Medium Density Residential, and commercial buildings where the zoning was Neighborhood Commercial. As stated in the purpose section, the Planned Development is to allow deviations in the regulations for creative, large scale projects with high quality. While not necessarily creative, Staff focused on quality and improvements over the existing Planned Development (PPD15-00001). Many of the previous nonconformities have been eliminated due to the larger site size and changes to the design. We have also worked with the applicant to add architectural details to the buildings, recreational activity areas, driveway pavers, colored stamped concrete and landscaping across the entire site. Staff finds that the project exceeds what would typically be expected and it justifies the density increase, the decrease in apartment sizes, and lack of parking on the senior apartment site.

FISCAL IMPACT

Development will be subject to payment of all development impact fees adopted by the City.

ALTERNATIVE(S)

1. The Planning Commission may disagree with one or more of the provisions within the Planned Development which provide reduced parking spaces and deficiencies for other development standards that allow for the proposed increased intensity of development. For Staff, the biggest deficiency seemed to be covered parking, therefore, we added a condition of approval requiring 62 spaces along the northern property line to be covered, bringing the project into compliance with that aspect.
2. Provide alternative direction to staff.

ATTACHMENT(S)

1. Aerial photo
2. General Plan & zoning map
3. Site Plan
4. 1 Bedroom Senior Apartment Floor Plan
5. 2 Bedroom Senior Apartment Floor Plan
6. Assisted Living Studio Unit Floor Plan
7. Assisted Living 1BR Unit Floor Plan
8. Elevations for Apartments & Assisted Living
9. Negative Declaration ND18-02 with the Initial Study
10. Resolution No. PC-2019-11 with Exhibit "A" (PPD18-00001)
11. Resolution No. PC-2019-12, with list of conditions (CUP18-00007)



City of Hesperia Meeting Minutes Planning Commission

City Council Chambers
9700 Seventh Ave.
Hesperia CA, 92345
www.cityofhesperia.us

Thursday, July 11, 2019

6:30 PM

Council Chambers

CALL TO ORDER - 6:30 PM

A. Pledge of Allegiance to the Flag

Pledge was led by Commissioner Caldwell

B. Invocation

Invocation was led by Commissioner Blocker

C. Roll Call

Present Chair Tom Murphy
 Commissioner Rusty Caldwell
 Commissioner James Blocker
 Commissioner Kerrie Justice

Absent Vice Chair Cody Leis

D. Reorganization of the Planning Commission

1. Election of Chair
2. Election of Vice Chair

A motion was made by Murphy, seconded by Justice, that Cody Leis be elected Chair and Rusty Caldwell be elected Vice Chair. The motion carried by the following vote:

Aye: Chair Tom Murphy
 Commissioner Rusty Caldwell
 Commissioner James Blocker
 Commissioner Kerrie Justice

Absent: Vice Chair Cody Leis

JOINT PUBLIC COMMENTS

Chair Murphy Opened the Public Comments at 6:33 pm.
There were no Public Comments.
Chair Murphy closed the Public Comments at 6:33 pm.

CONSENT CALENDAR

1. Consideration of the May 9, 2019 Planning Commission Draft Meeting Minutes

Recommended Action:

It is recommended that the Planning Commission approve the Draft Minutes from the regular meeting held on May 9, 2019

Sponsor: Administrative Secretary Erin Baum

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

Aye: Commissioner Kerrie Justice
Commissioner Rusty Caldwell
Commissioner James Blocker

Abstain: Chair Tom Murphy

Absent: Vice Chair Cody Leis

PUBLIC HEARINGS

1. Consideration of a Conditional Use Permit, CUP19-00005, to allow the sale of beer, wine and liquor for on-site consumption within a restaurant (Culichi Town Restaurant) (Applicant: Culichi Town Hesperia, Inc; APN: 3064-481-13).

Recommended Action:

It is recommended that the Planning Commission adopt Resolution No. PC-2019-13, approving CUP19-00005.

Sponsor: Senior Planner Ryan Leonard

Senior Planner Ryan Leonard gave a presentation on the project.

Chair Tom Murphy opened the Public Comments at 6:37pm.

There were no Public Comments.

Chair Tom Murphy closed the Public Comments at 6:38pm.

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

Aye: Chair Tom Murphy
Commissioner Rusty Caldwell
Commissioner James Blocker
Commissioner Kerrie Justice

Absent: Vice Chair Cody Leis

2. Tentative Tract TT18-00002 (TT-20259), Site Plan SPR18-00011 & Minor Exception ME19-00001

Recommended Action:

It is recommended that the Planning Commission adopt Resolution PC No. 2019-14, approving TT18-00002 (TT-20259), Site Plan SPR18-00011 and Minor Exception ME19-00001.

Sponsor: Senior Planner Ryan Leonard

Senior Planner Ryan Leonard gave a presentation on the project.

Chair Tom Murphy opened the Public Comments at 6:45 pm.

There were no Public Comments.

Chair Tom Murphy closed the Public Comments at 6:45 pm.

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

Aye: Chair Tom Murphy
Commissioner Rusty Caldwell
Commissioner James Blocker
Commissioner Kerrie Justice

Absent: Vice Chair Cody Leis

3. Planned Development PPD18-00001, Conditional Use Permit CUP18-00007(Americana-Hesperia Retirement Project, LLC; APN: 0405-062-56 & 70)

Recommended Action:

It is recommended that the Planning Commission adopt Resolution No. PC-2019-11, recommending that the City Council introduce and place on first reading an ordinance approving PPD18-00001 and adopt Resolution No. PC-2019-12, recommending approval of CUP18-00007 for the entire development including assisted living facility and alcohol sales.

Sponsor: Senior Planner Ryan Leonard

Senior Planner Ryan Leonard gave a presentation on the project.

Chair Tom Murphy opened the Public Comments at 7:04 pm.

Applicant's representative Dino DeFazio spoke in regards to the liquor licenses requested on the project.

Chair Tom Murphy closed the Public Comments at 7:06 pm.

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

Aye: Chair Tom Murphy
Commissioner Rusty Caldwell
Commissioner James Blocker
Commissioner Kerrie Justice

Absent: Vice Chair Cody Leis

4. Consideration of a Conditional Use Permit, CUP19-0004 to establish a microbrewery and a beer-tasting lounge at 11430 "I" Avenue (Applicant: 3 Dogs Barking Brewing Company' APN: 0415-272-11).

Recommended Action:

It is recommended that the Planning Commission adopt Resolution No. PC-2019-15, approving CUP19-00004 to establish a microbrewery and a beer-tasting lounge.

Sponsor: Senior Planner Daniel Alcayaga

Senior Planner Daniel Alcayaga gave a presentation on the project.

Chair Tom Murphy opened the Public Comments at 7:17pm.

Jennifer Sweet spoke in favor of the project and applicant.

Bob Tarango spoke in favor of the project and applicant.

Randolph Fincter spoke in favor of the project and applicant.

The applicant, Jessie Canelle spoke in favor of the project and offered to answer Commission questions.

Chair Tom Murphy closed the Public Comments at 7:28 pm.

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

Aye: Chair Tom Murphy
Commissioner Rusty Caldwell
Commissioner James Blocker
Commissioner Kerrie Justice

Absent: Vice Chair Cody Leis

5. Consideration of a Revised Site Plan Review, SPRR19-00003 to construct 20 units on a site that is partially improved with a 12-unit apartment complex, in conjunction with Variance VAR19-00001 to allow setback reductions, on 3.1 gross acres within the Medium Density Residential (MDR) Zone of the Main Street and Freeway Corridor Specific Plan located at 9578 Maple Avenue. This project is categorically exempt from CEQA (Applicant: Maple West, LLC; APNs: 3057-131-35).

Recommended Action:

It is recommended that the Planning Commission adopt Resolution Nos. PC-2019-17 and PC-2019-18, approving SPRR19-00003 to construct 20 units on a site that is partially improved with a 12-unit apartment complex, in conjunction with VAR19-00001 to allow setback reductions.

Sponsor: Senior Planner Daniel Alcayaga

Chair Tom Murphy recused himself for item #6.

Senior Planner Daniel Alcayaga gave a presentation on the project.

Commissioner Rusty Caldwell opened the Public Comments at 7:35pm

Architect Tom Steeno spoke in favor of the project.

Commissioner Rusty Caldwell closed the Public Comments at 7:37 pm.

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

Aye: Commissioner Rust Caldwell
Commissioner James Blocker
Commissioner Kerrie Justice

Absent: Vice Chair Cody Leis

Recused: Chair Tom Murphy

6. Reconsideration of CUP19-00002 to allow for the sale of beer, wine, and liquor for on-site consumption (Type 47) in conjunction with a restaurant at 17376 Main Street, Unit C (Applicant: M.O.R.R. - Round Table Pizza; APN: 04 10-135-56).

Recommended Action:

It is recommended that the Planning Commission adopt Resolution No. PC-2019-19, approving CUP19-00002 to allow for the sale of beer, wine and liquor for on-site consumption (Type 47) in conjunction with a restaurant at 17376 Main Street, Unit C.

Sponsor: Senior Planner Daniel Alcayaga

Senior Planner Daniel Alcayaga gave a presentation on the project.

Chair Tom Murphy opened the Public Comments at 7:42pm.

Applicant Rudolpho Rocha spoke about the project and offered to answer Commission questions.

Chair Tom Murphy closed the Public Comments at 7:44pm.

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

Aye: Chair Tom Murphy
Commissioner Rusty Caldwell
Commissioner James Blocker
Commissioner Kerrie Justice

Absent: Vice Chair Cody Leis

PRINCIPAL PLANNER'S REPORT

Senior Planner Daniel Alcayaga filled in for Principal Planner Chris Borchert, who is on vacation. Daniel gave the Commission an update on pending and future projects.

At this time the Commission circled back to the Commission Reorganization item previously passed over.

The Principal Planner or staff may make announcements or reports concerning items of interest to the Commission and the public

E. DRC Comments

There were no comments

F. Major Project Update

There were no updates.

PLANNING COMMISSION BUSINESS OR REPORTS

The Commission Members may make comments of general interest or report on their activities as a representative of the Planning Commission.

ADJOURNMENT

Meeting was adjourned at 7:50pm until Thursday September 12, 2019.



Erin Baum,
Planning Commission Secretary



Cody Leis
Vice Chair

City of Hesperia STAFF REPORT



DATE: October 1, 2019

TO: Mayor and City Council members

FROM: Nils Bentsen, City Manager

BY: Mike Blay, Assistant City Manager
Tina Bulgarelli, Administrative Analyst

SUBJECT: Amendments to Title 5 of Hesperia Municipal Code – Cannabis Regulations

RECOMMENDED ACTION

It is recommended that the City Council introduce and place on first reading Ordinance No. 2019-52 amending Title 5 of the Hesperia Municipal Code modifying cannabis regulations.

BACKGROUND

In November 2017, the City Council adopted regulations to allow for Commercial Cannabis activity specific to Medicinal Non-Storefront Retailer Delivery Only Dispensaries.

In February 2019, the City Council ratified a tax on Commercial Cannabis businesses and set the rate at 4%.

ISSUES/ANALYSIS

There are eight operating commercial cannabis businesses in the City, based on current applications, there could be as many as thirty to forty in the future. Each business is responsible to pay required taxes and fees to the State Bureau of Cannabis Control, the County of San Bernardino, and the City. Due to the nature of the cannabis industry, banking services are not readily available to the businesses and it remains a mostly cash business. The City believes that occasional audits of the cannabis businesses will ensure that compliance with state and local law is being upheld and that each business is paying their required taxes and fees to the City. The audit will be completed by a company selected by the City pursuant to procedures for selecting vendors to perform City services. A fee for the audit will be charged to the cannabis business to pay for the service. The City will only charge the business owner the fee when an audit is performed on their business.

Adopting a separate fee for audit services, to be charged to the business owner when an audit is deemed necessary will offset any City costs for the service and ensure that each business is paying for their audit individually.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Ordinance No. 2019-52
2. Exhibit A – Title 5 Amendment (clean copy)
3. Exhibit A – Title 5 Amendment (track changes)

ORDINANCE NO. 2019-52

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, AMENDING TITLE 5, CHAPTER 5.50 OF THE HESPERIA MUNICIPAL CODE, RELATED TO COMMERCIAL CANNABIS REGULATIONS

WHEREAS, the City of Hesperia has the authority and responsibility to regulate businesses to protect the public health, safety, and welfare; and

WHEREAS, Title 5 of the Hesperia Municipal Code contains regulations related to commercial cannabis operations; and

WHEREAS, in 2017 the City Council adopted regulations related to the Commercial Cannabis operations, and in February 2019 ratified a tax on Commercial Cannabis businesses; and

WHEREAS, since that time there have been situations where it is apparent that the need for an audit of the financial records of the cannabis businesses may be required; and

WHEREAS, there are currently provisions in the existing regulations to allow the City to review any records related to the cannabis business, inclusive of financial records; and

WHEREAS, additionally, language is proposed to include a more extensive description of the audit requirement; and

WHEREAS, adopting a fee for the audit services will allow the City to recover fully any costs related to auditing the cannabis businesses, and allow the City to schedule audits as needed with each individual business owner being responsible for their audit costs; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE HESPERIA CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1. All of the facts set forth in the forgoing recitals are true, correct and are adopted as findings.

Section 3. Title 5, Chapter 5.50 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "A", attached hereto.

Section 6. This Ordinance shall take effect on November 17, 2019.

Section 7. The City Council of the City of Hesperia hereby declares that should any provision, section, paragraph, sentence, or word of this Ordinance hereby adopted be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by any reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, and words shall remain in full force and effect.

Section 8. The City Clerk shall certify to the adoption of the Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Resolution 93-78.

ADOPTED AND APPROVED this 17th day of September, 2019

Larry Bird, Mayor

ATTEST _____
Melinda Sayre, City Clerk

ATTACHMENT 2

5.50.100 - Records

3) All records required to be maintained by the delivery dispensary must be maintained for no less than 3 years and are subject to immediate inspection upon written request by the Director.

a. Records pertaining to the operation of the delivery dispensary, including but not limited to taxation remittance to State, County or City, revenue, product inventory, etc. shall be subject, at the City's discretion, to an audit, performed by a company selected by the City. The business owner shall pay any required fees, as adopted by the City Council, for the performance of the audit. Upon notification by City that there is an intent to perform an audit, the business owner shall remit the fee for the audit to the City within thirty (30) days.

ATTACHMENT 3

5.50.100 - Records

3) All records required to be maintained by the delivery dispensary must be maintained for no less than 3 years and are subject to immediate inspection upon written request by the Director.

4) a. Records pertaining to the operation of the delivery dispensary, including but not limited to taxation remittance to State, County or City, revenue, product inventory, etc. shall be subject, at the City's discretion, to an audit, performed by a company selected by the City. The business owner shall pay any required fees, as adopted by the City Council, for the performance of the audit. Upon notification by City that there is an intent to perform an audit, the business owner shall remit the fee for the audit to the City within thirty (30) days.

CITY OF HESPERIA

STAFF REPORT



DATE: October 1, 2019

TO: Mayor and City Council Members

FROM: Nils Bentsen, City Manager

BY: Eric Dunn, City Attorney
Casey Brooksher, Director of Finance

SUBJECT: Desert Candle Appeal of CFD 2005-1 Special Taxes

RECOMMENDED ACTION

It is recommended that the City Council evaluate the three appeal requests made by Desert Candle, LP regarding properties within Community Facilities District (CFD) 2005-1 and:

- A. Uphold the recommendation of the City Attorney and staff by providing direction as follows: Appeal Request #1 – approve a \$6,342.02 refund of special taxes for APN# 3046-301-01 for which confirmation of a building permit could not be obtained; Appeal Request #2 – deny the request for special tax reimbursement related to 24 parcels that were properly added to the Assessor's Tax Roll upon issuance of a building permit; and Appeal Request #3 – approve a refund of \$843.24 for the overcharge of APN #3046-261-39 which should have been levied as a Class 7 category; and authorize the City Manager and City Attorney to effectuate the necessary actions.
- B. Adopt Resolution Nos. 2019-054 and HPFA 2019-01, providing clarification to the CFD 2005-1 Rate and Method of Apportionment for the treatment of Developed Property where a change in square footage occurs after the issuance of a building permit for new construction.

BACKGROUND

CFD 2005-1 is the result of a workout agreement to restructure the previously defaulted CFD 91-3 (Belgate Development Project) \$10,000,000 Special Tax Bonds, 1992 Series A (1992 Bonds). These bonds were issued under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended, and were used to finance the construction of certain street, sanitary sewer, water, storm drain, and fire suppression improvements within the CFD No. 91-3. The 1992 Bonds and the interest payable were secured by an annual special tax levied by the City on land within the district and proceeds from the sale of property collected as a result of foreclosure of the lien of such special taxes. The 1992 Bonds were in default because the properties were not built-out as expected, which resulted in the failure to pay the special taxes.

On August 10, 2003, the City entered into a Workout Agreement with Hesperia-ET Ventures, LLC to restructure the defaulted 1992 Bonds from CFD 91-3. Because delinquent principal and interest on the 1992 Bonds continued to accrue since issuance, the amount to defease and redeem the 1992 Bonds exceeded \$18 million. In order to extend the maturity of the bonds and implement a new development plan, a new CFD was formed for the purpose of refunding the 1992 Bonds. In 2005, CFD 2005-1 was formed and the related Community Facilities District

2005-1 (Belgate Development Restructuring) \$18,554,508 Special Tax Bond 2005 Series A were issued to refinance and restructure the 1992 Bonds.

In December 2014 these bonds were refinanced into CFD 2005-1 Special Tax Refunding Bonds, Series 2014, achieving a net present value savings of \$4.2 million. The refinancing lowered the special taxes by approximately 12% for the parcel owners within the District. The CFD 2005-1 Bonds are secured by and payable solely from the proceeds of special taxes levied annually on the taxable property in the District.

The Rate and Method of Apportionment for CFD 2005-1 ("Rate and Method of Apportionment"; Attachment #1), which is the governing document for the District, defines how the special taxes shall be levied on all Assessor's parcels located within the boundaries of CFD 2005-1. As referenced in the Rate and Method of Apportionment, a parcel is deemed to be "Developed Property" upon the issuance of a building permit for new construction. This designation triggers inclusion in the annual special tax levy that is presented to San Bernardino County for inclusion in the annual property tax roll. The funds received from the special tax are used to pay the expenses of the CFD 2005-1 District, including principal and interest on the 2005-1 Bonds referenced above, as well as certain Police and Fire service costs to service the District.

ISSUES/ANALYSIS

Desert Candle, LP (Developer), through their representative Zimmerman Group, submitted a written appeal (Attachment 2) to the City in May 2019 for review of the special taxes that have been levied on the Developer's parcels, pursuant to Section F of the CFD 2005-1 Rate and Method of Apportionment. The appeal references three individual requests, as outlined below:

Request #1 (Lot 555) – This parcel (APN 3046-301-01) has been classified as "Developed Property" pursuant to the Rate and Method of Apportionment; however, confirmation cannot be obtained that a building permit was issued for this parcel. As such, a refund has been requested for the years from FY 2010/11 through FY 2018/19 amounting to \$14,719.48.

Staff Recommendation to Request #1 – Staff concurs that without the issuance of a building permit, a refund is appropriate. However, per California Revenue and Taxation code 5097.a.2, an appeal of special tax must be "filed within four years after making the payment sought to be refunded." Therefore, tax years 2015/16 through 2018/19 would be eligible for refund in the amount of \$6,342.02. In addition, the special tax for this parcel will be removed from future tax rolls until a building permit is issued for this parcel.

Request #2 (24 Lots) – The Developer's request concedes that building permits were issued for these parcels, and therefore that the parcels meet the definition of "Developed Property" in the Rate and Method of Apportionment ("...all Taxable Property...for which a building permit for new construction was issued after January 1, 2004...") but states that the building permits have since expired. The request further acknowledges that the Rate and Method of Apportionment does not include any language to revert a property from Developed Property to Undeveloped Property status. In the absence of such language, the request makes a comment regarding potential concerns about the assignment of "Land Use Class" if a new permit is issued for a different size home than the original permit, and seeks a determination from the City Council about reverting the parcels to an undeveloped status.

Staff Recommendation to Request #2 – Staff recommends the rejection of the request, as there is no provision in the Rate and Method of Apportionment to support reverting a parcel from a Developed Property status to an Undeveloped Property status based upon the expiration of a permit.

Building permits were issued on the subject parcels in October 2006 and grading was performed on the lots. Desert Candle acquired the parcels in 2010. After review of the appeal by both the City Attorney and Jones Hall, as Bond Counsel for the Community Facilities District 2005-1 Special Tax Refunding Bonds, Series 2014, both attorneys concur that the property became Developed Property upon the issuance of a building permit and there is no provision in the Rate and Method of Apportionment that would compel the City Council to accommodate such a request.

Further, the implications of this request are substantial, as a potential reimbursement of the special taxes for FY 2015/16 through FY 2018/19 would amount to approximately \$155,754. The granting of a request to revert the properties to an Undeveloped Property status would create a shortfall in CFD 2005-1 levied funds, as the annual amount levied is limited to the amount needed to pay the costs of the District. Annual special tax levies for these properties, occurring since the issuance of building permits, have properly included the referenced parcels, as required by the Rate and Method of Apportionment. As such, a reimbursement to the Developer like the one described above would create a shortfall that would need to be allocated among the remaining 860 Developed Property parcels within the CFD. If approved, the average increase in the FY 2019/20 levy would be approximately \$172, with an additional \$46 average increase per parcel to the annual levy in future years. As such, if the City Council is inclined to further explore Request #2, staff recommends scheduling this item for a future Council Meeting to provide an opportunity for the tax payers of the remaining 860 developed parcels, who would potentially be impacted by an increase to their property tax bills, to address any concerns they may have with the impacts associated with Request #2.

In response to the Developer's request for clarification about the assignment of "Land Use Class" if a new permit is issued for a different size home than the original permit, Resolution Nos. 2019-054 and HPFA 2019-01 have been included for the Council/Authority's consideration. These resolutions provide clarification to the CFD 2005-1 Rate and Method of Apportionment by specifying that should a building permit for new construction of a Developed Property expire prior to the completion of construction, the Developed Property will continue to be levied at the square footage classification identified on the original permit until the issuance of a subsequent building permit for new construction, at which time the Developed Property would then be levied at the CFD 2005-1 classification for the square footage identified on the successor building permit for new construction. Such change would be placed on the next available levy with the County of San Bernardino. Approval of this resolution is consistent with providing financial stability to CFD 2005-1 tax revenues for the payment of CFD 2005-1 expenditures, including the payment of principal and interest for the CFD 2005-1 Special Tax Refunding Bonds, Series 2014.

Request #3 (Lot 695) –The Developer asserts in this request that parcel 3046-261-39 (which is also among the parcels referenced in Request #2) was incorrectly levied as a Class 4 property but should have been levied as a Class 7 parcel, and requests a refund for taxes in the amount of \$1,956.62, but did not specify the tax years to support their calculation.

Staff Recommendation to Request #3 – After review of the request, staff concurs that the parcel was incorrectly levied as a Class 4 property and should have been levied as Class 7, resulting in a refund for the overcharge. However, per Taxation and Revenue Code 5097.a.2 as referenced earlier, appeals must be submitted within four years of the tax year in question. Therefore, the correct amount to be refunded is \$843.24 for excess payments in tax years 2015/16 through 2018/19. In addition, the Class 7 correction will be made to the special tax levy going forward.

FISCAL IMPACT

There is no direct fiscal impact to the City regarding the City functioning as administrator of the District and the City has no financial responsibility thereto. However, the City is obligated to act in a fiduciary capacity for the bondholders of the CFD 2005-1 Special Tax Refunding Bonds, Series 2014 and, due to the challenging financial history of this District, the exercise of caution is recommended so as not to make a decision that would negatively impact the repayment to bondholders.

Approving Request #1 in the amount of \$6,342.02 and Request #3 in the amount of \$843.24, as recommended by staff, is consistent with Revenue and Taxation Code 5097.a.2 for the correction of the two referenced parcels. The combined amount of these requests is \$7,185.26.

Request #2, which is not recommended by staff and is not provided for in the Rate and Method of Apportionment, would result in a shortfall of CFD 2005-1 funds that would need to be allocated among the remaining 860 Developed Property parcels in the CFD. The average increase in the FY 2019/20 levy would be approximately \$172, with an additional \$46 average increase per parcel to the annual levy in future years. As such, if the City Council would like to further explore Request #2, staff recommends scheduling the item at a future Council Meeting to provide an opportunity for the tax payers of the remaining 860 developed parcels, who would potentially be impacted by an increase to their property tax bills, to address any concerns they may have with the impacts associated with Request #2.

Approval of Resolutions 2019-054 and HPFA 2019-01 would provide clarification regarding the levy of Developed Parcels for which the building permit for new construction has expired and a subsequent building permit for new construction is obtained by specifying that the Developed Property will continue to be levied at the classification indicated by the original building permit for new construction until such time that a subsequent building permit for new construction is issued and the Developed Property would then be levied according to the classification for the square footage identified on the subsequent permit, with such change being placed on the next available levy with the County of San Bernardino. Approval of these resolutions is consistent with providing financial stability to CFD 2005-1 tax revenues for the payment of CFD 2005-1 expenditures, including the payment of principal and interest for the CFD 2005-1 Special Tax Refunding Bonds, Series 2014.

ALTERNATIVE(S)

Provide alternative direction to staff.

ATTACHMENTS

1. CFD 2005-1 Rate and Method of Apportionment
2. Appeal Letter by Zimmerman Group on behalf of Desert Candle dated 5-22-19
3. Resolution Nos. 2019-054 and HPFA 2019-01

FINAL

**RATE AND METHOD OF APPORTIONMENT FOR
CITY OF HESPERIA COMMUNITY FACILITIES DISTRICT NO. 2005-1
(BELGATE DEVELOPMENT RESTRUCTURING)**

Special Taxes (defined below) shall be levied on all Assessor's Parcels (defined below) located within the boundaries of City of Hesperia Community Facilities District No. 2005-1 (Belgate Development Restructuring) (hereinafter "CFD No. 2005-1"). The amount of Special Tax to be levied on an Assessor's Parcel in any Fiscal Year (defined below) shall be determined by the City Council of the City of Hesperia (hereinafter the "Council" and the "City"), in accordance with this Rate and Method of Apportionment described below. All of the property in CFD No. 2005-1, unless exempted by law or Section E below, shall be taxed for the purposes, to the extent, and in the manner provided herein.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre or Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final map, parcel map, condominium plan, or other recorded County parcel map. The square footage of an Assessor's Parcel is equal to the Acreage of such parcel multiplied by 43,560.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 2005-1: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or designee thereof or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs of remitting the Special Taxes to the Trustee; the costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under the Indenture; the costs to the City, CFD No. 2005-1 or any designee thereof of complying with arbitrage rebate requirements; the costs to the City, CFD No. 2005-1 or any designee thereof of complying with City, CFD No. 2005-1 or obligated persons disclosure requirements associated with applicable federal and state securities laws and of the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 2005-1 or any designee thereof related to an appeal of the Special Tax; the costs associated with the release of funds from any escrow account; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 2005-1 for any other administrative purposes of CFD No. 2005-1, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Assessor's Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor designating parcels by Assessor's Parcel number.

"Assigned Special Tax" means the Special Tax for each Land Use Class of Developed Property, as determined in accordance with Section C.1.(b) below.

"Authorized Services" means, for each Fiscal Year, the amount computed by multiplying the number of residential units within Land Use Classes 1 through 12 by the Police and Fire Services Costs.

"Backup Special Tax" means the Special Tax applicable to each Assessor's Parcel of Developed Property, as determined in accordance with Section C.1.(c) below.

"Bonds" means any bonds or other debt (as defined in Section 53317(d) of the Act), whether in one or more series, issued or incurred by CFD No. 2005-1 under the Act to pay, repay or defease bonds previously issued by CFD No. 91-3.

"CFD Administrator" means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

"CFD No. 2005-1" means City of Hesperia Community Facilities District No. 2005-1 (Belgate Development Restructuring).

"CFD No. 91-3" means City of Hesperia Community Facilities District No. 91-3 (Belgate Development Project).

"City" means the City of Hesperia.

"Consumer Price Index" means, for each Fiscal Year, the Consumer Price Index published by the U.S. Bureau of Labor Statistics for "All Urban Consumers" in the Los Angeles - Anaheim - Riverside Area, measured as of the month of December in the calendar year which ends in the previous Fiscal Year. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index for the City of Los Angeles.

"Council" means the City Council of the City.

"County" means the County of San Bernardino.

"Developed Property" means for each Fiscal Year, all Taxable Property, exclusive of Taxable Public Property and Taxable Property Owner Association Property, for which a building permit for new construction was issued after January 1, 2004 and prior to March 1 of the previous Fiscal Year.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Indenture" means the indenture, fiscal agent agreement, resolution or other instrument pursuant to which Bonds are issued, as modified, amended and/or supplemented from time to time.

"Land Use Class" means any of the classes listed in Table 1 below.

"Maximum Special Tax" means the maximum Special Tax, determined in accordance with Section C below, that can be levied in any Fiscal Year on any Assessor's Parcel.

"Non-Residential Property" means all Assessor's Parcels of Developed Property for which a building permit was issued for a non-residential use.

"Outstanding Bonds" means all Bonds which are deemed to be outstanding under the Indenture.

"Police and Fire Services Costs" means, for Fiscal Year 2004-2005, an amount equal to \$406.32 per unit to: (i) pay for fire protection and suppression services and (ii) pay for police protection services, which on each July 1, commencing on July 1, 2005, shall be increased based on the percentage change in the Consumer Price Index with a maximum annual increase of six percent (6%) and a minimum annual increase of two percent (2%) per Fiscal Year.

"Property Owner Association Property" means, for each Fiscal Year, any property within the boundaries of CFD No. 2005-1 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

"Proportionately" means, for Developed Property, that the ratio of the actual Special Tax levy to the Assigned Special Tax is equal for all Assessor's Parcels of Developed Property, or where the Backup Special Tax is being levied, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels upon which a Backup Special Tax is being levied. For Undeveloped Property, "Proportionately" means that the ratio of the actual Special Tax levy per Acre to the Maximum Special Tax per Acre is equal for all Assessor's Parcels of Undeveloped Property. The term "Proportionately" may similarly be applied to other categories of Taxable Property as listed in Section D below.

"Public Property" means property within the boundaries of CFD No. 2005-1 owned by, irrevocably offered or dedicated to, or for which an easement for purposes of public right-of-way has been granted to the federal government, the State of California, the County of San Bernardino, the City of Hesperia, or any local government or other public agency, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

"Residential Floor Area" means all of the square footage of living area within the perimeter of a residential structure, not including any carport, walkway, garage, overhang,

patio, enclosed patio, or similar area. The determination of Residential Floor Area shall be made by reference to the building permit(s) issued for such Assessor's Parcel.

"Residential Property" means all Assessor's Parcels of Developed Property for which a building permit has been issued for purposes of constructing one or more residential dwelling units.

"Special Tax" means the special tax to be levied in each Fiscal Year on each Assessor's Parcel of Taxable Property within CFD No. 2005-1 to fund the Special Tax Requirement.

"Special Tax Requirement" means that amount required in any Fiscal Year for CFD No. 2005-1 to: (i) pay debt service on all Outstanding Bonds; (ii) pay periodic costs on the Bonds, including but not limited to, credit enhancement and rebate payments on the Bonds; (iii) pay Administrative Expenses; (iv) pay any amounts required to establish or replenish any reserve funds for all Outstanding Bonds; (v) pay for Authorized Services; (vi) pay for reasonably anticipated Special Tax delinquencies based on the delinquency rate for the Special Tax levy in the previous Fiscal Year; less (vii) a credit for funds available to reduce the annual Special Tax levy, as determined by the CFD Administrator pursuant to the Indenture.

"State" means the State of California.

"Taxable Property" means all of the Assessor's Parcels within the boundaries of CFD No. 2005-1 which are not exempt from the Special Tax pursuant to law or Section E below.

"Taxable Property Owner Association Property" means, for each Fiscal Year, all Assessor's Parcels of Property Owner Association Property that are not exempt from the Special Tax pursuant to Section E below.

"Taxable Public Property" means, for each Fiscal Year, all Assessor's Parcels of Public Property that are not exempt from the Special Tax pursuant to Section E below.

"Trustee" means the trustee or fiscal agent under the Indenture.

"Undeveloped Property" means, for each Fiscal Year, all Taxable Property not classified as Developed Property, Taxable Public Property or Taxable Property Owner Association Property.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, all Taxable Property within CFD No. 2005-1 shall be classified as Developed Property, Taxable Public Property, Taxable Property Owner Association Property, or Undeveloped Property, and shall be subject to Special Taxes in accordance with this Rate and Method of Apportionment determined pursuant to Sections C and D below. Residential Property shall be assigned to Land Use Classes 1 through 12 as listed in Table 1 below based on the Residential Floor Area for each unit. Non-Residential Property shall be assigned to Land Use Class 13.

C. MAXIMUM SPECIAL TAX

1. Developed Property

(a). Maximum Special Tax

The Maximum Special Tax for each Assessor's Parcel classified as Developed Property shall be the greater of (i) the amount derived by application of the Assigned Special Tax or (ii) the amount derived by application of the Backup Special Tax.

(b). Assigned Special Tax

The Fiscal Year 2004-2005 Assigned Special Tax for each Land Use Class is shown below in Table 1.

TABLE 1
Assigned Special Tax for Developed Property in
Community Facilities District No. 2005-1
Fiscal Year 2004-2005

Land Use Class	Description	Residential Floor Area	Assigned Special Tax
1	Residential Property	> 3,300 sq. ft.	\$2,201 per unit
2	Residential Property	3,151 – 3,300 sq. ft.	\$2,054 per unit
3	Residential Property	3,001 – 3,150 sq. ft.	\$2,012 per unit
4	Residential Property	2,851 – 3,000 sq. ft.	\$1,991 per unit
5	Residential Property	2,701 – 2,850 sq. ft.	\$1,913 per unit
6	Residential Property	2,551 – 2,700 sq. ft.	\$1,857 per unit
7	Residential Property	2,401 – 2,550 sq. ft.	\$1,801 per unit
8	Residential Property	2,251 – 2,400 sq. ft.	\$1,464 per unit
9	Residential Property	2,101 – 2,250 sq. ft.	\$1,429 per unit
10	Residential Property	1,951 – 2,100 sq. ft.	\$1,394 per unit
11	Residential Property	1,801 – 1,950 sq. ft.	\$1,281 per unit
12	Residential Property	<= 1,800 sq. ft.	\$1,078 per unit
13	Non-Residential Property	Not Applicable	\$14,253 per Acre

(c). Backup Special Tax

The Fiscal Year 2004-2005 Backup Special Tax for an Assessor's Parcel of Developed Property shall equal \$0.3272 per square foot of land area within the Assessor's Parcel.

(d). Increase in the Assigned Special Tax and Backup Special Tax

On each July 1, commencing on July 1, 2005, the Assigned Special Tax and the Backup Special Tax shall be increased by an amount equal to two percent (2%) of the amount in effect for the previous Fiscal Year.

(e). Multiple Land Use Classes

In some instances an Assessor's Parcel of Developed Property may contain more than one Land Use Class. The Assigned Special Tax levied on an Assessor's Parcel shall be the sum of the Assigned Special Taxes for all Land Use Classes located on that Assessor's Parcel. The Maximum Special Tax that can be levied on an Assessor's Parcel shall be the sum of the Maximum Special Taxes that can be levied for all Land Use Classes located on that Assessor's Parcel. For an Assessor's Parcel that contains both Residential Property and Non-Residential Property, the Acreage of such Assessor's Parcel shall be allocated to each type of property based on the amount of Acreage designated for each land use as determined by reference to the site plan approved for such Assessor's Parcel. The CFD Administrator's allocation to each type of property shall be final.

2. Undeveloped Property, Taxable Public Property, and Taxable Property Owner Association Property

(a). Maximum Special Tax

The Fiscal Year 2004-2005 Maximum Special Tax for Undeveloped Property, Taxable Public Property, and Taxable Property Owner Association Property shall be \$14,253 per Acre.

(b). Increase in the Maximum Special Tax

On each July 1, commencing on July 1, 2005, the Maximum Special Tax for Undeveloped Property, Taxable Public Property, and Taxable Property Owner Association Property shall be increased by an amount equal to two percent (2%) of the amount in effect for the previous Fiscal Year.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2006-07 (or a later Fiscal Year as determined pursuant to Section I.1), and for each subsequent Fiscal Year, the Council shall determine the Special

Tax Requirement and levy the Special Taxes until the amount of Special Taxes equals the Special Tax Requirement. The Special Tax shall be levied each Fiscal Year as follows:

First: The Special Tax shall be levied on each Assessor's Parcel of Developed Property at up to 100% of the applicable Assigned Special Tax;

Second: If additional monies are needed to satisfy the Special Tax Requirement after the first step has been completed, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property at up to 100% of the Maximum Special Tax for Undeveloped Property;

Third: If additional monies are needed to satisfy the Special Tax Requirement after the first two steps have been completed, then the levy of the Special Tax on each Assessor's Parcel of Developed Property whose Maximum Special Tax is determined through the application of the Backup Special Tax shall be increased Proportionately from the Assigned Special Tax up to the Maximum Special Tax for each such Assessor's Parcel;

Fourth: If additional monies are needed to satisfy the Special Tax Requirement after the first three steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property and Taxable Property Owner Association Property at up to the Maximum Special Tax for Taxable Public Property and Taxable Property Owner Association Property.

Notwithstanding the above, under no circumstances will the Special Tax levied against any Assessor's Parcel of Residential Property for which an occupancy permit for private residential use has been issued be increased by more than ten percent as a consequence of delinquency or default by the owner of any other Assessor's Parcel within CFD No. 2005-1.

E. EXEMPTIONS

No Special Tax shall be levied on up to 92.3 Acres of Public Property and/or Property Owner Association Property. Tax-exempt status will be assigned by the CFD Administrator in the chronological order in which property becomes Public Property or Property Owner Association Property. However, should an Assessor's Parcel no longer be classified as Public Property or Property Owner Association Property its tax-exempt status will be revoked.

Public Property or Property Owner Association Property that is not exempt from the Special Tax under this section shall be subject to the levy of the Special Tax and shall be taxed Proportionately as part of the fourth step in Section D above, at up to 100% of the applicable Maximum Special Tax for Taxable Public Property or Taxable Property Owner Association Property.

In addition, no Special Tax shall be levied on any Assessor's Parcel for which the obligation to pay the Special Taxes authorized in CFD No. 91-3 has been prepaid.

F. APPEALS AND INTERPRETATIONS

Any landowner or resident who feels that the amount of the Special Tax levied on their Assessor's Parcel is in error may submit a written appeal to CFD No. 2005-1. The CFD Administrator shall review the appeal and if the CFD Administrator concurs, the amount of the Special Tax levied shall be appropriately modified.

The Council may interpret this Rate and Method of Apportionment for purposes of clarifying any ambiguity and make determinations relative to the annual administration of the Special Tax and any landowner or resident appeals. Any decision of the Council shall be final and binding as to all persons.

G. MANNER OF COLLECTION

The Special Tax will be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that CFD No. 2005-1 may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations, and may covenant to foreclose and may actually foreclose on delinquent Assessor's Parcels as permitted by the Act.

H. PREPAYMENT OF SPECIAL TAX

The following definitions apply to this Section H:

"Bond Portion of the Special Tax" means the portion of the Special Tax levied on an Assessor's Parcel that is necessary to provide 100% coverage for the debt service associated with that Assessor Parcel's fair share of the Bonds.

"Bulldout" means, for CFD No. 2005-1, that all expected building permits have been issued.

"Previously Issued Bonds" means, for any Fiscal Year, all Outstanding Bonds that are deemed to be outstanding under the Indenture after the first interest and/or principal payment date following the current Fiscal Year.

1. Prepayment of Bonds in Full

The obligation of an Assessor's Parcel to pay the Bond Portion of the Special Tax may be prepaid and permanently satisfied as described herein; provided that a prepayment may be made only for Assessor's Parcels of Developed Property or Undeveloped Property for which a building permit has been issued, and only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. An owner of an Assessor's Parcel intending to prepay the Bond Portion of the Special Tax shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount of such Assessor's Parcel. The CFD Administrator may charge a reasonable fee for providing this service.

Prepayment must be made not less than 45 days prior to the next occurring date that notice of redemption of Bonds from the proceeds of such prepayment may be given to the Trustee pursuant to the Indenture. No portion of the Special Tax other than the Bond Portion of the Special Tax may be prepaid.

The Prepayment Amount for the Bond Portion of the Special Tax shall be calculated as summarized below (capitalized terms as defined below):

	Bond Redemption Amount
plus	Redemption Premium
plus	Defeasance Amount
plus	Administrative Fees and Expenses
less	Reserve Fund Credit
less	Capitalized Interest Credit
Total: equals	Prepayment Amount for the Bond Portion of the Special Tax

As of the proposed date of prepayment, the Prepayment Amount for the Bond Portion of the Special Tax shall be calculated as follows:

Paragraph No.:

1. Confirm that no Special Tax delinquencies apply to such Assessor's Parcel.
2. For Assessor's Parcels of Developed Property, compute the Assigned Special Tax and Backup Special Tax applicable for the Assessor's Parcel to be prepaid. For Assessor's Parcels of Undeveloped Property (for which a building permit has been issued) to be prepaid, compute the Assigned Special Tax and Backup Special Tax for that Assessor's Parcel as though it was already designated as Developed Property, based upon the building permit that has already been issued for that Assessor's Parcel.
3. (a) Divide the Assigned Special Tax computed pursuant to paragraph 2 by the total estimated Assigned Special Taxes for CFD No. 2005-1 based on the Developed Property Special Tax which could be charged in the current Fiscal Year on all expected development through Buildout of CFD No. 2005-1, excluding any Assessor's Parcels for which the Bond Portion of the Special Tax has been prepaid, and

(b) Divide the Backup Special Tax computed pursuant to paragraph 2 by the estimated total Backup Special Tax levy at Buildout of CFD No. 2005-1, excluding any Assessor's Parcels for which the Bond Portion of the Special Tax has been prepaid.
4. Multiply the larger quotient computed pursuant to paragraph 3(a) or 3(b) by the Previously Issued Bonds to compute the amount of Previously Issued Bonds to be retired and prepaid (the "Bond Redemption Amount").

5. Multiply the Bond Redemption Amount computed pursuant to paragraph 4 by the applicable redemption premium (e.g., the redemption price – 100%), if any, on the Previously Issued Bonds to be redeemed (the "Redemption Premium").
6. Compute the amount needed to pay interest on the Bond Redemption Amount from the first bond interest and/or principal payment date not covered by the current Fiscal Year Bond Portion of the Special Tax until the earliest redemption date for the Previously Issued Bonds.
7. Compute the minimum amount the CFD Administrator reasonably expects to derive from the reinvestment of the Prepayment Amount for the Bond Portion of the Special Tax, less the Administrative Fees and Expenses (defined below), from the date of prepayment until the redemption date for the Previously Issued Bonds to be redeemed with the prepayment.
8. Subtract the amount computed pursuant to paragraph 7 from the amount computed pursuant to paragraph 6 (the "Defeasance Amount").
9. Verify the administrative fees and expenses of CFD No. 2005-1, including the costs of computation of the prepayment, the costs to invest the prepayment proceeds, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (the "Administrative Fees and Expenses").
10. If reserve funds for the Previously Issued Bonds, if any, are at or above 100% of the reserve requirement (as defined in the Indenture) on the prepayment date, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Previously Issued Bonds to be redeemed pursuant to the prepayment (the "Reserve Fund Credit"). No Reserve Fund Credit shall be granted if reserve funds are below 100% of the reserve requirement.
11. If any capitalized interest for the Previously Issued Bonds will not have been expended at the time of the first interest and/or principal payment following the current Fiscal Year, a capitalized interest credit shall be calculated by multiplying the larger quotient computed pursuant to paragraph 3(a) or 3(b) by the expected balance in the capitalized interest fund after such first interest and/or principal payment (the "Capitalized Interest Credit").
12. The Prepayment Amount for the Bond Portion of the Special Tax is equal to the sum of the amounts computed pursuant to paragraphs 4, 5, 8 and 9, less the amounts computed pursuant to paragraphs 10 and 11.
13. From the Prepayment Amount for the Bond Portion of the Special Tax, the amounts computed pursuant to paragraphs 4, 5, 8, 10 and 11 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Previously Issued Bonds or make debt service payments. The amount computed pursuant to paragraph 9 shall be retained by CFD No. 2005-1.

14. To determine the Bond Portion of the Special Tax that has been prepaid and permanently satisfied pursuant to paragraphs 12 and 13, calculate the level of Special Tax necessary to provide 100% coverage on the Bond Redemption Amount calculated under paragraph 4.
15. To determine the remaining Assigned Special Tax and Maximum Special Tax on the Assessor's Parcel that shall continue to be levied in ensuing Fiscal Years, subtract the Bond Portion of the Special Tax that was calculated under paragraph 14 from the original Assigned Special Tax on the Assessor's Parcel, and subtract the Bond Portion of the Special Tax that was calculated under paragraph 14 from the original Maximum Special Tax on the Assessor's Parcel. The difference resulting from this subtraction is the remaining Assigned Special Tax and Maximum Special Tax for the Assessor's Parcel.

The Prepayment Amount for the Bond Portion of the Special Tax may be insufficient to redeem a full \$5,000 increment of Bonds. In such cases, the increment above \$5,000 or integral multiple thereof will be retained in the appropriate fund established under the Indenture to be used with the next prepayment of Bonds or to make debt service payments.

With respect to any Assessor's Parcel that is prepaid, and only after the CFD Administrator has confirmed that the current Fiscal Year's Special Tax obligation for such Assessor's Parcel has been paid in full, the Council shall cause a suitable notice to be recorded in compliance with the Act to indicate the prepayment of the Bond Portion of the Special Tax, and that the remaining portion of the Special Tax with respect to such Assessor's Parcel shall continue to be levied for Administrative Expenses and Authorized Services pursuant to Section D.

Notwithstanding the foregoing, no Special Tax prepayment shall be allowed unless the amount of the Bond Portion of the Special Taxes that may be levied on Taxable Property within CFD No. 2005-1 (after excluding 92.3 Acres of Public Property and/or Property Owner Association Property as set forth in Section E) both prior to and after the proposed prepayment is at least 1.1 times the maximum annual debt service on all Previously Issued Bonds, plus the Administrative Expenses.

2. Prepayment in Part

The Bond Portion of the Special Tax for an Assessor's Parcel of Developed Property or an Assessor's Parcel of Undeveloped Property for which a building permit has been issued may be partially prepaid. The amount of the prepayment shall be calculated as in Section H.1; except that a partial prepayment shall be calculated according to the following formula:

$$PP = [(P_E - A) \times F] + A$$

These terms have the following meaning:

PP = the partial prepayment

- P_E = the Prepayment Amount for the Bond Portion of the Special Tax calculated according to Section H.1
- A = the Administrative Fees and Expenses calculated according to Section H.1
- F = the percentage by which the owner of the Assessor's Parcel(s) is partially prepaying the Bond Portion of the Special Tax.

The owner of any Assessor's Parcel who desires such prepayment shall notify the CFD Administrator of such owner's intent to partially prepay the Bond Portion of the Special Tax and the percentage by which the Bond Portion of the Special Tax shall be prepaid. The CFD Administrator shall provide the owner with a statement of the amount required for the partial prepayment of the Bond Portion of the Special Tax for an Assessor's Parcel within thirty (30) days of the request and may charge a reasonable fee for providing this service. With respect to any Assessor's Parcel that is partially prepaid, the City shall (i) distribute the funds remitted to it according to Section H.1, and (ii) indicate in the records of CFD No. 2005-1 that there has been a partial prepayment of the Bond Portion of the Special Tax, and that a portion of the Bond Portion of the Special Tax with respect to such Assessor's Parcel, equal to the outstanding percentage $(1.00 - F)$ of the remaining Bond Portion of the Special Tax, shall continue to be levied on such Assessor's Parcel for each ensuing Fiscal Year after the Fiscal Year in which the partial prepayment occurred, along with the portion of the Special Tax on the Assessor's Parcel that may still be levied for Administrative Expenses and Authorized Services, pursuant to Section D.

I. TERM OF SPECIAL TAX

1. Commencement of the Term of Special Tax

Notwithstanding anything to the contrary contained herein the Special Taxes shall be levied no earlier than the Fiscal Year in which CFD No. 91-3 is dissolved pursuant to Section 53338.5 of the Act, so long as the tax bill for any portion of the Fiscal Year shall not contain special taxes levied by both CFD No. 91-3 and CFD No. 2005-1. If CFD No. 91-3 is not so dissolved, the Special Taxes shall not be levied.

2. End of Term of Special Tax

The Bond Portion of the Special Tax shall not be levied after Fiscal Year 2040-41, and the remaining portion of the Special Tax shall continue to be levied for Administrative Expenses and Authorized Services so long as the Council, acting in its capacity as the legislative body of CFD No. 2005-1, determines that such Special Taxes are necessary to fund the Administrative Expenses and Authorized Services.



May 22, 2019

City of Hesperia CFD No. 2005-1
c/o Adina McCargo
Associate Director
NBS Government Finance Group
32605 Temecula Parkway, Suite 100
Temecula, CA 92592
Email: amccargo@nbsgov.com

Re: City of Hesperia CFD No. 2005-1 Special Tax Levy Appeal

Ms. McCargo,

On behalf of Desert-Candle, LP ("Developer"), I am submitting this written appeal to City of Hesperia CFD No. 2005-1 (Belgate Development Restructuring) ("CFD") pursuant to Section F of the Rate and Method of Apportionment for the CFD ("RMA"). Developer acquired property within the CFD in March of 2010 and recently asked us to review the CFD special taxes that have been levied on 25 of Developer's lots. Over the past couple of months, our office has communicated with NBS Government Finance Group ("CFD Administrator") regarding the special taxes levied by the CFD on these lots. Some informal communications have occurred regarding the past and future CFD tax levies, and this letter serves as the "written appeal" required by Section F of the RMA which allows the special taxes levied by the CFD to be "appropriately modified" as provided therein.

As you know, Developer was unaware that any building permits had been issued for these lots. On behalf of Developer, we contacted the City and was told that no building permits had been issued. Upon further review by the City and CFD Administrator, building permits appear to have been issued in October of 2006 for 24 of these lots. After review of the building permits and the RMA, Developer makes the following three specific requests regarding the special taxes being levied by the CFD on Developer's property.

Request 1 (Lot 555)

Pursuant to the San Bernardino County property tax bills for Assessor's Parcel No. 3046-301-01, lot 555 of Tract No. 16676-7 ("Lot 555") was classified as "Developed Property" (as defined in the RMA) at some point prior to Developer acquiring the property. Since that time, Developer has paid \$14,719.48 in CFD special taxes for Lot 555 comprising fiscal years 2010/2011 through 2018/2019. Based on feedback from the City and CFD Administrator, no building permit was ever issued for Lot 555. Accordingly, we are requesting that the special taxes paid for Lot 555 be returned to Developer as soon as possible.

Request 2 (24 Lots)

With respect to the other 24 lots for which the special tax is being levied by the CFD, building permits appear to have been issued over a decade ago. It is our understanding that these permits expired long ago, and new building permits will need to be issued for these lots. In addition, no construction was ever started on these lots. Although the definition of Developed Property in the RMA does not address the situation in which a building permit expires, the expiration of a building permit leads to ambiguity regarding how the special tax will be levied once a new building permit is issued and a home is built. In similar circumstances with other community facilities districts, when a new building permit would be required prior to the construction of a home because a previous permit had expired, the lead agency of such community facilities district stopped levying the tax until the issuance of the new building permit. The rate and method related to those circumstances also did not specify what happened if a building permit expired.

The requirement for a new building permit to be issued prior to the construction of a home will likely result in confusion regarding the special tax to be levied on the ultimate homeowner. If a new building permit is issued for a different size home than the original building permit, the new permit could put the parcel into a different "Land Use Class" than the original building permit. In such case, the RMA does not make it clear which building permit will be used to determine the amount of the special tax to be levied on the parcel. As a result, both the homebuilder and the homeowner will not know the amount of the special tax that needs to be disclosed or that will be levied on such home.

Section F of the RMA gives the right to the City Council to interpret the RMA to clarify any ambiguities. We request that with respect to these 24 lots, the City make the determination that since homes cannot be built without the issuance of new building permits, (i) the CFD will not levy special taxes on these lots in any future fiscal years until the issuance of the new building permits and (ii) upon the issuance of a new building permit, the CFD will classify and tax each lot based on in the applicable Land Use Class associated with the square footage listed on the new building permit. It is important to note that debt service on the CFD bonds can be paid without levying taxes on these 24 lots.

Request 3 (Lot 695)

According to the building permit for assessor's parcel number 3046-261-39, the prior owner of lot 695 of Tract No. 16676-8 ("Lot 695") received a permit to build a home with 2,444 square feet of "Residential Floor Area" as defined in the RMA. The RMA classifies a home of this size as Land Use Class 7. However, after reviewing the San Bernardino County property tax bills for Lot 695, Developer has been charged special taxes based on Land Use Class 4. This has resulted in Developer being over-levied for Lot 695 by \$1,956.62. In addition to not levying on this lot until a new building permit is issued pursuant to Request 2 above, Developer is requesting that this amount be returned to Developer along with the amount in Request 1.

We appreciate your review and consideration of these requests and look forward to working with you and the City to resolve these issues.

Sincerely,



Jim Zimmerman
Principal

Cc: Nelson Chung; Desert-Candle, LP
Anne Duke, Deputy Finance Director; City of Hesperia

RESOLUTION NO. 2019-054

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, CLARIFYING THE RATE AND METHOD OF APPORTIONMENT FOR THE COMMUNITY FACILITY DISTRICT 2005-1 FOR THE TREATMENT OF DEVELOPED PROPERTY

WHEREAS, the City Council of the City of Hesperia (the “City”) has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the “Act”), to form “City of Hesperia Community Facilities District 2005-1 (Belgate Development Restructuring), County of San Bernardino, State of California” (the “CFD”), to authorize the levy of special taxes upon the land within the CFD, and to issue bonds secured by said special taxes the proceeds of which are to be used to finance certain public improvements (the “Facilities”), all as described in those proceedings; and

WHEREAS, on April 14, 2005, under the provisions of the Act and pursuant to a Fiscal Agent Agreement, dated as of April 1, 2005 (the “2005 CFD Bonds Fiscal Agent Agreement”), by and between the City and The Bank of New York Mellon Trust Company, N.A., as successor fiscal agent (the “2005 CFD Bonds Fiscal Agent”), the City issued its \$18,554,508 initial principal amount City of Hesperia Community Facilities District No. 2005-1 (Belgate Development Restructuring), County of San Bernardino, State of California Special Tax Bonds, 2005 Series A (the “2005 CFD Bonds”); and

WHEREAS, the 2005 CFD Bonds were refinanced during FY 2014-15 to lower interest costs to the property owners within CFD 2005-1. The refinanced bonds are the City of Hesperia Community Facilities District 2005-1 (Belgate Development Restructuring), County of San Bernardino, State of California Special Tax Refunding Bonds, Series 2014 (2014 Bonds); and

WHEREAS, the CFD 2005-1 Rate and Method of Apportionment (RMA) dictates the method by which the special tax is calculated; and

WHEREAS, the special tax is assessed on all developed property. The RMA defines developed property as, “Developed Property” means for each Fiscal Year, all Taxable property, exclusive of Taxable Public Property and Taxable Owner Association Property, for which a building permit for new construction was issued after January 1, 2004 and prior to March 1 of the previous Fiscal Year, and

WHEREAS, the RMA does not provide guidance for properties with an expired building permit for which no building activity occurred on the Developed Property; and

WHEREAS, the Council wishes to provide clarification to the CFD 2005-1 RMA for Developed Property with expired building permits, for which no building activity has occurred.

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. Any Developed Property with an expired building permit for new construction shall continue to be levied at the CFD 2005-1 RMA classification for Developed Property based upon the square footage identified on the original permit until the issuance of a subsequent building permit for new construction, at which time the Developed Property will then be levied at the CFD 2005-1 RMA classification for the square footage identified on the successor building permit for new construction. Such change will be placed on the next available levy with the County of San Bernardino and every year thereafter.

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 1st DAY OF OCTOBER 2019.

Larry Bird, Mayor

ATTEST:

Melinda Sayre, City Clerk

**HESPERIA PUBLIC FINANCING AUTHORITY
RESOLUTION NO. HPFA 2019-01**

**A RESOLUTION OF THE HESPERIA PUBLIC FINANCING AUTHORITY OF
THE CITY OF HESPERIA, CALIFORNIA, CLARIFYING THE RATE AND
METHOD OF APPORTIONMENT FOR THE COMMUNITY FACILITY DISTRICT
2005-1 FOR THE TREATMENT OF DEVELOPED PROPERTY**

WHEREAS, the Hesperia Public Financing Authority (the “PFA”) is a joint exercise of powers agency, duly established and authorized to transact business and exercise powers under and pursuant to the provisions of Section 6500 of the California Government Code (the “Joint Exercise of Powers Law”);

WHEREAS, the City Council of the City of Hesperia (the “City”) has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the “Act”), to form “City of Hesperia Community Facilities District 2005-1 (Belgate Development Restructuring), County of San Bernardino, State of California” (the “CFD”), to authorize the levy of special taxes upon the land within the CFD, and to issue bonds secured by said special taxes the proceeds of which are to be used to finance certain public improvements (the “Facilities”), all as described in those proceedings; and

WHEREAS, on April 14, 2005, under the provisions of the Act and pursuant to a Fiscal Agent Agreement, dated as of April 1, 2005 (the “2005 CFD Bonds Fiscal Agent Agreement”), by and between the City and The Bank of New York Mellon Trust Company, N.A., as successor fiscal agent (the “2005 CFD Bonds Fiscal Agent”), the City issued its \$18,554,508 initial principal amount City of Hesperia Community Facilities District No. 2005-1 (Belgate Development Restructuring), County of San Bernardino, State of California Special Tax Bonds, 2005 Series A (the “2005 CFD Bonds”); and

WHEREAS, the 2005 CFD Bonds were refinanced during FY 2014-15 to lower interest costs to the property owners within CFD 2005-1. The refinanced bonds are the City of Hesperia Community Facilities District 2005-1 (Belgate Development Restructuring), County of San Bernardino, State of California Special Tax Refunding Bonds, Series 2014 (2014 Bonds); and

WHEREAS, the CFD 2005-1 Rate and Method of Apportionment (RMA) dictates the method by which the special tax is calculated; and

WHEREAS, the special tax is assessed on all developed property. The RMA defines developed property as, “Developed Property” means for each Fiscal Year, all Taxable property, exclusive of Taxable Public Property and Taxable Owner Association Property, for which a building permit for new construction was issued after January 1, 2004 and prior to March 1 of the previous Fiscal Year, and

WHEREAS, the RMA does not provide guidance for properties with an expired building permit for which no building activity occurred on the Developed Property; and

WHEREAS, the Authority wishes to provide clarification to the CFD 2005-1 RMA for Developed Property with expired building permits, for which no building activity has occurred.

NOW THEREFORE, it is **ORDERED** and DETERMINED, as follows:

Section 1. The PFA hereby finds and declares that the above recitals are true and correct.

Section 2. Any Developed Property with an expired building permit for new construction shall continue to be levied a the CFD 2005-1 RMA classification for Developed Property based upon the square footage identified on the original permit until the issuance of a subsequent building permit for new construction, at which time the Developed Property will then be levied at the CFD 2005-1 RMA classification for the square footage identified on the successor building permit for new construction. Such change will be placed on the next available levy with the County of San Bernardino and every year thereafter.

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 1st DAY OF OCTOBER 2019.

Larry Bird, Chairperson

ATTEST:

Melinda Sayre, Secretary

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DATE: October 1, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Rachel Molina, Assistant to the City Manager
SUBJECT: Support of Mojave River Valley Movement

RECOMMENDED ACTION

It is recommended that the City Council consider adoption of Resolution 2019-055 and provide direction to staff on support of the Mojave River Valley movement.

BACKGROUND

In 2015, a movement began across the region focused on reinforcing a positive collective identity as the Mojave River Valley, to replace “High Desert”, the existing term for the region. The term High Desert refers to this community as well as regions that include the Antelope Valley and Yucca Valley.

ISSUES/ANALYSIS

Proponents of the Mojave River Valley movement have creating a branding campaign to be used to market the region to prospective employers, developers and future residents. The campaign will communicate that the Mojave River Valley is:

- A great place to raise a family;
- Beautifully surrounded by desert vista and open space;
- The next frontier of economic growth and expansion;
- Home to a more relaxing way of life.

Support of the Mojave River Valley movement will include adoption of a resolution by the City Council; support of the branding through the use of the term in official communications where the term High Desert is currently used; and the use of the term in economic development efforts.

FISCAL IMPACT

Fiscal impact is nominal as changes to City branding will be implemented over time.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Resolution 2019-55

RESOLUTION NO. 2019-055

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA,
CALIFORNIA, SUPPORTING THE MOJAVE RIVER VALLEY MOVEMENT**

WHEREAS, a movement began across this region focused on establishing a collective identify as the Mojave River Valley; and

WHEREAS, The term “High Desert” refers to the Hesperia region and neighboring cities as well as regions to include Antelope Valley and Yucca Valley; and

WHEREAS, Mojave River Valley rebranding of this region will be used to market the region to prospective employers, developers and future residents in an effort to relay the beauty and benefits to be found in the area.

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

- Section 1. The City of Hesperia will support the Mojave River Valley movement;
- Section 2. The City of Hesperia will support the branding through the use of the term in official communications where the term High Desert is currently used;
- Section 3. The City of Hesperia will use the term in economic development efforts.
- Section 4. That 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 1st day of October, 2019.

Larry Bird, Mayor

ATTEST:

Melinda Sayre
City Clerk



DATE: October 1, 2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Eric Dunn, City Attorney
SUBJECT: Options for Filling Vacancy in City Council District Four

RECOMMENDED ACTION

It is recommended that the City Council determine whether to take one of the following actions, and give direction to staff to prepare an action item for the October 15 City Council agenda:

- (1) Make an appointment to fill the District Four vacancy on the City Council. Because the vacancy occurred in the first half of the term, the District Four seat will be up for election in November 2020 in accordance with state law. The person elected in November 2020 will serve the remainder of the unexpired term, which ends December 2022.
- (2) Call a special election to be held March 3, 2020 to fill the vacancy. The person elected in March 2020 will serve the remainder of the unexpired term which ends December 2022.

BACKGROUND

On September 3, 2019, the City Council declared the City Council District Four seat vacant. Within 60 days of the vacancy, state law directs the City Council to fill the vacancy by appointment or by calling a special election. The 60-day deadline is November 2, 2020. The last regular Council meeting prior to that date is October 15. If the City Council does not act on October 15, a special meeting would be required by November 2.

ISSUES/ANALYSIS

State law directs that no later than 60 days after a vacancy occurs (which in this case is Saturday, November 2, 2019), the City Council must either (1) appoint a qualified resident to fill the vacancy or (2) call a special election to be held on the next regularly scheduled election date at least 114 days after the special election is called. (Government Code section 36512.) The next regularly scheduled election date is March 3, 2020.

The length of time the new councilmember will serve depends on whether they are appointed or elected.

Appointment

If the City Council chooses to make an appointment, it must do so by November 2, 2019. Because the person will serve in District Four, the appointee must be a qualified resident of District Four.

Because the vacancy occurred in the first half of a term of office and at least 130 days prior to the next general municipal election (in this case November 3, 2020), the appointee will hold office until the next general municipal election. The person elected at that time will hold office for the unexpired balance of the term of office which ends in December 2022. (Government Code section 36512(b)(2)(A).) In other words, the appointee would take office immediately on appointment and would serve until the winner of the regularly scheduled November 2020 election is declared.

The Council may wish to initiate a process calling for applications to be submitted and considered, but state law does not establish a specific process.

Special Election

If the City Council chooses to call a special election to fill the unexpired term, it must do so by November 2, 2019. The election would be held on March 3, 2020. Candidates for the special election must reside in District Four. The person elected at that time would hold office for the unexpired balance of the term of office which ends in December 2022. (Government Code section 36512(b)(1).) Unlike the appointment scenario, the seat would not be up for election in November 2020.

FISCAL IMPACT

There is no fiscal impact associated with this item at this time.

ALTERNATIVE(S)

1. Direct staff to prepare an action item for the October 15 agenda.
2. Provide alternate direction to staff.

ATTACHMENT(S)

None