

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

Regular Joint Meetings
1st and 3rd Tuesday

Date: January 21, 2020
REGULAR MEETING

Time: 5:30 P.M. (Closed Session)
6:30 P.M. (Regular Meeting)

CITY COUNCIL MEMBERS

Larry Bird, Mayor

Cameron Gregg, Mayor Pro Tem

Brigit Bennington, Council Member

William J. Holland, Council Member

Rebekah Swanson, Council Member

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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.

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

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

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

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

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

CLOSED SESSION - 5:30 PM

Roll Call

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

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

1. Two (2) cases

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

1. Victor Valley Wastewater Reclamation Authority v. City of Hesperia (Claim for Damages)

CALL TO ORDER - 6:30 PM

A. Invocation

B. Pledge of Allegiance to the Flag

C. Roll Call

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

D. Agenda Revisions and Announcements by City Clerk**E. Closed Session Reports by City Attorney****ANNOUNCEMENTS/PRESENTATIONS**

1. Presentation to Employee of the Quarter for Field Staff to Ernie Montes, Senior Code Enforcement Officer by Mike Blay, Assistant City Manager
2. Presentation to Employee of the Quarter for Office Staff to Yvonne Kliever, Office Assistant by Mark McKinley, Assistant City Engineer
3. Community Events Calendar

JOINT CONSENT CALENDAR

1. Page 7 Consideration of the Draft Minutes from the Regular Meeting held Tuesday, January 7, 2020

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Regular Meeting held Tuesday, January 7, 2020.

Staff Person: City Clerk Melinda Sayre

Attachments: [Draft CC Min 2020-01-07](#)

2. Page 13 Warrant Run Report (City - Successor Agency - Housing Authority - Community Development Commission - Water)

Recommended Action:

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

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Warrant Run 1-21-2020](#)
[Attachment 1 - Warrant Run](#)

3. Page 15 Treasurer's Cash Report for the unaudited period ended November 30, 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.

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Treasurer's Report 1-21-2020](#)

[Attachments 1 - Treasurer's Report](#)

4. Page 23

Award Contract for Repairs to Manholes on Bear Valley Road C.O. No. 9022

Recommended Action:

It is recommended that the City Council award a contract to the lowest responsive/responsible bidder, Custom Homes, Inc. (CHI Construction) in the amount of \$49,500; approve an additional 10% contingency in the amount of \$4,950 for a total construction budget of \$54,450; approve the design of the project represented by the plans and specifications; and authorize the City Manager to execute the contract.

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

Attachments: [SR CHI Construction Contract 1-21-2020](#)

5. Page 25

Memorandum of Understanding between the City of Hesperia and the Teamsters Local 1932 for the period of February 1, 2020 through January 31, 2022

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2020-003 and the Board of Directors of the Hesperia Water District adopt Resolution HWD 2020-02, approving the Memorandum of Understanding with the Teamsters Local 1932 (Teamsters Union).

Staff Person: Assistant City Manager Michael Blay and Assistant to the City Manager Rachel Molina

Attachments: [SR Teamsters Union MOU 1-21-2020](#)

[Attachment 1 - Memorandum of Understanding](#)

[Resolution 2020-003](#)

[Resolution HWD 2020-02](#)

6. Page 77

Phone System Update

Recommended Action:

It is recommended that the City Council authorize the City Manager to execute a contract with ConvergeOne in the amount of \$112,574 to update the City's phone system and related network hardware to a supported version.

Staff Person: Assistant to the City Manager Rachel Molina

Attachments: [SR Phone System Update 1-21-2020](#)

7. Page 79

Real Property Purchase and Sale Agreement - APN 0407-261-03, 04 & 20

Recommended Action:

It is recommended that the Hesperia Housing Authority (HHA) adopt Resolution No. HHA 2020-02 and the Hesperia Community Development Commission (CDC) adopt Resolution No. CDC 2020-01: (i) approving "Agreement for the Purchase and Sale Of Real Property and Joint Escrow Instructions" (Agreement) for real property located at the northwest corner of Ninth and Juniper, Assessor Parcel Numbers 0407-261-03, 04 & 20 (Property) by and between ZAB LLC, a California limited liability company (Buyer) and the Hesperia Housing Authority and Hesperia Community Development Commission (Seller); and (ii) authorizing the City Manager and Executive Director to execute all documents necessary to complete the transaction and adjust book value of properties accordingly.

Staff Person: Economic Development Manager Rod Yahnke

Attachments: [SR ZAB Purchase and Sale Agreement 1-21-2020](#)

[Resolution HHA 2020-02](#)

[Resolution CDC 2020-01](#)

[Attachment 3 - Purchase & Sale Agreement - HHA](#)

[Attachment 4 - Purchase & Sale Agreement - CDC](#)

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.

8. Page 151 Amendments to Title 14 of Hesperia Municipal Code - Discontinuation of Residential Water Service

Recommended Action:

Place on second reading and adopt by title waiving the text of Ordinance No. 2020-02 amending Title 14 of the Hesperia Municipal Code to incorporate the provisions set forth in the Water Shutoff Protection Act - Senate Bill 998 and 2) the Council/Board adopt Joint Resolution No. 2020-02 and Hesperia Water District Resolution No. 2020-01, adopting a written policy on the Discontinuation of Residential Water Service for Nonpayment in compliance with Senate Bill 998.

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Sentate Bill 998 1-7-2020](#)

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.

- 9.** Page 155 Substantial Amendment to the Community Development Block Grant (CDBG) 2019-2020 Action Plan

Recommended Action:

It is recommended that the City Council: 1) Conduct a public hearing and upon accepting public testimony, adopt Resolution No. 2020-01 including any modifications or amendments thereto; 2) Approve a Substantial Amendment to the Community Development Block Grant ("CDBG") 2019-2020 Annual Action Plan ("Action Plan") by programming \$200,000 to the 2019-2020 Peach Avenue Drainage Improvement Project ("Drainage Project") and \$326,196 to the 2019-2020 Street Improvement Project ("Street Project"); 3) Approve 2019-20 FY Budget amendment and; 4) Authorize the City Manager and/or Economic Development Manager to execute and transmit all necessary documents, including the Substantial Amendment to the Action Plan, and any additional amendments, to assure the City's timely expenditure of CDBG funds.

Staff Person: Economic Development Manager Rod Yahnke

Attachments: [SR Substantial Amendment CDBG 1-21-2020](#)
[Attachment 1 - Substantial Amendment to Action Plan](#)
[Resolution 2020-01](#)

NEW BUSINESS

- 10.** Page 161 Appeal of Revocation of Business License No. BL-45284

Recommended Action:

It is recommended that the Council hear evidence and render a decision in the appeal of Business License No. BL-45284 for Supreme Smoke Shop.

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

Attachments: [SR Appeal of Revocation of BL-45284 1-21-2020](#)
[Attachment 1 - Revocation Letter](#)
[Attachment 2 - Appeal Supreme Smoke Shop](#)

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, January 16, 2020 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.



City of Hesperia

Meeting Minutes - Draft

City Council

City Council Chambers
9700 Seventh Ave.
Hesperia CA, 92345

Tuesday, January 7, 2020

6:30 PM

**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: 5 - Mayor Bird, Mayor Pro Tem Gregg, Council Member Bennington, Council Member William J. Holland and Council Member Swanson

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

1. Jeremiah Brosowske v City of Hesperia Case No. CIVDS1926015
2. Victor Valley Wastewater Reclamation Authority v. City of Hesperia (Claim for Damages)

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

1. Negotiating Parties: City of Hesperia and Chi-Chu Chen Trust
Location: APN 3039-431-01 Lift Station
Under Negotiation: Price and Terms

2. Negotiating Parties: Guttman and City of Hesperia
Location: APN: 3057-061-01
Under Negotiation: Price and Terms

CALL TO ORDER - 6:30 PM

- A. Invocation by resident James Blocker**
- B. Pledge of Allegiance to the Flag**
- C. Roll Call**

Present: 5 - Mayor Bird, Mayor Pro Tem Gregg, Council Member Bennington, Council Member William J. Holland and Council Member Swanson

- D. Agenda Revisions and Announcements by City Clerk - None**

E. Closed Session Reports by City Attorney – No reportable action taken.

ANNOUNCEMENTS/PRESENTATIONS

1. Presentation by Robin Hawley, San Bernardino County Librarian to the City Council
2. Community Events Calendar - *Meet & Clean event on Saturday, January 25 at the corner of Eucalyptus and Maple Avenue from 8am – 11am; Christmas Tree Recycling is available for Advance Disposal customers through January 24; Veterans of the Armed Forces are able to adopt a pet from the Hesperia Animal Shelter free of charge. Adoptable pets are viewable at www.PetHarbor.com*

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: 5 - Bird, Gregg, Bennington, Holland and Swanson

Nay: 0

1. Consideration of the Draft Minutes from the Regular Meeting held Tuesday, December 17, 2019

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Regular Meeting held Tuesday, December 17, 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 Hesperia Water District.

Sponsors: Director of Finance Casey Brooksher

3. Audited Hesperia Housing Authority Financial Statements for Fiscal Year Ended June 30, 2019 and Housing Successor SB 341 Report

Recommended Action:

It is recommended that the City Council and the Hesperia Housing Authority (HHA) Board receive and file the audited Hesperia Housing Authority - Component Unit Financial Statements for the Fiscal Year Ended June 30, 2019 and Housing Successor SB 341 Report.

Sponsors: Director of Finance Casey Brooksher

4. Receive and File the Transient Occupancy Tax Audit Results

Recommended Action:

It is recommended that the City Council receive and file the attached Transient Occupancy Tax (TOT) Audit results for the Calendar Year (CY) 2016.

Sponsors: Director of Finance Casey Brooksher

CONSENT ORDINANCES

*The following individuals commented on item 6:
ET Snell, Sam Humeid*

*The following individuals commented on item 7:
ET Snell, Sam Humeid*

**A motion was made by Holland, seconded by Bennington, that the Consent Ordinances be approved.
The motion carried by the following vote:**

Aye: 5 - Bird, Gregg, Bennington, Holland and Swanson

Nay: 0

5. Specific Plan Amendment SPLA19-00005; Applicant: City of Hesperia; APNs: 3064-581-01 thru 05, 3064-621-01 & 3064-631-01

Recommended Action:

Place on second reading and adopt by title waiving the text of Ordinance No. 2019-17 approving Specific Plan Amendment SPLA19-00005 to change approximately 105 gross acres within the Main Street and Freeway Corridor Specific Plan from Regional Commercial (RC) to Commercial Industrial Business Park (CIBP) Zoning.

Sponsors: Senior Planner Ryan Leonard

6. Commercial Cannabis Program Stay

Recommended Action:

Place on second reading and adopt by title waiving the text of Ordinance No. 2019-18, continuing the stay on the Commercial Cannabis Program.

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

7. Amendments to Title 5 of Hesperia Municipal Code - Cannabis Regulations

Recommended Action:

Place on second reading and adopt by title waiving the text of Ordinance No. 2019-19 amending Title 5 of the Hesperia Municipal Code.

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

PUBLIC HEARING

8. Amendments to Title 14 of Hesperia Municipal Code - Discontinuation of Residential Water Service

Recommended Action:

It is recommended: 1) the City Council introduce and place on first reading Ordinance No. 2020-02 amending Title 14 of the Hesperia Municipal Code to incorporate the provisions set forth in the Water Shutoff Protection Act - Senate Bill 998 and 2) the Council/Board adopt Joint Resolution No. 2020-02 and Hesperia Water District Resolution No. 2020-01, adopting a written policy on the Discontinuation of Residential Water Service for Nonpayment in compliance with Senate Bill 998.

Sponsors: Director of Finance Casey Brooksher

The public hearing was opened, there being no public comment, the public hearing was closed.

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

Aye: 5 - Bird, Gregg, Bennington, Holland and Swanson

Nay: 0

9. Statewide Community Infrastructure Program (SCIP)

Recommended Action:

It is recommended that the City Council hold a public hearing to receive comments regarding the Statewide Community Infrastructure Program (SCIP); and adopt Resolution 2020-03, authorizing the City to join the SCIP; approving substantially to form, the Acquisition Agreement and other SCIP related documents, subject to modifications as approved by the City Attorney as needed; and authorizing the City Manager to execute completed Acquisition Agreements.

Sponsors: Assistant City Manager Michael Blay

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

Mike Leonard

There being no further comment the public hearing was closed.

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

Aye: 5 - Bird, Gregg, Bennington, Holland and Swanson

Nay: 0

NEW BUSINESS

10. Consideration of Ballot Measure- Land Use

Recommended Action:

It is recommended that the City Council provide direction to staff regarding placing a ballot measure on an upcoming election regarding land use requirements in the City including minimum parcel sizes and maximum building densities.

Sponsors: City Clerk Melinda Sayre

Bob Nelson commented on item 10.

Direction was given to staff, no action taken on this item.

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

Mike Leonard commented on actions taken by the state.

Et Snell was called to speak, was not present

Daniel Krist commented on various community issues.

Bob Nelson commented on the Tapestry Project area.

Al Vogler commenting on road issues.

Pastor Green commented on Mission Crest street paving and census taking.

Ramona Allen commented on cannabis and high density housing.

COUNCIL COMMITTEE REPORTS AND COMMENTS

Council Member Holland requested that agenda items regarding State requirements for personal water usage and

making Hesperia a sanctuary city for the second amendment be brought forward for discussion.

Council Member Swanson commented on attendance at upcoming SBCTA meeting and advantages of the Hesperia Library.

Council Member Bennington commented on staff's response during inclement weather and the illegal use of fireworks within the City.

Mayor Pro Tem Gregg appointed Roger Abrero to the Planning Commission and requested an item be brought forward regarding assessing a fine for illegal fireworks and illegal dumping.

Mayor Bird commented on leadership for the Hesperia Recreation and Park District.

CITY MANAGER/CITY ATTORNEY/STAFF REPORTS

None

ADJOURNMENT

Adjourned in honor of Council Member Swanson's father John Pavey's 92nd birthday at 7:58 p.m.

*Melinda Sayre,
City Clerk*

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City of Hesperia

STAFF REPORT



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DATE: January 21, 2020

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 December 7, 2019 through December 27, 2019.

<u>Agency/District</u>	<u>Accounts Payable</u>	<u>Payroll</u>	<u>Wires</u>	<u>Totals</u>
City of Hesperia	\$3,652,537.54	\$484,608.14	\$0.00	\$4,137,145.68
Successor Agency	0.00	0.00	0.00	0.00
Housing Authority	9,827.50	576.17	0.00	10,403.67
Community Development Commission	11,071.87	14,313.15	0.00	25,385.02
Water	549,609.93	205,839.82	0.00	755,449.75
Totals	\$4,223,046.84	\$705,337.28	\$0.00	\$4,928,384.12

ATTACHMENT(S)

1. Warrant Runs

City of Hesperia
WARRANT RUNS
12/07/2019 - 12/27/2019

FUND #	FUND NAME	W/E 12/13/2019	W/E 12/20/2019	W/E 12/27/2019	WARRANT TOTALS	Wires	YEAR-TO DATE TOTALS *	PRIOR FY YTD DATE TOTALS
Accounts Payable								
100	GENERAL	\$ 57,263.99	\$ 322,281.78	\$ 1,454,966.78	\$ 1,834,512.55	\$ -	\$ 12,994,142.32	\$ 10,928,865.67
200	HESPERIA FIRE DISTRICT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 700.00	\$ 348,815.74
204	MEASURE I - RENEWAL	\$ -	\$ 161,361.49	\$ 24,263.50	\$ 185,624.99	\$ -	\$ 198,959.45	\$ 260,011.40
205	GAS TAX	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,795.00
207	LOCAL TRANSPORT-SB 325	\$ -	\$ 34,993.68	\$ 94,288.05	\$ 129,281.73	\$ -	\$ 271,333.84	\$ 201,251.43
209	GAS TAX-RMRA	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,495,086.16	\$ 24,895.99
210	HFPD (PERS)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 874,510.00	\$ -
251	CDBG	\$ 1,142.50	\$ 6,523.75	\$ 15,712.70	\$ 23,378.95	\$ -	\$ 706,370.07	\$ 141,522.57
254	AB2766 - TRANSIT	\$ -	\$ 60,964.00	\$ 313,052.00	\$ 374,016.00	\$ -	\$ 477,331.07	\$ 27,600.00
256	ENVIRONMENTAL PROGRAMS GRANT	\$ 1,494.00	\$ 55.65	\$ 30.12	\$ 1,579.77	\$ -	\$ 8,401.31	\$ 16,987.02
257	NEIGHBORHOOD STABILIZATION PROG	\$ 91.00	\$ -	\$ 21.30	\$ 112.30	\$ -	\$ 48,224.66	\$ 15,056.87
260	DISASTER PREPARED GRANT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,318.08	\$ 4,719.95
263	STREETS MAINTENANCE	\$ 22,023.07	\$ 41,793.45	\$ 29,606.62	\$ 93,423.14	\$ -	\$ 1,071,695.52	\$ 1,158,276.15
300	DEV. IMPACT FEES - STREET	\$ 288.00	\$ 264.00	\$ 96.00	\$ 648.00	\$ -	\$ 36,535.34	\$ 138,699.70
301	DEV. IMPACT FEES - STORM DRAIN	\$ -	\$ -	\$ 2,737.95	\$ 2,737.95	\$ -	\$ 219,812.64	\$ 20,827.50
402	WATER RIGHTS ACQUISITION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,018,915.04	\$ 1,028,329.10
403	2013 REFUNDING LEASE REV BONDS	\$ 2,225.00	\$ -	\$ -	\$ 2,225.00	\$ -	\$ 563,794.37	\$ 559,827.92
501	CFD 91-3 BELGATE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 837,793.25	\$ -
502	FIRE STATION BUILDING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,790,888.41
504	CITY WIDE STREETS - CIP	\$ -	\$ -	\$ 94,233.09	\$ 94,233.09	\$ -	\$ 214,640.05	\$ 22,567.23
509	CITY FACILITIES CIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 39,189.17	\$ 212,339.73
800	EMPLOYEE BENEFITS	\$ 252,568.59	\$ 335,045.41	\$ 30,201.22	\$ 617,815.22	\$ -	\$ 3,937,543.05	\$ 3,564,762.19
801	TRUST/AGENCY	\$ 606.93	\$ 288,212.92	\$ 1.00	\$ 288,820.85	\$ -	\$ 604,336.09	\$ 922,539.39
802	AD 91-1 AGENCY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 367.50
804	TRUST-INTEREST BEARING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 67.50
807	CFD 2005-1	\$ 4,128.00	\$ -	\$ -	\$ 4,128.00	\$ -	\$ 21,869.33	\$ 808,940.54
808	HFPD (TRANSITION)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,668,935.57	\$ -
	CITY	\$ 341,831.08	\$ 1,251,496.13	\$ 2,059,210.33	\$ 3,652,537.54	\$ -	\$ 27,311,436.38	\$ 27,202,954.50
160	REDEVELOP OBLIG RETIREMENT - PA1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,306,154.96
161	REDEVELOP OBLIG RETIREMENT - PA2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 426,569.15
162	REDEVELOP OBLIG RETIREMENT-HOUSING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,476,736.59
163	REDEVELOP OBLIG RETIREMENT-2018	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,752,150.38	\$ -
173	SUCCESSOR AGENCY ADMINISTRATION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,005.00
	SUCCESSOR AGENCY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,752,150.38	\$ 8,213,465.70
370	HOUSING AUTHORITY	\$ 3,576.00	\$ 126.00	\$ 6,125.50	\$ 9,827.50	\$ -	\$ 50,285.64	\$ 94,225.10
	HOUSING AUTHORITY	\$ 3,576.00	\$ 126.00	\$ 6,125.50	\$ 9,827.50	\$ -	\$ 50,285.64	\$ 94,225.10
170	COMMUNITY DEVELOPMENT COMMISSION	\$ 1,646.00	\$ 5,493.75	\$ 3,932.12	\$ 11,071.87	\$ -	\$ 154,411.88	\$ 151,695.17
	COMMUNITY DEVELOPMENT COMMISSION	\$ 1,646.00	\$ 5,493.75	\$ 3,932.12	\$ 11,071.87	\$ -	\$ 154,411.88	\$ 151,695.17
700	WATER OPERATING	\$ 59,415.24	\$ 47,361.95	\$ 113,374.54	\$ 220,151.73	\$ -	\$ 3,424,976.27	\$ 4,423,911.17
701	WATER CAPITAL	\$ 259,463.76	\$ 30,239.00	\$ 914.04	\$ 290,616.80	\$ -	\$ 1,853,205.05	\$ 3,798,590.15
710	SEWER OPERATING	\$ 4,164.42	\$ 2,528.18	\$ 3,889.80	\$ 10,582.40	\$ -	\$ 1,485,134.31	\$ 2,025,960.46
711	SEWER CAPITAL	\$ 48.00	\$ 28,211.00	\$ -	\$ 28,259.00	\$ -	\$ 57,813.05	\$ 64,510.70
	WATER	\$ 323,091.42	\$ 108,340.13	\$ 118,178.38	\$ 549,609.93	\$ -	\$ 6,821,128.68	\$ 10,312,972.48
	ACCOUNTS PAYABLE TOTAL	\$ 670,144.50	\$ 1,365,456.01	\$ 2,187,446.33	\$ 4,223,046.84	\$ -	\$ 42,089,412.96	\$ 45,975,312.95
REG. PAYROLL								
	City	\$ 243,477.57	\$ -	\$ 241,130.57	\$ 484,608.14	\$ -	\$ 3,121,456.60	\$ 3,103,975.09
	Housing Authority	\$ 264.60	\$ -	\$ 311.57	\$ 576.17	\$ -	\$ 3,721.40	\$ 28,722.55
	Community Development Commission	\$ 6,722.52	\$ -	\$ 7,590.63	\$ 14,313.15	\$ -	\$ 92,521.72	\$ 54,262.98
	Water	\$ 104,284.58	\$ -	\$ 101,555.24	\$ 205,839.82	\$ -	\$ 1,342,823.35	\$ 1,280,409.31
	PAYROLL TOTAL	\$ 354,749.27	\$ -	\$ 350,588.01	\$ 705,337.28	\$ -	\$ 4,560,523.07	\$ 4,467,369.93

* 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: January 21, 2020

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: Treasurer's Cash Report for the unaudited period ended November 30, 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.

BACKGROUND

This report is presented to the City Council pursuant to Government Code Section 53646 (b) setting forth the City's investment portfolio.

ISSUES/ANALYSIS

The Treasurer's Cash Reports are presented on the following pages for each agency.

FISCAL IMPACT

These reports reflect unaudited cash balances as of November 30, 2019.

ALTERNATIVE(S)

Provide alternative direction to staff.

ATTACHMENT(S)

1. City of Hesperia Investment Report
2. Successor Agency to the Hesperia Community Redevelopment Agency Investment Report
3. Hesperia Housing Authority Investment Report
4. Community Development Commission Investment Report
5. Hesperia Water District Investment Report

CITY OF HESPERIA

<u>FUND</u>	<u>VALUE</u>
General Fund (100 & 800)	\$ 4,430,116.69
Fire District Fund (200)	15,859.09
HFPD (PERS) (210)	426,460.90
AB27666 - Transit (254)	(79,636.69)
AB3229 Supplemental Law (255)	145,205.61
AD No. 91-1 (802)	366,020.87
Beverage Recycling Grant (256)	155,665.07
CFD 2005-1 (807)	553,592.51
HFPD Transition (808)	53,523.09
City Wide-Capital Projects (504)	(136,002.01)
Community Dev Block Grant (251, 252, & 253)	607,477.76
Development Impact Fund (300-304)	9,221,380.53
Development Impact Fund 2018 (306-312)	2,323,027.66
Disaster (260)	43,403.39
Gas Tax Fund (205)	(126,791.41)
Gas Tax - RMRA (209)	798,181.36
Gas Tax Swap (206)	5,454.81
Local Transportation SB325 (207)	1,764,060.01
Measure I - Renewal (204)	5,333,242.48
Neighborhood Stabilization Prog (257)	2,287,053.92
Public Works Street Maint (263)	886,501.11
Trust Fund (801, 803-806, & 815)	2,024,194.62
2012 Water Rights Acquisition (402)	(1,006,427.49)
2013 Refunding Lease Rev Bonds (403)	(200,829.12)
TOTAL CITY FUNDS	<u><u>\$ 29,890,734.76</u></u>

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

<u>FUND</u>	<u>VALUE</u>
RORF Retention - (163)	<u><u>\$ 1,622,677.04</u></u>

HESPERIA HOUSING AUTHORITY

<u>FUND</u>	<u>VALUE</u>
Hesperia Housing Authority Fund (370)	\$ 3,503,414.62
WEDA Housing Authority (371)	1,788,647.12
TOTAL HOUSING AUTHORITY FUNDS	<u>\$ 5,292,061.74</u>

COMMUNITY DEVELOPMENT COMMISSION

<u>FUND</u>	<u>VALUE</u>
Community Development Commission Fund (170)	<u>\$ (1,115,331.60)</u>

WATER

<u>FUND</u>	<u>VALUE</u>
Water Operating (700)	\$ 5,360,241.14
Water Capital (701)	(13,179,427.29)
Water Capital Rehab and Replace (703)	1,407,981.60
Water Contamination Mitigation (704)	1,402,413.51
Sewer Operating (710)	10,953,816.63
Sewer Capital (711)	4,376,617.65
Sewer Capital Rehab and Replace (713)	241,218.56
TOTAL WATER FUNDS	<u>\$ 10,562,861.80</u>

City of Hesperia
Investment Report
Unaudited
November 30, 2019

ATTACHMENT 1

<u>Type of Investment</u>	<u>Institution/ Fiscal Agent</u>	<u>Interest Rate</u>	<u>Date of Purchase</u>	<u>Date of Maturity</u>	<u>Par Value at Maturity</u>	<u>Book Value</u>	<u>Market Value</u>	<u>Account Description</u>
Investments under the direction of the City:								
Local Agency Investment Funds	State of Calif.	2.103%	30-Nov-19	Demand	\$ 23,329,733.36	23,329,733.36	23,329,733.36	
Money Market	Bank of the West	1.260%	30-Nov-19	Demand	4,851,826.33	4,851,826.33	4,851,826.33	
Citizens Business Bank Checking	Citizens Bus Bank	n/a	30-Nov-19	Demand	1,709,175.07	1,709,175.07	1,709,175.07	
Total Unaudited Investments under the direction of the City					\$ 29,890,734.76	\$ 29,890,734.76	\$ 29,890,734.76	


Investments under the direction of fiscal agents:

2012 Lease Revenue Bonds	Union	1.540%	30-Nov-19	Demand	314.70	314.70	314.70	2012 - Water Rights Revenue Fund
2012 Lease Revenue Bonds	Union	1.540%	30-Nov-19	Demand	1,459,271.83	1,459,271.83	1,459,271.83	2012 - Water Rights Reserve Fund
2012 Lease Revenue Bonds	Union	0.000%	30-Nov-19	Demand	0.31	0.31	0.31	2012 - Water Rights Surplus Revenue Fund
2013 Refunding Lease Revenue Bonds	Union	1.540%	30-Nov-19	Demand	554.94	554.94	554.94	2005 Civic Plaza - Revenue Fund
2013 Refunding Lease Revenue Bonds	Union	1.540%	30-Nov-19	Demand	1,155,403.70	1,155,403.70	1,155,403.70	2005 Civic Plaza - Reserve Fund
2013 Refunding Lease Revenue Bonds	Union	0.000%	30-Nov-19	Demand	0.31	0.31	0.31	2005 Civic Plaza - Surplus Rev Fund
2014 CFD 2005-1 Refunding	Union	1.540%	30-Nov-19	Demand	280.58	280.58	280.58	2014 CFD 05-1 - Special Tax Fund
2014 CFD 2005-1 Refunding	Union	1.540%	30-Nov-19	Demand	93.46	93.46	93.46	2014 CFD 05-1 - Bond Fund
2014 CFD 2005-1 Refunding	Union	1.540%	30-Nov-19	Demand	1,437,916.19	1,437,916.19	1,437,916.19	2014 CFD 05-1 - Reserve Fund
2014 CFD 2005-1 Refunding	Union	1.540%	30-Nov-19	Demand	23,740.19	23,740.19	23,740.19	2014 CFD 05-1 Administrative Expense Bonds
Deposits - Workers' Comp	PERMA	n/a	30-Nov-19	n/a	1,266,513.80	1,266,513.80	1,266,513.80	GL 1352
Total Unaudited Investments under the direction of fiscal agents					\$ 5,344,090.01	5,344,090.01	5,344,090.01	

Please Note: All market value data is provided courtesy of the City's fiscal agents,
Union Bank of California & Bank of New York (BNY) Trust Company.

I certify that this investment portfolio is in compliance with the statement of investment policy of the City of Hesperia and the investment program provides sufficient liquidity to meet expenditure requirements for the next six months, as required by the California Government Code sections 53646(b)(2) and (3), respectively.

* Note: 2005 Certificates of Participation began in May 2005 for the financing of the Civic Plaza.


Virginia Villasenor, Senior Accountant

Investment Report

Unaudited

November 30, 2019

Type of Investment	Issuer/ Institution	Interest Rate	Date of Purchase	Date of Maturity	Par Value at Maturity	Book Value	Market Value	Account Description
Investments under the direction of the City:								
Local Agency Investment Funds	State of Calif.	2.103%	30-Nov-19	Demand	\$ 1,266,500.24	\$ 1,266,500.24	1,266,500.24	
Money Market	Bank of the West	1.260%	30-Nov-19	Demand	263,390.89	263,390.89	263,390.89	
Citizens Business Bank Checking	Citizens Bus Bank	n/a	30-Nov-19	Demand	92,785.91	92,785.91	92,785.91	
Total Unaudited Investments under the direction of the City					\$ 1,622,677.04	\$ 1,622,677.04	\$ 1,622,677.04	

Investments under the direction of fiscal agents:

2018 Refunding Bonds	Union	0.000%	30-Nov-19	Demand	1.00	1.00	1.00	2018A & 2018B - Debt Service Account
2018 Refunding Bonds	Union	1.560%	30-Nov-19	Demand	4,845.76	4,845.76	4,845.76	2018A & 2018B - Interest Account
2018 Refunding Bonds	Union	0.000%	30-Nov-19	Demand	1.00	1.00	1.00	2018A & 2018B - Reserve Account
Total Unaudited Investments under the direction of fiscal agents					\$ 4,847.76	\$ 4,847.76	\$ 4,847.76	

Please Note: All market value data is provided courtesy of the City's fiscal agent
Union Bank of California.

I certify that this investment portfolio is in compliance with the statement of investment policy of the City of Hesperia and the investment program provides sufficient liquidity to meet expenditure requirements for the next six months, as required by the California Government Code sections 53646(b)(2) and (3), respectively.

* Note: The 2005 and 2007 Series Bonds were refinanced to 2018 Series Bonds in November 2018.


Virginia Villasenor, Senior Accountant

Hesperia Housing Authority

ATTACHMENT 3

Investment Report

Unaudited

November 30, 2019

<u>Type of Investment</u>	<u>Issuer/ Institution</u>	<u>Interest Rate</u>	<u>Date of Purchase</u>	<u>Date of Maturity</u>	<u>Par Value at Maturity</u>	<u>Book Value</u>	<u>Market Value</u>
Investments under the direction of the City:							
Local Agency Investment Funds	State of California	2.103%	30-Nov-19	Demand	\$ 4,130,456.82	4,130,456.82	4,130,456.82
Money Market	Bank of the West	1.260%	30-Nov-19	Demand	859,000.78	859,000.78	859,000.78
Citizens Business Bank Checking	Citizens Business Bank	n/a	30-Nov-19	Demand	302,604.14	302,604.14	302,604.14
Total Unaudited Investments under the direction of the City					\$ 5,292,061.74	\$ 5,292,061.74	\$ 5,292,061.74

I certify that this investment portfolio is in compliance with the statement of investment policy of the City of Hesperia and the investment program provides sufficient liquidity to meet expenditure requirements for the next six months, as required by the California Government Code sections 53646(b)(2) and (3), respectively.


Virginia Villasenor, Senior Accountant

Investment Report**Unaudited**November 30, 2019

<u>Type of Investment</u>	<u>Issuer/ Institution</u>	<u>Interest Rate</u>	<u>Date of Purchase</u>	<u>Date of Maturity</u>	<u>Par Value at Maturity</u>	<u>Book Value</u>	<u>Market Value</u>
Investments under the direction of the City:							
Local Agency Investment Funds	State of California	2.103%	30-Nov-19	Demand	\$ (870,516.87)	(870,516.87)	(870,516.87)
Money Market	Bank of the West	1.260%	30-Nov-19	Demand	(181,039.22)	(181,039.22)	(181,039.22)
Citizens Business Bank Checking	Citizens Business Bank	n/a	30-Nov-19	Demand	(63,775.51)	(63,775.51)	(63,775.51)
Total Unaudited Investments under the direction of the City					\$ (1,115,331.60)	\$ (1,115,331.60)	\$ (1,115,331.60)

I certify that this investment portfolio is in compliance with the statement of investment policy of the City of Hesperia and the investment program provides sufficient liquidity to meet expenditure requirements for the next six months, as required by the California Government Code sections 53646(b)(2) and (3), respectively.


Virginia Villasenor, Senior Accountant

Hesperia Water District
Investment Report
Unaudited
November 30, 2019

ATTACHMENT 5

<u>Type of Investment</u>	<u>Issuer/ Institution</u>	<u>Interest Rate</u>	<u>Date of Purchase</u>	<u>Date of Maturity</u>	<u>Par Value at Maturity</u>	<u>Book Value</u>	<u>Market Value</u>	<u>Account Description</u>
Investments under the direction of the City:								
Local Agency Investment Funds	State of California	2.103%	30-Nov-19	Demand	\$ 8,244,318.89	8,244,318.89	8,244,318.89	
Money Market	Bank of the West	1.260%	30-Nov-19	Demand	1,714,550.39	1,714,550.39	1,714,550.39	
Citizens Business Bank Checking	Citizens Business Bank	n/a	30-Nov-19	Demand	603,992.52	603,992.52	603,992.52	
Total Unaudited Investments under the direction of the City					\$ 10,562,861.80	\$ 10,562,861.80	\$ 10,562,861.80	
Investments under the direction of fiscal agents:								
First American Treas - Money Market	US Bank	0.000%	30-Nov-19	Demand	9,137.96	9,137.96	9,137.96	98 A - 95453340
First American Treas - Money Market	US Bank	0.000%	30-Nov-19	Demand	32.03	33.03	32.03	98 A - 95453341
98 A Dep w/Trustee - Collateral	Bank of America	2.400%	30-Nov-19	Demand	1,880,000.00	1,880,000.00	1,880,000.00	GL 1319
Deposits - Workers' Comp	PERMA	n/a	30-Nov-19	n/a	650,626.91	650,626.91	650,626.91	GL 1352
Deposits w/Other Agencies	Various	n/a	30-Nov-19	n/a	0.00	0.00	0.00	GL 1350
Total Unaudited Investments under the direction of fiscal agents					\$ 2,539,796.90	\$ 2,539,797.90	\$ 2,539,796.90	

Please Note: All market value data is provided courtesy of the City's fiscal agents
Bank of New York (BNY) Trust Company and US Bank.

I certify that this investment portfolio is in compliance with the statement of investment policy of the City of Hesperia and the investment program provides sufficient liquidity to meet expenditure requirements for the next six months, as required by the California Government Code sections 53646(b)(2) and (3), respectively.


Virginia Villasenor, Senior Accountant

City of Hesperia

STAFF REPORT



DATE: January 21, 2020

TO: Mayor and Council Members
Chair and Board Members, Hesperia Water District

FROM: Nils Bentsen, City Manager

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

SUBJECT: Award Contract for Repairs to Manholes on Bear Valley Road C.O. No. 9022

RECOMMENDED ACTION

It is recommended that the City Council award a contract to the lowest responsive/responsible bidder, Custom Homes, Inc. (CHI Construction) in the amount of \$49,500; approve an additional 10% contingency in the amount of \$4,950 for a total construction budget of \$54,450; approve the design of the project represented by the plans and specifications; and authorize the City Manager to execute the contract.

BACKGROUND

There are five manholes located on Bear Valley Road between Mariposa Road and Cottonwood Avenue that are in need of replacement. The manhole covers are sinking beneath the grade of the road, causing an uneven driving surface and possible road hazard.

ISSUES/ANALYSIS

The project was advertised for bids beginning on October 24, 2019 and was placed on the City's online bidding platform (PUBLICPURCHASE) where more than 100 contractors were notified about the project. Bids were received, opened online, and publicly read on December 3, 2019 from the following bidders:

Creative Homes, Inc.	Anaheim, CA	\$49,500
Christianson Brothers	Apple Valley, CA	\$60,600
Manhole Adjusting, Inc.	Pico Rivera, CA	\$62,000
Bunker Engineering	Indio, CA	\$77,925

Staff has determined that Custom Homes, Inc. (CHI) is the lowest responsive/responsible bidder and recommends the award of this contract to CHI. The bids were thoroughly reviewed and staff conducted due diligence, including reference checks. CHI has successfully completed several capital improvement projects of a similar nature and has been able to do so at very competitive prices.

There are sufficient funds within the Water District Budget to complete the project. Staff is recommending Council award this contract to CHI and authorize the City Manager to executed the contract.

FISCAL IMPACT

Funding for this project will require amending the FY 2019-20 Capital Improvement Program (CIP) Budget and will be presented to the City Council during the Mid-Year Budget Review.

ALTERNATIVE(S)

1. Do not award contract.
2. Provide alternative direction to staff.

ATTACHMENT(S)

None

City of Hesperia

STAFF REPORT



DATE: January 21, 2020

TO: Mayor and Council Members
Chair and Board Members, Hesperia Water District

FROM: Nils Bentsen, City Manager

BY: Rachel Molina, Assistant to the City Manager
Michael Blay, Assistant City Manager
Casey Brooksher, Director of Finance
Rita Perez, Human Resources Manager

SUBJECT: Memorandum of Understanding between the City of Hesperia and the Teamsters Local 1932 for the period of February 1, 2020 through January 31, 2022

RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. 2020-003 and the Board of Directors of the Hesperia Water District adopt Resolution HWD 2020-02, approving the Memorandum of Understanding with the Teamsters Local 1932 (Teamsters Union).

BACKGROUND

The current Memorandum of Understanding (MOU) between the City of Hesperia and the Teamsters Union is effective from February 1, 2018 through January 31, 2020, and shall remain in effect until a successor MOU is renegotiated or until such time that other provisions are concluded.

On September 24, 2019, the City and the Teamsters Union began the meet and confer process in order to negotiate a successor MOU. In December 2019, the City and the Teamsters Union reached a tentative agreement on a successor MOU to cover a two (2) year period beginning February 1, 2020 through January 31, 2022.

ISSUES/ANALYSIS

The changes to the MOU agreed to by the City and the Teamsters Union are summarized as follows:

Article 4: Duration, Implementation and Re-openers

The term of the Teamsters Union MOU shall be for the duration of February 1, 2020 through January 31, 2022.

Article 13: Salary Ranges

Effective the first full pay period of Fiscal Year 2020-21, all salary ranges reflect in base salary a COLA increase based on the Consumer Price Index (CPI) – All Urban Consumers (Area: Riverside-San Bernardino-Ontario) measured by the annualized CPI from January 2019 to January 2020 no less than 3.0% and no more than 4.5%.

Effective the first full pay period of Fiscal Year 2021-22, all salary ranges reflect in base salary a COLA increase based on the Consumer Price Index (CPI) – All Urban Consumers (Area: Riverside-San Bernardino-Ontario) measured by the annualized CPI from January 2020 to January 2021 no less than 2.0% and no more than 4.5%.

Effective the first full pay period of Fiscal Year 2020-21, City agrees to implement the results of the salary study, so long as the City's Sales and Use Tax for FY 2020-21 increases by 2% or more. If the Sales and Use Tax does not increase for FY 2020-21 by 2% or more, then effective the first full pay period of Fiscal Year 2021-22, City agrees to implement the results of the salary study, so long as the City's Sales and Use Tax for FY 2021-22 increase by 2% or more.

Should the Sales and Use Tax increase by 2% or more, the following classifications will increase:

Position	Range Change
Building Inspector	+1.0
Code Enforcement Officer	+1.0
Senior Pump Maintenance Worker	+0.5
Senior Pump Operator	+0.5
Water Quality Specialist	+0.5
Engineering Technician	+1.5
Equipment Operator/Water	+0.5
Equipment Operator	+0.5
Pump Operator	+0.5
Water Quality Technician	+0.5

Employees currently in the classification on the effective day of the change will be placed at the new range at their current step.

Article 18: Tuition Reimbursement/Certification

Commercial Driver's License \$100 Certification Pay:

Employees maintaining a valid Class "A" California Driver's License, placed on the City's Department of Transportation Random list for testing and complies with the City's Drug and Alcohol Testing Program for Commercial Drivers shall receive a one-time payment of \$100 each fiscal year. This certification payment shall be made on or after February 1 each year for those employees who hold the License as of January 31st. This certification pay will not be considered special compensation and will not be reported to the California Public Employees' Retirement System.

Article 20: Health Insurance

Effective July 1, 2020, for the August 2020 insurance premiums, the City shall pay up to \$1,224 per month, with no difference received as cash, the employee shall be responsible for paying the difference, or the amount greater than \$1,224 through payroll deduction.

Effective July 1, 2021, for the August 2021 insurance premiums, the City shall pay up to \$1,324 per month, with no difference received as cash, the employee shall be responsible for paying the difference, or the amount greater than \$1,324 through payroll deduction.

Other Changes:

Employees can have a maximum of 400 vacation hours carry-over per fiscal year.

Employees now must have eighty (80) hours of vacation remaining before an employee can cash out twenty (20) or more hours of vacation.

A permanent employee may appeal a suspension of four (4) schedule work days or more.

Other minor cleanup language to the MOU as agreed upon during the labor negotiations.

FISCAL IMPACT

The total projected cost of implementing the Teamsters Union MOU for year 1 is \$296,296, which assumes an anticipated 3% CPI for the COLA. Year 2 is projected to cost an additional \$280,800, which too assumes that CPI will be 3%. The following table details the projected source of funding.

	Year 1	Additional for Year 2
Class "A" California Driver's License	\$ 1,900	\$ 0
Medical - Year 1 @ \$1,224 & Year 2 @ \$1,324	37,296	33,600
COLA (3% Assumption)	187,000	247,200
Salary Increase for Negotiated Positions	53,000	0
Total Increase	\$ 279,196	\$ 280,800

If approved, the FY 2020-21 Proposed Budget, which will be presented to the City Council during June 2020, will reflect increases to salaries and benefits.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Memorandum of Understanding
2. Resolution No. 2020-003
3. HWD Resolution No. 2020-02

ATTACHMENT 1

EXHIBIT A

To Resolutions:

Resolution No. 2020-003 and HWD 2020-02

MEMORANDUM OF UNDERSTANDING

Made and Entered Into Between

The City of Hesperia

and the

Teamsters Local 1932

Effective February 1, 2020 through January 31, 2022

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CITY/TEAMSTERS LOCAL1932 MEMORANDUM OF UNDERSTANDING
February 1, 2020 through January 31, 2022

Foreword

This Memorandum of Understanding is made and entered into between designated management representatives of the City of Hesperia (hereinafter referred to as the "CITY"), and the designated representatives of the Teamsters Local 1932 (hereinafter referred to as "Teamsters Union").

Preamble

It is the purpose of this Memorandum of Understanding (hereinafter referred to as "MOU") to promote and provide for harmonious relations, cooperation, and understanding between the City Management representatives and the general employees covered under this MOU, to provide an orderly and equitable means of resolving any misunderstandings or differences which may arise under this MOU; and to set forth the agreement of the parties reached as a result of good faith negotiations regarding wages, hours, and other terms and conditions of employment of the employees covered under this MOU.

General Provisions

Article 1: Recognition

The City of Hesperia recognizes Teamsters Union as the exclusive majority representative for all classifications in this unit, as set forth below:

Account Clerk	Registered Veterinary Technician
Animal Control Officer	Senior Account Clerk
Animal Care Technician	Senior Animal Control Technician
Building Inspector	Senior Animal Control Officer
Code Enforcement Officer	Senior Customer Service Representative
Community Development Technician	Senior Maintenance Worker
Custodian	Senior Custodian
Customer Service Representative	Senior Maintenance Worker/Water
Engineering Aide	Senior Pump Maintenance Worker
Engineering Technician	Senior Pump Operator
Equipment Operator	Senior Warehouse Technician
Equipment Operator/Water	Utility Line Locator
Maintenance Worker	Warehouse Technician
Maintenance Worker/Water	Water Conservation Specialist
Meter Reader	Water Quality Specialist
Pump Maintenance Worker	Water Quality Technician
Pump Operator	Water Resources Specialist
Receptionist	

Article 2: Classifications

The City shall not create a new classification or reclassify Teamsters Union represented employees for the purposes of diminishing Teamsters Union representation. Unless the newly classified position would otherwise be outside of the unit (such as a supervisory, management or professional classification) the newly classified position will remain part of Teamsters Union.

Article 3: Implementation

This MOU constitutes a recommendation to be submitted to the City Council and the membership of Teamsters Union. It is agreed that this MOU shall not be binding upon the parties either in whole or in part unless and until the City Council acts, by majority vote, formally to approve and adopt said MOU and the membership of Teamsters Union approves the MOU.

Article 4: Duration, Implementation and Re-openers

This MOU shall, upon ratification by both parties, become effective February 1, 2020 and remain in full force and effect up to and including January 31, 2022. However, if a successor MOU is not negotiated by January 31, 2022, this MOU shall remain in force until a successor MOU is negotiated or the impasse process for a successor MOU has been concluded.

Article 5: City Rights

The City reserves, retains and is vested with, solely and exclusively, all rights of management which are not expressly abridged by law to manage the City. The City may exercise its management rights unilaterally without the obligation to meet and confer on the decision to exercise such rights. The sole and exclusive rights of management shall include, but not be limited to, the following:

- (a) To manage the City generally and to determine all issues of policy;
- (b) To determine the existence or nonexistence of facts which are the basis of management decisions;
- (c) To determine the necessity of organization of any service or activity conducted by the City and expand or diminish such services;
- (d) To determine the nature, manner, means and technology and extent of services to be provided to the public;
- (e) To determine methods of financing;
- (f) To select types of equipment or technology to be used;
- (g) To determine and/or change the facility, methods, technological means, and size of the workforce by which City operations are to be conducted;
- (h) To determine and change the number of locations, relocation and type of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract or subcontract any work or operation of the City;
- (i) To assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice and in accordance with City Personnel Rules and the memoranda of understanding;
- (j) To relieve employees from duties for lack of work, funds, or similar non-disciplinary reasons;
- (k) To determine and modify productivity and performance programs and standards;
- (l) To discharge, suspend, demote or otherwise discipline employees for proper cause;
- (m) To determine job classifications and to reclassify employees in accordance with City Personnel Rules and applicable resolutions and ordinances of the City;
- (n) To hire, transfer, promote and demote employees for non-disciplinary reasons in accordance with City Personnel Rules and applicable ordinances and resolutions of the City;
- (o) To determine and administer policies, procedures and standards for selection, training and promotion of employees in accordance with City Personnel Rules and applicable resolutions and ordinances of the City;
- (p) To establish employee performance standards including, but not limited to, qualification and quantity standards and to require compliance therewith;
- (q) To take any and all necessary action to carry out the functions of the City in emergencies.

Article 6: Employee Rights

- A. Employees of the City shall have the right to form, join and participate in the activities of Teamsters Union for the purpose of representation on all matters of Employer-Employee Relations, including but not limited to, wages, hours, and other terms and conditions of employment. Employees of the City also shall have the right to refuse to join or participate in the activities of employee organizations, but will be required to pay a service fee, or hold conscientious objection status, pursuant to Article 8 herein, if they do not become Teamsters Union members.
- B. No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against by the City, Teamsters Union, or other employee organization(s) because of the exercise of his/her rights under this Article.
- C. The City shall afford employees the procedural due process safeguards as set out in the Personnel Rules and Regulations and this MOU. An employee shall have right of Teamsters Union representation when the employee reasonably anticipates that such a meeting is for the purpose of disciplining the employee or is to obtain facts to support disciplinary action.

Article 7: Teamsters Local 1932 Rights

- A. The City recognizes the rights of Teamsters Union to govern its internal affairs.
- B. The City agrees to include a Teamsters Union "Information Packet" in the orientation packet for newly hired employees in positions represented by Teamsters Union. The City and Teamsters Union agree that the purpose of the "Information Packet" is to familiarize new employees with the operations and benefits of Teamsters Union. All costs associated with preparing the "Information Packet" shall be borne by Teamsters Union. Teamsters Union agrees to indemnify and hold the City harmless for any disputes between employees represented by Teamsters Union and Teamsters Union arising out of information contained in the "Information Packet." Prior to distribution, the "Information Packet" must be approved by the City. Teamsters Local 1932 representatives shall be notified at least 10 days prior, or as soon as is practical, to participate in a new employee orientation on City time for the sole purpose of providing information regarding Teamsters Local 1932 membership. This participation shall be mandatory and without the presence of the City or its representatives, and shall be for 30 minutes during New Employee Orientation.
- C. The City will furnish a reasonable portion of existing bulletin board space or allow Teamsters Union to install a bulletin board for notices of Teamsters Union. Only areas designated by the appointing authority may be used for posting of notices. Posted notices shall not be obscene, defamatory, or of a political nature nor shall they pertain to public issues which do not involve the City or its relations with City employees. All notices to be posted must be dated and signed by an authorized representative of Teamsters Union, with a copy to be submitted to the City Manager. City equipment, materials, or supplies shall not be used for the preparation, reproduction, or distribution of notices, nor shall such notices be prepared by City employees during their regular work time.
- D. The City agrees to provide Teamsters Union with a quarterly listing of names, departments, classifications, and addresses of employees in classifications represented by Teamsters Union. Names, departments, classifications, and addresses provided will reflect the most current data on file with the Management Services Department, Human Resources/Risk Management Division, as of the date the list is prepared. These quarterly listings will identify separated and new hire employees separately.

Article 7: Teamsters Local 1932 Rights (continued)

Within one week of starting work, the Human Resources/Risk Management Division will notify a Teamsters Union designated representative at City Hall of the name, job title, and department of each new hire. This will allow a Teamsters Union representative to contact the new employee and offer to meet with them during a break, lunchtime, before or after work, to answer any questions the new employee may have about Teamsters Union membership and benefits.

- E. The parties recognize and agree that in order to maintain good employee relations, it is necessary for representatives of Teamsters Union to confer with City employees during working hours. Teamsters Union shall provide and maintain with the City a current list of the names of all authorized representatives of the Teamsters Union. An authorized representative shall not enter any work location without the consent of the Department Head or his/her designee or the City Manager or his/her designee. The Department Head or his/her designee shall have the right to make arrangements for a contact location removed from the work area of the employee. Management shall not unreasonably deny access.
- F. Teamsters Union will be granted permission to use City facilities for the purpose of meeting with employees to conduct its internal affairs provided space for such meetings can be made available without interfering with City needs. Permission to use City facilities must be obtained by Teamsters Union from the appropriate appointing authority. Teamsters Union shall be held fully responsible for any damages to and the security of any City facilities that are used by Teamsters Union. No City vehicles, equipment, time or supplies may be used in connection with any activity of Teamsters Union, except as may be otherwise provided in this Agreement.
- G. The City agrees to allow City time for Teamsters Union employee representative meetings, if they do not disrupt City operations. The employee representative meetings will be every other month for one hour around lunchtime, so travel time is minimized. There are approximately seven employee representatives related to City Department/Divisions. Supervisors must be informed at least three days before the meetings, and if City operations will be disrupted, the employee representative meeting needs to be rescheduled.

Article 8: Teamsters Local 1932 Membership

Each fiscal year, Teamsters Union shall inform the City in writing of the membership dues per month (prorated from the date an employee joins the Teamsters Union). Employees may authorize the deduction of the dues from payroll, or may pay the amounts directly to Teamsters Union.

Dues withheld by the City shall be transmitted to the Teamsters Union Officer designated in writing by Teamsters Union as the person authorized to receive such funds, at the address specified.

The City shall not be obligated to put into effect any new, changed or discontinued deduction until a Teamsters Union certifies that it has in its possession a valid dues authorization card, and such certification is submitted to the Management Services Department in sufficient time to permit normal processing of the change or deduction.

Teamsters Union shall be fully responsible for expending funds received under this Article consistent with all legal requirements for expenditures of employee dues, which are applicable to public sector labor organizations.

Teamsters Union hereby agrees to defend, indemnify and hold harmless the City and its officers and employees from any claim, loss, liability, or cause of action of any nature whatsoever arising out of the operation of this Article.

Article 8: Teamsters Local 1932 Membership (continued)

Teamsters Union's indemnity and liability obligation is more fully set forth as follows:

Teamsters Union shall defend, indemnify and hold harmless the City and its officers and employees from any claim, loss, liability, cause of action or administrative proceeding arising out of the operation of this Article. Upon commencement of such legal action, administrative proceeding or claim, Teamsters Union shall have the right to decide and determine whether any claim, administrative proceeding, liability, suit, or judgment made or brought against the City or its officers and employees because of any application of this Article shall not be compromised, resisted, defended, tried, or appealed. Any such decision on the part of Teamsters Union shall not diminish Teamsters Union's defense and/or indemnification obligations under this Agreement.

The City, immediately upon receipt of notice of such claim, proceeding or legal action shall inform Teamsters Union of such action, provide Teamsters Union with all information, documents and assistance necessary for Teamsters Union defense or settlement of such action, and fully cooperate with Teamsters Union in providing all necessary employee witnesses and assistance necessary for said defense. The cost of any such assistance shall be paid by Teamsters Union.

Teamsters Union, upon its compromise or settlement of such action or matter, shall immediately pay the parties to such action all sums due under such settlement or compromise. Teamsters Union, upon final order and judgment of a court of competent jurisdiction awarding damages or costs to any employee, shall pay all sums owing under such order and judgment.

Article 9: Non-Discrimination Clause

No person shall in any way be favored or discriminated against, by either the City or Teamsters Union to the extent prohibited by law because of political opinion or affiliation, race, color, religion, sex, sexual orientation, marital status, age, national origin, veteran status, medical condition, or physical or mental disability or other protected classifications. This affects decisions including, but not limited to, an employee's compensation, benefits, terms and conditions of employment, opportunities for promotion, training and development, transfer and other privileges of employment.

The City is committed to providing ongoing training to all employees on the subjects of equal employment, non-discrimination and cultural awareness.

Working Condition

Article 10: Alternative Work Schedules and Adjusted Workweeks

A. Alternative Work Schedules

The City instituted a 9/80 workweek effective January 1996.

Employees may switch to a 4/10 workweek on a seasonal basis and for temporary periods of time to meet particular work needs. At the end of such periods, the employees shall revert to a 9/80 schedule.

The City and Teamsters Union for purposes of implementing an alternate workweek schedule without the City incurring any increased costs or the employees receiving any increase in benefits, the following shall apply:

1. General Agreement - Whenever any oral or written practice, procedure, or policy provides employee economic benefits in terms of days, all such provisions shall be converted to provide such economic benefits in terms of hours and any such practice, procedure, or policy which previously was phrased in terms of days is hereby converted to eight hours for each day.
2. Workweek – The following shall amend Rule XI, paragraph 1, subparagraph 1 of the Personnel Rules, for the purposes of the employees represented by Teamsters Union. The workweek for employees assigned to an alternate workweek shall begin and end as follows:
 - a. For employees assigned to work four (4) days per week, ten (10) hours per day (the "4/10"), their workweek shall begin at 12:01 a.m. each Monday morning and end the following Sunday night at 12:00 p.m. midnight.
 - b. For employees assigned to work four (4) days per week, nine (9) hours per day and eight (8) hours every other Friday, with the alternating Friday off (the "9/80"), the workweek shall begin each Friday afternoon at 12:01 p.m. and end the following Friday morning at 12:00 p.m. noon.
3. Holidays - On the 9/80 alternate workweek, paid holidays will be at nine (9) hours for holidays falling Monday - Thursday, and eight (8) hours if falling on Friday. Section 3, subdivision 1, Rule VI, of the Personnel Rules and Regulations will now read as follows:
 - a. Any other employee benefit expressed in terms of days earned, not specifically mentioned above, is hereby amended to provide eight (8) hours accrued benefit in lieu.

Effective March 17, 2018, paid holidays will be paid at the same number of hours of the employee approved alternate work schedule. For example, employees working a 4/10 schedule: paid holiday will be at (10) hours per holiday.

4. Modified 9/80 Work Schedule (New Subsection added per Resolution 2005-160 and HWD 2005-24 approved December 7, 2005) – The City desires to develop a Modified 9/80 Work Schedule to have certain City programs open to the public on alternative or normally closed Friday's starting in 2006. City management is developing a plan and evaluating resource needs to have certain City programs open to the public on alternative or normally closed Fridays. The longer term goal of the City is to have all City programs, some on a limited basis, open to the public on alternative or normally closed Friday's. The Teamsters Union has agreed to cooperate with City management on voluntarily assigning Teamsters Union represented employees to work the alternative or normally Closed Fridays to improve customer service for the public and not increase overtime costs. While this is not a binding provision, it is a clear agreement by the Teamsters Union and City management to cooperate to serve the public's interest.

Article 10: Alternative Work Schedules and Adjusted Workweeks (continued)

- B. Adjusted Workweeks for existing Teamsters Union employees in the following classifications:
1. Senior Animal Control Officers and Animal Control Officers – Management is authorized to change normal work schedules for Senior Animal Control Officers and Animal Control Officers to include closed Fridays and Saturdays to serve the customer service needs of the City and save overtime costs. Reasonable notice of two weeks must be provided unless the normal work schedule change is mutually agreed to by the supervisor and employee.
- C. New and Promoted Employees' Adjusted Workweeks (Revised language added per Resolution No. 2005-160 and HWD 2005-24 approved December 7, 2005) – New employees hired and existing employees promoted after MOU approved by the City Council who have been informed at the time of employment that management has the authority to adjust their workweek can have the workweek scheduled as follows:
1. Adjust new employees and promoted employee' normal work schedule during a workweek, with time off on an hour-for-hour basis in lieu of overtime during the same workweek.
 2. Management is authorized to change normal work schedules for new employees' and promoted employees' to include closed Fridays, Saturdays, and potentially Sundays to serve the customer service needs of the City and save overtime costs. Reasonable notice of two weeks must be provided unless the normal work schedule change is mutually agreed to by the supervisor and employee.

Article 11: Rest Periods

All Teamsters Union represented employees shall receive, at the direction of the respective department, two (2) fifteen (15) minute rest periods, one each approximately at the mid-point of each one-half shift. Employees working in the field shall take, at the direction of the department, rest periods at or nearby the work site or return to their department for rest. For employees working in the field, the 15-minute rest periods include travel time employees may take from the work site to and from the department. Rest time is not cumulative beyond the half scheduled workday within which the break period occurs.

Article 12: Late Starts

An employee who is tardy to work shall be docked pay at the discretion of the Department Head. Such docking shall be done in fifteen (15) minute increments. An employee may not substitute accrued compensatory time, vacation, holiday, or sick leave for the docked pay, nor may the employee utilize a shortened break period or lunch period.

Compensation

Article 13: Salary Ranges

- A. Effective the first full pay period of Fiscal Year 2018-19, all salary ranges reflect in base salary a COLA increase based on the Consumer Price Index (CPI) – All Urban Consumers (Area: Los Angeles–Riverside-Orange County now called Los Angeles-Long Beach-Anaheim) by the annualized CPI from February 2017 to February 2018 no less than 2.5% and no more than 5%.
- B. Effective the first full pay period of Fiscal Year 2019-20, all salary ranges reflect in base salary a COLA increase based on the Consumer Price Index (CPI) – All Urban Consumers (Area: Riverside-San Bernardino-Ontario) measured by the annualized CPI from February 2018 to February 2019 no less than 2.5% and no more than 5%. On January 10, 2019, the City and Teamsters entered into a side agreement amending the above language as follows: Effective the first full pay period of Fiscal Year 2019-20, all salary ranges reflect in base salary a COLA increase based on the Consumer Price Index (CPI) – All Urban Consumers (Area: Riverside-San Bernardino-Ontario) measured by the annualized CPI from January 2018 to January 2019 no less than 2.5% and no more than 5%.
- C. Effective the first full pay period of Fiscal Year 2020-21, all salary ranges reflect in base salary a COLA increase based on the Consumer Price Index (CPI) – All Urban Consumers (Area: Riverside-San Bernardino-Ontario) measured by the annualized CPI from January 2019 to January 2020 no less than 3.0% and no more than 4.5%.
- D. Effective the first full pay period of Fiscal Year 2021-22, all salary ranges reflect in base salary a COLA increase based on the Consumer Price Index (CPI) – All Urban Consumers (Area: Riverside-San Bernardino-Ontario) measured by the annualized CPI from January 2020 to January 2021 no less than 2.0% and no more than 4.5%.
- E. Effective the first full pay period of Fiscal Year 2020-21, City agrees to implement the results of the salary study, so long as the City's Sales and Use Tax for FY 2020-21 increases by 2% or more. If the Sales and Use Tax does not increase for FY 2020-21 by 2% or more, then effective the first full pay period of Fiscal Year 2021-22, City agrees to implement the results of the salary study, so long as the City's Sales and Use Tax for FY 2021-22 increase by 2 % or more.

Should the Sales and Use Tax increase by 2% or more, the following classifications will increase:

Position	Range Change
Building Inspector	+1.0
Code Enforcement Officer	+1.0
Senior Pump Maintenance Worker	+0.5
Senior Pump Operator	+0.5
Water Quality Specialist	+0.5
Engineering Technician	+1.5
Equipment Operator/Water	+0.5
Equipment Operator	+0.5
Pump Operator	+0.5
Water Quality Technician	+0.5

Employees currently in the classification on the effective day of the change will be placed at the new range at their current step.

Article 14: Overtime

A. Overtime Calculation

All employees required to perform in excess of forty (40) hours in a seven (7) day cycle or in excess of their regularly scheduled work day, shall receive compensation at the rate of time and one-half his/her regular rate of pay.

In determining an employee's eligibility for overtime, the below listed paid leaves of absences shall be included in the total hours worked. Excluded are duty-free lunches, travel time to and from work, and time spent conducting bona fide volunteer activities. Paid leave of absence includes the following:

- Holiday Leave
- Jury Duty
- Bereavement Leave

Effective March 17, 2018, the following will also be included in paid leave of absence:

- Pre-approved (minimum 1 week notice) sick leave
- Pre-approved (minimum 1 week notice) vacation leave

There shall be no pyramiding of overtime. Hours worked by an employee in any workday or workweek on which premium rates have once been allowed shall not be used again in any other overtime calculation other than computing total actual hours worked.

Time worked shall be computed by rounding the nearest quarter of an hour.

B. Compensatory Time

In lieu of receiving overtime pay pursuant to this article, Section A above, an employee may elect to receive compensatory time off on a time and one-half basis. No employee shall accrue more than forty (40) hours of such compensatory time. Should any employee exceed forty (40) hours of accrued compensatory time, he/she shall be paid at time and one-half his/her regular rate for all hours in excess of forty (40) hours

Effective March 17, 2018, no employee shall accrue more than eighty (80) hours of such compensatory time. Should any employee exceed eighty (80) hours of accrued compensatory time, he/she shall be paid at time and one-half his/her regular rate for all hours in excess of eighty (80) hours

An employee may use such compensatory time within a reasonable period after making the request if the use of compensatory time does not unduly disrupt the operations of the department.

On June 30th of each year, all employees accrued compensatory time shall be paid down to zero.

C. Overtime Authorization

All overtime requests must have the prior authorization of a supervisor prior to the commencement of such overtime work. Where prior written authorization is not feasible, explicit verbal authorization must be obtained. Calls for service beyond the end of the duty time are considered as authorized.

An employee's failure to obtain prior approval may result in the denial of the overtime request.

Article 14: Overtime (continued)

D. Clothes Changing

Employees are not authorized to wear their uniforms or any part thereof that is distinguishable as such unless on duty.

Nothing herein prevents an employee from wearing his/her uniform to and/or from his/her residence to work.

Nothing herein prevents an employee from wearing his/her uniform while conducting personal business during lunchtime.

Time spent in changing clothes before or after a shift, is not considered hours worked and is not compensable in any manner whatsoever.

E. Training Time

Training time outside normally scheduled work hours shall be compensated pursuant to Code of Federal Regulations (CFR), Section 785.27, et. Seq.

Travel time outside normally scheduled work hours shall be compensated pursuant to CFR Section 785.33, et. Seq. When feasible, the Department will adjust the employee's work schedule to minimize the impact of travel and training time.

F. City Vehicle Use

Employees who are provided with a City vehicle to travel to and from work shall not be compensated in any manner whatsoever for such travel time in the City vehicle.

This provision also applies in those situations where the radio must be left on and monitored.

G. Call Back Pay

Call back duty occurs when an employee is ordered to return to duty on a non-regularly scheduled work shift. Call back does not occur when an employee is held over from his/her prior shift or is scheduled a minimum of ten (10) hours in advance to work prior to his/her regularly scheduled shift. An employee is called back to duty commencing at the time he/she receives the page and is compensated as follows:

Credit for two hours worked is received. If during the first hour of the call out a second or more call outs are received, he/she will still receive credit for the two hours worked or more hours based on actual time worked.

After the first hour, if he/she has completed the work related to the call out(s) and returned home and receives a new call out, he/she will again receive credit for two hours worked (a new call out) and the same first hour provisions apply.

Any employee called back after midnight shall be allowed to have his/her shift for the next day reduced by the number of hours spent on call back. The reduction of hours shall be either at the start or the end of the regular shift, with the approval of the employee's supervisor.

Article 14: Overtime (continued)

H. Court Pay

When an employee is physically called to court on behalf of the City, while off duty, he/she shall be credited on an hour for hour basis for the time actually spent in court. An employee shall be credited with a minimum of two (2) hours for the court appearance. Travel time shall not be considered hours worked and shall not be compensated in any manner whatsoever.

I. Standby Pay

Teamsters Union represented employees required to standby, to handle overtime work, which may arise, shall be compensated at the rate of two hundred dollars (\$200) per seven (7) day period.

Standby status is defined as time in which an employee can be reached at his/her residence or by pagers and be able to respond in thirty (30) minutes.

Standby time is considered special pay under the Fair Labor Standards Act (FLSA). This payment is being made pursuant to the MOU. Time compensated in this manner shall not constitute hours worked for purpose of FLSA; however, standby pay will be included into the overtime calculation should overtime be earned during the work week.

Article 15: Uniforms and Boot Reimbursement

Affected employees will receive eleven (11) sets of uniforms owned or rented by the City. The City will pay for the cleaning of these uniforms.

In accordance with CalPERS regulations, any "Classic" employee required to wear a full uniform that is rented and maintained by a uniform vendor through a contract with the City shall have the monetary value of the City-provided uniforms reported to CalPERS as special compensation. The monetary value is based on the pricing for the rental and maintaining (i.e. laundering) the eleven (11) sets of uniforms provided to each employee. The current monetary value that will be reported bi-weekly to CalPERS is \$10.70; however, should a new contract between the City and a uniform vendor be approved, which results in a change to the monetary value, the new amount will be reported to CalPERS. The pricing will be specified in the contract between the City and the uniform vendor and will be adjusted accordingly when a change in the cost of renting and maintaining (i.e. laundering) of uniforms occurs. The uniform vendor contract will remain on file with the City Clerk's office and is selected via a formal bid process.

In accordance with CalPERS PEPRA regulations, any "New Member" employees required to wear a full uniform that is rented and maintained by a uniform vendor through a contract with the City shall not have the monetary value of the City-provided uniforms reported to CalPERS as special compensation.

In addition, each affected employee will be allowed reimbursement of up to \$250 for boot purchases made during each fiscal year. A second pair of boots may be reimbursed in a fiscal year with the supervisor's approval prior to the purchase. Affected employees must purchase boots which meet applicable requirements and specifications as set forth in the American National Standard for Personal Protection-Protective Boot Wear, Z41, 1991, and must purchase the boots at a City-approved store if the employee wants the store to bill the City directly.

Any portion of this reimbursement which is not used to purchase boots may be used to purchase boot accessories such as laces and inserts. Reimbursement for these expenses shall occur at the same time reimbursement occurs for boot purchases and the total shall not exceed \$250.

Article 16: Working Out of Classification

Employees who meet the following criteria shall be paid at the first step in the salary range for the position in which they are working out of classification, which gives them an increase of at least 5% in base salary:

1. The position is vacant or the incumbent is temporarily absent.
2. The position has a higher top salary step than their current position.
3. They are assigned to perform all of the essential functions of the higher classification.
4. They meet the minimum education and experience requirements for such position, as determined by management.
5. Their service in the higher paid classification exceeds 80 consecutive hours. In such case, the higher salary rate payable shall commence on the 81st consecutive working hour.
6. The appointment to perform this work has been approved by the City Manager following recommendation by the Department Head.
7. The need for such an assignment is temporary in nature, generally for one of the following reasons:
 - a. A higher classification employee is on a leave of absence, medical leave, or other non-routine circumstance.
 - b. Short-term assignments, special projects, or specific purpose and/or programs that will terminate in no more than one year.
 - c. A higher classification position is vacant.

Such assignments shall not exceed one year in duration. The City will follow the guidelines and rules as established by the California Public Employee Retirement System (CalPERS) law when reporting earnings for working out of class assignments.

1. When a higher classification position is vacant, no more than 960 hours of reportable earnings from the higher classification will be reported for Classic members working out of class.
2. When a higher classification employee is on a leave of absence; the Classic members will have all reportable earnings reported to CalPERS when working out of class.
3. PEPRAs members will not have any earnings reported to CalPERS when working in an out of class assignment.

The employee approved to receive out of class pay shall be eligible to receive merit increases in his/her regular position during the out of class pay assignment.

When the out of class pay assignment is ended, the employee will receive his/her original salary rate.

Article 17: Bilingual Pay

The City will establish a Bilingual Pay Program which will compensate designated employees who provide translation to and from a foreign language and related services. Department heads will recommend which classifications and employees to be considered for bilingual pay, and the City Manager will approve assignment recommendations based on the customer services needs of the City. Eligible employees will be required to pass a test that shall be administered by a qualified agency or individual. Employees who pass the test and are assigned to provide bilingual translation services will receive \$75 per month as compensation. Effective July 1, 2018, employees who pass the test and are assigned to provide bilingual translation services will receive \$100 per month as compensation. If the employee is reassigned to no longer provide bilingual translation services, the bilingual pay will be discontinued and will not be paid in the following month. It should be noted that regardless of whether or not an employee is receiving bilingual pay, all employees having bilingual capability shall be expected to reasonably respond to non-English inquiries directed to them in their capacity as a City employee.

Article 18: Tuition Reimbursement/Certification

- A. Tuition Reimbursement – The City shall provide all Teamsters Union represented employees a maximum of \$3,000 reimbursement per fiscal year per employee under the existing Tuition Reimbursement Policy. The City reserves the right to revise this policy, as needed other than changing the maximum annual reimbursement amount.
- B. Certification (Water District – Water and Sewer)
1. Requirements and expense reimbursement
 - a. Whenever the City or a State or Federal Agency determines that a position is required to obtain a specialized license or certificate, the City shall reimburse the cost for such certification courses or license when the employee presents proof of payment.
 - b. The City shall likewise reimburse the cost for other certifications or special credentials that are determined by the City Manager or his/her designee to be related to the employee's job duties.
 - c. The certification requirements shall be as follows for employees in the following classifications assigned to the Water Division:
 - D-1
 - Maintenance Worker
 - Meter Reader
 - Utility Line Locator
 - D-2
 - Pump Maintenance Worker
 - Pump Operator
 - Water Quality Technician
 - Equipment Operator
 - D-3
 - Senior Maintenance Worker
 - Senior Pump Maintenance Worker
 - Senior Pump Operator

Article 18: Tuition Reimbursement/Certification (continued)

- T-1
 - Pump Maintenance Worker
 - Pump Operator
 - Senior Maintenance Worker assigned to Water
 - Senior Pump Maintenance Worker
 - Senior Pump Operator
 - Water Quality Technician
- d. "D-1" is a Water Distribution Operator Certificate, Grade 1; "D-2" is Water Distribution Operator Certificate, Grade 2; and "D-3" is a Water Distribution Operator Certificate, Grade 3. A "T-1" is a Water Treatment Operator Certificate, Grade 1. Each of the above is issued by the State of California.
- e. All employees in the classifications requiring a "D-1" certificate who do not hold such certificate as of the effective date of this MOU and were not required to possess such certification prior to the completion of probation as part of their employment, will be required to have such certification no later than January 1, 2007. Such employees may be given up to one additional year following completion of probation to obtain their "D-1" certification, subject to recommendation by their Department Head and approval by the City Manager.
- f. All employees in the above classifications requiring a "D-2" or "D-3" certificate hold such certification as of the effective date of this MOU. They shall be required to maintain such certification as long as it is a requirement in their class specification.
- g. Additional certifications required by the City include:
 - 1. Water Quality Technician
 - Backflow Prevention Device Tester (AWWA)
 - Backflow Prevention Device Tester (San Bernardino County Department of Public Health)
 - Cross Connection Control Program Specialist (AWWA)
 - 2. Maintenance Worker assigned to Wastewater – Collection System Maintenance Grade I
 - 3. Senior Maintenance Worker assigned to Wastewater - Collection System Maintenance Grade II
- h. The Water Quality Technician and Senior Maintenance Worker have the required additional certifications as of the effective date of this MOU. They shall be required to maintain such certification as long as it is a requirement in their class specification.
- i. Employees in the classifications requiring a "T-1" certificate who have such certificate as of the effective date of this MOU shall be required to maintain such certification as long as it is a requirement in their class specification. All employees in the classifications requiring a "T-1" certificate who do not hold such certificate as of the effective date of this MOU, will be required to have such certification no later than January 1, 2007.

Article 18: Tuition Reimbursement/Certification (continued)

- j. All new hires or transfers into the Water Division will be required to meet the certification requirements as defined in their class specification, unless the certification requirements are temporarily suspended as recommended by their Department Head and approved by the City Manager (Note written agreement for new hires or transfers will document conditions).

2. Incentive Pay

- a. The City shall pay employees who possess required certifications above the "D-1" level an additional 2% of base salary starting on the date such certification becomes valid, however, no earlier than the month after the MOU is approved by the City Council.

As clarification, a Maintenance Worker who receives a D-2 will receive the 2% incentive pay, and if that same Maintenance Worker is promoted to a Pump Maintenance Worker position, the employee will stop receiving the 2% incentive pay because the Pump Maintenance Worker position requires a D-2. However, if the employee now working as a Pump Maintenance Worker receives a D-3, the 2% incentive pay will again be received.

Incentive pay shall be discontinued for employees possessing certificates that are not required in their class specification.

The above two new sections will replace the current Article 15 in its entirety, including the one-time "Certification Incentive payment of \$100 each year and the "Certification Incentive Pay" chart, which is Attachment A of the current MOU.

- b. The City shall pay employees who possess required certifications above the Collection System Maintenance Grade I (C-1) or Collection System Maintenance Grade II (C-2) level an additional 2% of base salary starting on the date such certification becomes valid, however, no earlier than the month after the MOU is approved by the City Council.

Incentive pay shall be discontinued for employees possessing certifications that are not required in their class specification.

C. Animal Control Officer Certification \$100 Certification Pay

Animal Control Officers and Senior Animal Control Officers shall receive a one-time "Certification Incentive" payment of \$100 each fiscal year for holding the necessary certification to use the equipment and chemicals needed to immobilize animals (Certificate of Completion – Chemical Immobilization for Animal Control Professionals conferred by the California State Humane Association or an equivalent certification and organization acceptable to the City).

The Certification Incentive payment shall be made no later than February 1 each year for those employees who already hold the certification or thirty (30) days after the employee submits the required documentation demonstrating he/she has earned the certification. No employee may earn Certification Incentive pay of more than \$100 per year, regardless of the number of certifications held or obtained. Teamsters Union and City agree that the fact that an employee is earning Certification Incentive pay cannot be used to assert that the employee is working out of class and is therefore entitled to reclassification.

The employee must maintain the certification for the entire year after the Certification Incentive pay is earned.

Article 18: Tuition Reimbursement/Certification (continued)

D. Commercial Driver's License \$100 Certification Pay

Employees maintaining a valid Class "A" California Driver's License, placed on the City's Department of Transportation Random list for testing and complies with the City's Drug and Alcohol Testing Program for Commercial Drivers shall receive a one-time payment of \$100 each fiscal year. This certification payment shall be made on or after February 1 each year for those employees who hold the License as of January 31st. This certification pay will not be considered special compensation and will not be reported to the California Public Employees' Retirement System.

Teamsters and the City agree that the fact that an employee is earning certification pay cannot be used to assert that the employee is working out of class and is therefore entitled to reclassification.

Benefits

Article 19: CalPERS Retirement Plan

The City provides the 2.7% at 55 full retirement formula, as provided by Government Code § 21354.5.

The City has elected and continues to elect to be subject to the following optional retirement provisions:

- a. Section 20042 (One-Year Final Compensation).
- b. Section 20903 (Two Years Additional Service Credit).
- c. Section 21574 (Fourth Level of 1959 Survivor Benefits. In addition to funding the employer cost of the survivor benefits, the City shall contribute a maximum of \$2.00 per month per employee as and for the member's contribution for funding of this benefit).
- d. Section 21024 (Military Service Credit as Public Service).

Effective the first full pay period after July 1, 2012 the City's contribution towards the local miscellaneous member's contribution will be zero percent of reportable earnings, and each local miscellaneous member's contribution shall be 8% of the individual member's reportable earnings.

Employees hired by the City on or after January 1, 2013, who qualify as "new members" as that term is defined in the Public Employee Pension Reform Act (AB 340) shall be subject to the Act including but not limited to:

- a. 2% at 62 retirement formula
- b. Pension benefit is based on the highest annual final compensation during a consecutive 36 month period.
- c. PERS contribution of 50% of the PERS "normal cost" as that term is defined in the Act.

In addition to paying the full CalPERS member contribution, each employee covered by the CalPERS 2.7% @ 55 full retirement formula shall, effective the first full pay period after July 1, 2015, pay one percent of reportable earnings by payroll deduction as cost sharing of the City's normal costs pursuant to Government Code section 20516 (f).

Article 20: Health Insurance

All employees must enroll in an available City health insurance plan unless they opt out.

1. Health Insurance Provider:

The City will provide a comparable health insurance plan(s) available for all full-time regular employees. The City and Teamsters Local 1932 will negotiate plan changes expeditiously when cost-effective alternatives are available.

2. City Contributions:

Effective June 1, 2017 for the July 1, 2017 premiums, the City contributions are towards premiums for health, dental and vision insurance only.

a. Opt-out of City Health Coverage Contribution:

Employees who opt-out of the City's health insurance with proof of alternate group coverage and hired before January 1, 2013 are eligible to receive the difference less the mandatory dental and vision plan selections up to \$665. The cash back provision is not available to employees hired on or after January 1, 2013.

Article 20: Health Insurance (continued)

In order to opt out, an employee must provide the following: (1) proof that the employee and all individuals for whom the employee intends to claim a personal exemption deduction for the taxable year or years that begin or end in or with the City's plan year to which the opt out applies ("tax family"), have or will have minimum essential coverage through another source (other than coverage in the individual market, whether or not obtained through Covered California) for the plan year to which the opt out arrangement applies ("opt out period"); and (2) the employee must sign an attestation that the employee and his/her tax family have or will have such minimum essential coverage for the opt out period. An employee must provide the attestation every plan year at open enrollment. The opt-out payment cannot be made and the City will not in fact make payment if the employer knows that the employee or tax family member doesn't have such alternative coverage, or if the conditions in this paragraph are not otherwise satisfied.

- b. Effective July 1, 2018 for the August 2018 insurance premiums, the City shall pay up to \$1,013 per month, with no difference received as cash, the employee shall be responsible for paying the difference, or the amount greater than \$1,013, through payroll deduction.
- c. Effective July 1, 2019, for the August 2019 insurance premiums, the City shall pay up to \$1,113 per month, with no difference received as cash, the employee shall be responsible for paying the difference, or the amount greater than \$1,113, through payroll deduction.
- d. Effective July 1, 2020, for the August 2020 insurance premiums, the City shall pay up to \$1,224 per month, with no difference received as cash, the employee shall be responsible for paying the difference, or the amount greater than \$1,224, through payroll deduction.
- e. Effective July 1, 2021, for the August 2021 insurance premiums, the City shall pay up to \$1,324 per month, with no difference received as cash, the employee shall be responsible for paying the difference, or the amount greater than \$1,324 through payroll deduction
- f. Retiree Contribution:
The City shall provide each employee who retires with a \$50 per month contribution toward a health care plan selected by the retiree. Said contribution shall terminate upon the retiree's sixty-fifth (65th) birthday. The City shall provide each employee who retires and is covered under the City's provided Health Insurance Provider(s) the minimum employer health contribution as required by the provider.

Reopener on ACA:

The City may reopen negotiations on the issue of health insurance benefits or cafeteria plan (including, as to both, but not limited to, plan benefits or structure, City or employee contributions and/or opt out amount or requirements) in order to avoid penalties or taxes under the ACA that may result from an interpretation of the ACA by the Internal Revenue Service or other federal agency (including, but not limited to, a revenue ruling, regulation or other guidance) or a ruling by a court of competent jurisdiction.

Article 20: Health Insurance (continued)

Affordable Care Act (ACA) Anti-Retaliation

1. Prohibition on Retaliation: It is the City's policy to comply in full with Section 1558 of the U.S. Patient Protection and Affordable Care Act (ACA), which prohibits retaliation against employees who report violations of Title I of ACA or who receive tax credits or cost-sharing reductions (under section 36B of the Internal Revenue Code or section 1402 of ACA) in connection with participation in the health insurance exchange.
2. Protected Activity
 - a) "Whistleblowing" re Violations of Title I of ACA: ACA protects an employee, former employee, or applicant who reports, testifies (or is about to testify) in a proceeding, assists or participates (or is about to assist or participate) in a proceeding, objects to, or refuses to participate in any activity, policy, practice, or assigned task that the employee (or other person) reasonably believed to be in violation of Title I of ACA, including any order, rule, regulation, standard or ban under Title I of ACA.
 - b) Title I of ACA includes but is not limited to consumer protections such as the following:
 - i. Elimination of lifetime and annual limits on benefits by 2014;
 - ii. Prohibition on rescissions of coverage;
 - iii. Elimination of pre-existing conditions exclusions;
 - iv. Coverage of preventive services and immunizations;
 - v. Extension of dependent coverage up to age 26;
 - vi. Development of uniform coverage documents; and
 - vii. Implementation of appeals processes for consumers.
 - c) Receipt of Affordability Assistance: ACA also protects an employee, former employee, or applicant who receives a tax credit under Section 36B of the Internal Revenue Code or a cost-sharing reduction under Section 1402 of the Act as a result of enrolling in a qualified health plan offered by the health insurance exchange. In California, this state-run marketplace is known as "Covered California."
3. Prohibited Retaliatory Conduct

Prohibited conduct includes but is not limited to discharge or otherwise retaliatory conduct, including intimidating, restraining, coercing, blacklisting, or disciplining an employee, former employee, or applicant with respect to compensation or any other terms, conditions or privileges of employment as a result of that individual's participation in a protected activity as defined in paragraph 2 above.

4. Complaint Procedure

Any City employee, former employee, or applicant who wishes to report a violation of Title I of ACA, or who believes he or she has been subject to retaliation in violation of this policy should immediately notify either his or her supervisor, Human Resources staff, or the City Manager. It is the City's policy that no City employee shall retaliate against any person who participates in a protected activity as defined by Section 1558 of ACA.

An employee, former employee, or applicant who believes that he or she has been retaliated against under this policy may file or have filed by any person on his or her behalf, a complaint with United States Department of Labor, Occupational Safety & Health Administration (OSHA) within 180 days after an alleged violation occurs. For more information on filing an OSHA complaint, visit www.osha.gov.

Article 21: Dental Insurance

The City will provide group dental insurance coverage. Employees are required to enroll in group dental coverage, at the minimum single-party rate. Effective July 1, 2018 for the August Premiums, the City shall pay the employee only coverage of the selected dental plan. If the selected dental plan is higher, then the employee shall be responsible for paying the difference. The City and Teamsters Union will negotiate plan changes expeditiously when cost-effective alternatives are available.

Article 22: Optical Insurance

The City shall provide group optical insurance coverage. Employees are required to enroll in group optical coverage at the minimum single-party rate. Effective July 1, 2018 for the August Premiums, the city shall pay the employee only coverage of the vision plan. If the selected vision plan is higher, then the employee shall be responsible for paying the difference. The City and Teamsters Union will negotiate plan changes expeditiously when cost-effective alternatives are available.

Article 23: Life Insurance

The City will provide group life insurance coverage. The City will pay life insurance premiums for \$30,000 life insurance coverage. The City and the Teamsters Union will negotiate plan changes expeditiously when cost-effective alternatives are available.

Article 24: IRS 125 Plan

Effective January 1, 2011, the City's IRS 125 Plan is available to the Teamsters Union membership, subject to the City's exercise of its sole discretion to change provisions of the plan and/or cease administering and/or to withdraw said Plan.

The City retains sole discretion to determine if and when its administration of the IRS 125 Plan shall change provisions of the Plan and cease and/or if and when it shall withdraw and terminate the IRS 125 Plan described herein. Neither the City's decision to implement, administer, change, cease administration, and/or terminate the IRS 125 Plan, nor the impact of said determinations, shall be subject to the meet and confer process. It is agreed by the parties that the benefit of an IRS 125 Plan is sufficient to provide consideration to Teamsters Union as and for the valid entering into of these provisions.

Article 25: Short Term/Long Term Disability Insurance

The City agrees to provide access to a short term/long term disability insurance policy or coverage. Employees are required to pay for this short term/long term disability insurance. The City and Teamsters Union will negotiate short term/long term disability insurance plan changes expeditiously when cost-effective alternatives are available.

Article 26: Employee Assistance Program

The City shall provide an Employee Assistance Program for all full-time continuous salaried employees and dependent coverage.

Article 27: Other Deductions

Insurance premiums sponsored by Teamsters Union shall be withheld by the City and shall be transmitted to the Teamsters Union Officer designated in writing by Teamsters Union as the person authorized to receive such funds, at the address specified on a monthly basis.

The City shall not be obligated to put into effect any new, changed or discontinued insurance premium deduction until a payroll deduction card is submitted to the Management Services Department in sufficient time to permit normal processing of the change or deduction.

Teamsters Union agrees to hold the City harmless and indemnify the City against any claims, causes of actions or lawsuits arising out of the deductions or transmittal of such funds to Teamsters Union, except the intentional failure of the City to transmit to Teamsters Union monies deducted from the employees pursuant to this article.

Leaves of Absence

Article 28: Holidays

The City offices shall be closed on the following days. All full-time continuous salaried employees shall be compensated at their regular rate for these days:

1. Independence Day
2. Labor Day
3. Veteran's Day
4. Columbus Day
5. Thanksgiving Day
6. Day after Thanksgiving
7. Christmas Eve
8. Christmas Day
9. New Year's Day
10. Martin Luther King Jr. Day
11. President's Day
12. Memorial Day

Whenever a holiday falls on a Sunday, the following Monday shall be observed as a holiday. Whenever a holiday falls on a Saturday, the preceding Friday shall be observed.

City facilities will be closed between Christmas Day and New Year's Day in what was a regular work week. For example, in 2013 the City shall be closed December 26, 27, 30 and 31 and in subsequent years, dates could be different based on the calendar. Each bargaining unit employee shall be paid for those days for the same amount of hours for which the employee would have been regularly scheduled and would have worked if the City were not closed on those dates. Employees may not be eligible for this closure but shall be eligible for overtime if worked.

The floating holiday benefit is eliminated.

For employees to be compensated (vacation or sick leave) for a day off prior to or following a Holiday, the employee must request and have approved the time off prior to the Holiday. If the employee does not have written approval for the absence, the employee must provide the city with a certification of absence from a physician for the absence or the absence will result in a non-paid leave.

Article 29: Vacation/Vacation Buy Back

All full-time employees shall, with continuous service, accrue working hours of vacation monthly according to the following schedule:

<u>Years of Service</u>	<u>Annual Hours Accrued</u>
1	80
2	88
3	96
4	104
5	112
6	120
7-9	128
10	136
11-13	144
14	152
15+	160

Employees may use up to forty (40) hours of accrued vacation after six (6) months of service.

Employees will have a maximum of 400 hours carry-over of vacation per fiscal year. On June 30, if an employee exceeds the maximum accrual allowable, the vacation accrual will stop until such time as the employee is at or below the maximum allowable, as long as the employee has not been denied vacation time off. This will be evaluated on a fiscal year basis.

Employees shall be allowed to cash out twenty (20) or more hours of vacation during any pay period in the fiscal year through the last full pay period during the fiscal year, as long as the employee has eighty (80) hours of vacation remaining on the books.

All accrued but unused vacation shall be paid out to the employee upon separation of employment.

Article 30: Sick Leave/Sick Leave Notification

Sick leave will be accrued at the rate of eight (8) hours per month, ninety-six (96) hours per year. Sick leave can be accrued without limit; however, there will be no buy back nor payoff of accrued but unused sick leave upon termination of employment. Eighteen (18) hours of sick leave per fiscal year may be utilized for personal time as long as the employee has forty (40) hours of sick leave accrued and is requested prior to the use. Effective March 17, 2018, eighteen (18) hours of sick leave may be utilized for personal time as long as the hours are requested prior to use and the employee has a remaining balance of forty (40) hours after use. Personal time hours must be used during the term of this MOU and can be neither cashed out nor carried over into a new year. If not used during the term of this MOU any remaining personal time hours shall be lost.

With respect to Teamsters Union represented employees, City Personnel Rules and Regulations, Rule VI, Section 7 (7), shall be amended as follows:

Notification to Supervisor - Any employee needing to be absent because of sickness or other physical disability shall notify the appropriate department manager or immediate supervisor at least one (1) day prior to such absence if circumstances permit, or by the start of shift barring unforeseen circumstances.

Rule VI, Section 9 of the Personnel Rules are revised to provide that the maximum usable benefit shall be forty (40) work hours rather than five (5) days.

Article 31: Bereavement Leave (Revised Article added per Resolution No. 2005-160 and HWD 2005-24 approved December 7, 2005)

The following new MOU language will be effective until such time as the Personnel Rules are amended with the same language and the Article 29 language becomes redundant in the MOU. Rule VI, Leave, Section 7, Sick Leave, Subsection 8, Bereavement Leave, of the Personnel Rules and Regulations is revised to provide that any eligible employee who is absent from work by reason of a death in their immediate family will be allowed a leave of absence with pay up to five (5) cumulative working days (44 hours) per occurrence or a death of their blood relative, will be allowed a leave of absence with pay up to three (3) cumulative working days (27 hours) per occurrence, effective July 1, 2018. Additional time may be requested by the eligible employee, however, this additional time will be deducted from the employee's leave accrual, e.g. sick (up to 13 hours); vacation, floating holiday hours.

For the purpose of this article, "immediate family" is defined as employee's spouse, employee's parents, employee's spouse's parents, employee's child, step-child, step-parent, grandparent, grandchild, brother, sister, step-brother, step-sister. "Blood relative" is defined as aunt, uncle, niece, nephew, brother-in-law, sister-in-law, legal guardian, employee's ex-spouse who is parent of employee's children, domestic partner as defined under California Family Code Section 297, and/or any other individual living in the same household as the City employee. The department head and the City Manager shall approve such bereavement leave with their signature.

The Bereavement Leave change will be retroactive to January 1, 2004, with applicable employee's sick leave hours used to Bereavement Leave restored to their sick leave accrual balance.

Article 32: Workers' Compensation

The City provides certain supplementary Workers' Compensation benefits for temporary disabilities (See Resolution No. 90-36).

Article 33: Jury Duty

Rule VI, Section 3 (1), of the Personnel Rules and Regulations is superseded to provide that employees who are summoned to appear and serve for jury duty shall be entitled to up to eighty (80) hours leave.

Article 34: Leave Without Pay

Rule VI, Section 4 of the Personnel Rules and Regulations is superseded to provide that such maximum leave shall be up to eighty (80) working hours rather than ten (10) working days.

Article 35: Catastrophic Leave

The City agrees to permit employees within the bargaining unit to contribute a portion of their accrued sick leave to another employee of the bargaining unit when such employee has suffered a catastrophic injury or illness. For such transfer to take place, the following conditions shall apply:

- A. The contributing employee must have at least ninety-six (96) hours remaining after such contribution and the sick leave application rate will be based on the contributing employee's dollar value which will be adjusted proportionally to the receiving employee's rate.
- B. The receiving employee has been absent from work due to injury or illness and has exhausted all earned leave credits, including but not limited to sick leave, vacation time, compensatory time and holiday credits, and is, therefore, facing financial hardship.
- C. The transfers must be a minimum of eight (8) hours and in whole hour increments thereafter.

The transfers are irrevocable, and will be indistinguishable from other sick leave credits belonging to the receiving employee. Transfers will be subject to all taxes required by law.

Eligibility to be a receiving employee in this program is not subject to the Grievance Procedure in the Personnel Rules and Regulations.

Article 36: Benefit Amendment Clause

Any other employee benefit expressed in terms of days earned, not specifically mentioned above, is hereby amended to provide eight (8) hours accrued benefit in lieu of days.

Employee/Employer Relations

Article 37: Employer/Employee Relations

The City has an Employer/Employee Relations Resolution, which provides the guidelines for forming recognized Employee Associations. (See Resolution No. 90-37).

Article 38: Promotions and Probationary Period

Effective March 17, 2018, qualified City Teamsters' members who apply for existing vacancies shall be provided an opportunity to participate in the competitive selection process (1st round) to be placed on the eligibility list. Teamsters' members who are among the top three (3) qualifying candidates on the eligibility list will be given an interview by the Department Head.

Any promotion requires a one (1) year probationary period. Once an employee receives regular full-time status at a position and then is promoted, the employee will not be terminated in the event they are unable to successfully fulfill the requirements of the position promoted to, but will be reassigned to an equivalent position within the organization in which they served prior to being promoted.

Upon promotion, the employee will receive a minimum of five percent (5%) base salary increase or the beginning of the position classification range, whichever is greater.

Article 39: Personnel Files

The official personnel file shall be located in the Management Services Department. Any documentation used in a disciplinary action (excluding oral reprimands) will be placed in an employee's personnel file.

Employees, during normal working hours at a reasonable time, have the right to have access to and copies of any document in their official personnel file or any departmental file.

An employee will be provided with an initial copy of any document, which will be placed in the official personnel file. An employee shall have the right to respond in writing to any information contained in his/her personnel file. Such a reply will remain in the personnel file so long as the referenced document is in the file.

Written reprimands, counseling notices, or notices requiring an employee to have medical verification for absences shall be removed from the personnel file and destroyed after three (3) years provided that there have been no further incidents, within that time, related to that specific reprimand or notice.

Article 40: Disciplinary Appeals

This Advisory Arbitration Provision amends the City Personnel Rules and Regulations, Rule XI, Appeal Procedures, by deleting all current text on Pages 60 and 61 and substituting the following language:

Appeal Procedures:

Any permanent employee in the classified service shall have the right to appeal any-termination, suspension of four (4) schedule work days or more, reduction in salary, or non-probationary demotion. The appeal process shall not be applicable to those positions which may be deemed exempt or to probationary employees. The appeal process shall not be applicable to verbal and written reprimands, suspensions of less than four (4) schedule work days, probationary demotions, performance evaluations and denial of merit increases. An employee desiring to appeal the appointing authority's decision shall have ten (10) calendar days after receipt of the response to file an appeal.

Article 40: Disciplinary Appeals (continued)

The employees request for appeal must be addressed to the Personnel Director and received in the Management Services Department so that same is date stamped by the Management Services Department within the ten (10) day period.

If, within the 10-day appeal period, the employee involved does not file said appeal, unless good cause for failure is shown, the action of the appointing authority shall be considered conclusive and shall take effect as prescribed. If within the ten (10) day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Management Services Department, an appeal hearing shall be established as follows:

- A. The American Arbitration Association or the State Mediation and Conciliation Service or any other recognized mediation/arbitration service as mutually agreed to shall be requested to submit a list of seven (7) persons qualified to act as hearing officers to the City and the employee. Within ten (10) days following receipt of the list of hearing officers, the parties shall meet to select the hearing officer. The parties shall alternately strike one (1) name from the list of hearing officers (the right to strike the first name to be determined by lots) until one (1) name remains, and that person shall be the hearing officer.
- B. Where practicable, the date for a hearing shall not be less than twenty (20) calendar days, nor more than sixty (60) calendar days, from the date of filing of the appeal with the Personnel Director. The parties may stipulate to a longer or shorter period of time in which to hear the appeal. All interested parties shall be notified in writing of the date, time, and place of the hearing.
- C. All hearings shall be private provided, however, that the hearing officer shall, at the request of the employee, open the hearing to the public.
- D. Subpoenas and subpoenas duces tecums pertaining to a hearing shall be issued at the request of either party, not less than seven (7) calendar days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the hearing officers.
- E. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded. The hearing officer shall not be bound by technical rules of evidence.
- F. Each party shall have their rights: To be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the employee does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing, unless the parties (City, hearing officer, employee/employee representative) mutually agree that same is not necessary.

Article 40: Disciplinary Appeals (continued)

- G. The hearing shall proceed in the following order, unless the hearing officer, for special reason, otherwise directs:
1. The party imposing discipline shall be permitted to make an opening statement;
 2. The appealing party shall then be permitted to make an opening statement;
 3. The party imposing disciplinary action shall produce the evidence on his/her part; the City bears the burden of proof and burden of producing evidence;
 4. The party appealing from such disciplinary action may then open his/her defense and offer his/her evidence in support thereof; the employee bears the burden of proof and the burden of producing evidence for any affirmative defenses asserted;
 5. The parties may then, in order, respectively offer rebutting evidence only, unless the hearing officer for good reason, permits them to offer evidence upon their original case;
 6. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the hearing officer.
- H. The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer, in his/her discretion, for good cause otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision. The hearing officer shall render his/her judgment as soon after the conclusion of the hearing as possible and in no event later than thirty (30) days after conducting the hearing. His/her decision shall set forth which charges, if any, are sustained and the reasons therefore. The opinion shall set forth findings of fact and conclusions.
- I. The hearing officer may recommend sustaining or rejecting any or all of the charges filed against the employee. He/she may recommend sustaining, rejecting, or modifying the disciplinary action invoked against the employee. He/she may not recommend for discipline more stringent than that issued by the department head.
- The hearing officer's opinion and recommendation shall be filed with the City Manager, with a copy sent to the charged employee, and the Personnel Director and shall set forth his/her findings and recommendations. If it is a dismissal hearing and a dismissal is not the hearing officer's recommendation, the opinion shall set forth the date the employee is recommended to be reinstated and/or other recommended action. The reinstatement date, if appropriate, may be any time on or after the date of disciplinary action.
- J. Within thirty (30) days of the receipt of the hearing officer's findings and recommendation, and transcript (which is optional only by the mutual consent of the City and the employee), whichever date is later, the City Manager, or his/her designee, shall adopt, amend, modify, or reject the recommended findings, conclusions, and/or opinions of the hearing officer. Prior to making a decision, which modifies or rejects the recommendation of the hearing officer, the City Manager, or his/her designee, shall order and read the transcript of the Third Party Advisory Process. Prior to making a decision, which supports the hearing officer, the City Manager, or his/her designee, shall not conduct a de novo hearing. The City Manager, or his/her designee, may, at his/her option, allow limited oral arguments and/or may request and

Article 40: Disciplinary Appeals (continued)

review written statements from either side. The decision of the City Manager, or his/her designee, shall be final and conclusive. Copies of the City Manager or his/her designee's, decision, including the hearing officer's recommendation(s) shall be filed where appropriate, including the employee's personnel file, unless no discipline is upheld by the City Manager.

- K. The decision of the City Manager, or his/her designee, shall be final and conclusive. Copies of the City Manager's, or his/her designee's, decision, including the hearing officer's recommendation(s) shall be filed where appropriate, including the employee's personnel file, unless no discipline is upheld by the City Manager, or his/her designee.
- L. Each party shall bear equally the cost of facilities, fees and expenses of the hearing officer, including the court reporter and transcripts. Each party shall bear its own witness and attorney fees. If either party unilaterally cancels or postpones a scheduled hearing, thereby resulting in a fee charged by the hearing officer or court reporter, then the party responsible for the cancellation or postponement shall be solely responsible for payment of that fee. This process shall not apply to mutual settlements by the parties, which result in an arbitration fee.
- M. In the case of suspension, demotion, reduction in salary, or dismissal prescribed by the City Manager, the time of such of suspension, demotion or dismissal shall be effective from the first day after such delivery of said decision or shall relate back to and be effective as of the date the employee was disciplined pending hearing before and decision by the City Manager, or his/her designee, whichever is applicable. If discipline imposed resulted in loss of pay, and the decision results in reduction or elimination of loss of pay, the pay loss shall be restored to the employee based on the number of standard work hours lost computed at his/her then base hourly rate.
- N. The provisions of Section 1094.6 of the Code of Civil Procedure shall be applicable to proceedings under this Section.

Appeals of Suspensions Less Than Four (4) Schedule Work Days:

A permanent employee shall have the right to appeal a suspension less than four (4) schedule work days in the following manner:

- 1. The appointing authority shall cause to be served on the employee affected, by registered mail or personal delivery, a statement signed by the appointing authority of the specific action against the employee. This statement shall clearly inform the employee that he/she has the right, within five (5) working days after receipt of this notice, to request an informal hearing on the action by filing the request with the appointing authority.
- 2. If within the five (5) day appeal period the employee involved does not file said appeal, unless good cause for the failure is shown, the action of the City shall be considered conclusive and shall take effect as prescribed.
- 3. If within the five (5) day appeal period the employee involved files such notice of the appeal by giving written notice of appeal to the appointing authority, a time for an appeal hearing before the City Manager, or his/her designee, shall be established. The date for a hearing shall not be less than ten (10) days, nor more than thirty (30) days, from the date of the filing of the appeal, unless the parties stipulate to a different date. All interested parties shall be notified in writing of the date, time, and place of the hearing at least seven (7) calendar days prior to the hearing.

Article 40: Disciplinary Appeals (continued)

4. The City Manager, or his/her designee, shall conduct an informal hearing on the appeal. Each party shall have the opportunity to present all relevant information in support of its respective position. These proceedings may be electronically recorded and either party shall have the right to cause them to be reported by a certified shorthand reporter at the party's expense.
5. Within ten (10) working days after the conclusion of the hearing, the City Manager, or his/her designee, shall deliver to the employee a written decision which shall either (a) affirm the decision, (b) modify it by (1) holding that certain charges were not established by a preponderance of the evidence and/or (2) reducing the penalty or (3) overturn the decision in its entirety. Said decision shall be final and binding on the parties, subject to their right to seek judicial review pursuant to 1094.5 and 1094.6 of the California Code of Civil Procedure.

Article 41: No Strike/No lockout

- Section 1. Teamsters Union, its officers, agents, representatives, and/or members agree that during the term of this MOU they will not cause or condone any strike, walkout, slowdown, sick-out or any other job action by withholding or refusing to perform services.
- Section 2. The City agrees that it shall not lockout its employees during the term of this MOU. The term "lockout" is hereby defined so as not to include the discharge, suspension, termination, layoff, failure to recall or failure to return to work of employees of the City in the exercise of its rights as set forth in any of the provisions of this MOU or applicable ordinance or law.
- Section 3. Any employee who participates in any conduct prohibited in Section 1 above may be subject to disciplinary action up to and including discharge.
- Section 4. In the event that any one or more officers, agents, representatives, or members of Teamsters Union engage in any of the conduct prohibited in Section 1 above, Teamsters Union shall immediately instruct any persons engaging in such conduct that their conduct is in violation of this MOU and is unlawful and they must immediately cease engaging in conduct prohibited in Section 1 above, and return to work.

Article 42: Layoffs

Amend City of Hesperia Personnel Rules and Regulations (9/15/88), Rule VIII, Section 3, Reduction in Force by Layoff by deleting all current text on Page 49 and substituting the following language.

1. Advance Notice - Employees separated by reason of a reduction in force shall be given at least thirty (30) days prior notice of separation and the reasons therefore. If one or more employee to be separated is represented by a duly recognized employee organization, the City will, on request, meet with such organization concerning the impact of the layoff.
2. Bumping - An employee whose position has been abolished and who would be laid off shall have the right to "bump" into a classification the employee previously held with the City if such position receives the same or lower salary, and is determined by the City Manager or designee to be qualified for such position at the time, based upon the applicable job description.
3. Offer of Reassignment - An employee's appointment shall not be terminated as a result of a reduction in force procedure before the employee has been made a reasonable offer of reassignment, if such offer is possible.

Article 42: Layoffs (continued)

4. Offer of Vacant Position - An employee whose position has been abolished and who would otherwise be laid off shall be offered the opportunity to transfer, without examination, to any then currently existing vacant position with the same or lower salary if the employee meets the minimum qualifications for such position, as determined by the City Manager or designee based upon the applicable job description and new application. If two or more employees are eligible for appointment to a vacancy, the criteria set forth in the paragraph entitled Order of Separation shall be applied to determine which employee shall be offered the vacant position.
5. Laid Off Employee on Reemployment Register - The names of regular employees who have been laid off due to reduction in force shall be placed on an appropriate lay off reemployment list according to date and order separated and shall be eligible for reemployment.

Each employee on a lay off reemployment list shall remain on that list for one-(1) year.

Employees whose name appears on a lay off reemployment list shall be considered for reemployment in the class from which the employee was laid off prior to using any other available employment eligible list to fill regular vacancies in the subject class. The Personnel Officer can extend the active period of reemployment lists or individual employees eligibility on such lists for six (6) month periods as he/she determines to be in the best interest of the City.

- A. Notice - The City will notify, by certified mail to the laid off or displaced employee's last known address, of all vacancies for which the employee is eligible for employment under this provision. Such notice shall be given for all such positions, which arise for one (1) year from the date of layoff or displacement. A laid off or displaced employee who fails to report for appointment within two (2) work weeks of notice shall be deemed to have rejected appointment and shall be automatically removed from the reemployment register list.
 - B. Reappointment - An employee who is laid off or displaced to a lower classification under this provision shall be entitled to automatic appointment to any vacant position from which he/she was laid off or displaced or for which he/she is qualified if such employee reports for duty on receiving notice. Appointments shall be made in the reverse order of layoffs, that is, the last laid off shall be the first offered reappointment.
6. Order of Separation - Selection for retention shall be based primarily upon seniority of service with performance being taken into account.

While seniority is the primary factor in determining order of separation, it is not in and of itself the only determining factor.

Therefore, this policy does not preclude the retention of members, which have less seniority to other members within the class for which the reduction in force action may be taken. The following criteria shall be considered in evaluating performance:

- A. The employee's written performance evaluations.
- B. The history of an employee's written disciplinary actions.
- C. The employee's written record of attendance including patterns of sick leave usage, tardiness and unexcused absences.

All newly hired employees serving an initial probationary period, part-time, temporary, seasonal, or emergency employees, in classifications affected by layoff, shall be laid off before any permanent employee is laid off.

Other Policies

Article 43: Outside Employment

It is the policy of the City of Hesperia to allow employees to hold a second job as long as the second job does not present a conflict of interest to their position with the City. In addition, it is required that a second job be reported to the Human Resources Division.

Article 44: Smoking

The City has a no smoking policy to include all tobacco products, including e-cigarettes, vapors exhalants, etc. Employees are prohibited from use of products in all City buildings including passenger vehicles and equipment owned or leased by the City. Use of the products will be prohibited within 20 feet of all vehicles, equipment and entrances, exits, operable windows and ventilation ducts of City buildings.

Article 45: Prevailing Benefits

It is understood and agreed that there exists, in written form, certain personnel rules, policies, practices and benefits which shall continue in effect except for those provisions modified by mutual agreement of both parties.

Article 46: Provisions of Law

It is understood and agreed that this MOU is subject to all current and future applicable federal and state laws, federal and state regulations. If any part or provision of the MOU is in conflict or inconsistent with such above applicable laws, rules and regulations, or is otherwise held to be invalid or unenforceable by any tribunal or competent jurisdiction, such part or provision shall be suspended and superseded by such applicable law or regulations, and the remainder of this MOU shall not be affected thereby.

Article 47: Sole and Entire Memorandum of Understanding

By entering into this agreement, the parties have each fully complied with the obligations to meet and confer under the Meyers-Milias-Brown Act. It is the intent of the parties hereto that the provisions of this MOU shall supersede all prior agreements and memorandums of agreement or memorandums of understanding, or contrary salary and/or personnel resolutions, oral or written, expressed or implied, between the parties, and shall govern the entire relationship and shall be the sole source of any and all rights which may be asserted hereunder. This MOU is not intended to conflict with federal or state law.

This agreement, the City's personnel rules, and the resolution of adoption of this MOU set forth the wages, hours and all other terms and conditions of employment for the employees subject to this MOU. All other terms and conditions of employment, whether written or unwritten, are hereby abrogated and declared null and void.

The parties acknowledge that if the Association membership ratifies this MOU, the City Council would adopt this agreement by resolution and that said resolution would remain in full force and effect during the life of this MOU.

Article 48: Emergency Waiver

In the event of circumstances beyond the control of the City, such as acts of God, fire, flood, insurrection, civil disorder, national emergency, or similar circumstances, if the Chief Administrative Officer or his designee so declares, any provisions of this MOU or the Personnel Rules or Resolutions of the City, which restrict the City's ability to respond to these emergencies, shall be suspended of the duration of such emergency. After the emergency is declared over, the Teamsters Union shall have the right to meet and confer with the City regarding the impact on employees of the suspension of these provisions in the MOU and any personnel rules and policies.

Article 49: Waiver

- Section 1. The parties mutually agree that neither party shall seek to negotiate or bargain with reference to wages, hours, or terms and conditions of employment, regardless of whether covered by this MOU or in the negotiations leading thereto and irrespective of whether or not such matters were discussed or were even within the contemplation of the parties hereto during the negotiations leading to this MOU. Regardless of the waiver contained in this Article, the parties may, by mutual agreement, in writing, agree to meet and confer about any matter during the term of this MOU.
- Section 2. The parties shall reopen any provision of this MOU for the purpose of complying with any final order of a federal or state agency or court of competent jurisdiction requiring a modification or change in any provision or provisions of this MOU in order to comply with state or federal laws.
- Section 3. The parties acknowledge that this MOU shall not be in full force and effect until ratified by Teamsters Union and adopted through resolution of the City Council of the City of Hesperia.

CITY/TEAMSTERS LOCAL 1932 MEMORANDUM OF UNDERSTANDING
February 1, 2020 through January 31, 2022

For the Teamsters, Local 1932:



Steve Cadena, Labor Relations Representative

1-7-2020

Date



Tyson Falls

1-8-2020

Date



Kelly Mathews

1-8-2020

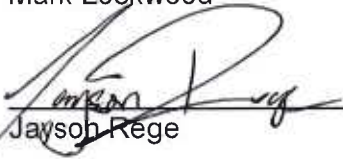
Date



Mark Lockwood

01-07-2020

Date



Jayson Rege

1-8-2020

Date



Stephen Verheyen

1/7/2020

Date

For the City of Hesperia:



Michael Blay
Assistant City Manager

1-7-2020

Date



Rachel Molina
Assistant to the City Manager

1.7.2020

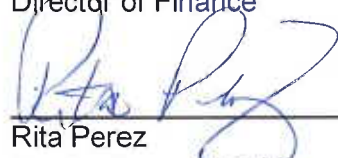
Date



Casey Brooksher
Director of Finance

1-7-2020

Date



Rita Perez
Human Resources Manager

1-7-2020

Date

PASSED, APPROVED and ADOPTED THIS 21st day of January 2020.

Mayor

I, Melinda Sayre, City Clerk of the City of Hesperia, California, do hereby certify that the foregoing Resolution was duly passed, approved and adopted by the City Council of the City of Hesperia, California, at an adjourned meeting of said City Council held on the 21st day of January 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Melinda Sayre, City Clerk

RESOLUTION NO. 2020-003

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA,
CALIFORNIA, APPROVING THE MEMORANDUM OF UNDERSTANDING
WITH THE TEAMSTERS LOCAL 1932**

WHEREAS, the City and the Teamsters Local 1932 (Teamsters Union) have met and conferred and bargained in good faith and have reached a tentative agreement on a successor Memorandum of Understanding for the period of February 1, 2020 through January 31, 2022; and

WHEREAS, the Memorandum of Understanding prescribes the salaries, benefits, and other terms and conditions for employees of the City of Hesperia represented by the Teamsters Union; and

WHEREAS, the City Council has reviewed and approves of the provisions included in the Memorandum of Understanding.

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

Section 1. That the recitals above are true and correct.

Section 2. That the City Council approves the Memorandum of Understanding (Exhibit A on file in the City Clerk's Office) made and entered into between the City of Hesperia and the Teamsters Local 1932, effective February 1, 2020 through January 31, 2022.

Section 3. 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 21st day of January 2020.

Larry Bird, Mayor

ATTEST:

Melinda Sayre, City Clerk

RESOLUTION HWD NO. 2020-02

**A RESOLUTION OF THE HESPERIA WATER DISTRICT OF THE CITY OF
HESPERIA, CALIFORNIA, APPROVING THE MEMORANDUM OF
UNDERSTANDING WITH THE TEAMSTERS LOCAL 1932**

WHEREAS, the City and the Teamsters Local 1932 (Teamsters Union) have met and conferred and bargained in good faith and have reached a tentative agreement on a successor Memorandum of Understanding for the period of February 1, 2020 through January 31, 2022; and

WHEREAS, the Memorandum of Understanding prescribes the salaries, benefits, and other terms and conditions for employees of the City of Hesperia represented by the Teamsters Union; and

WHEREAS, the Board of Directors has reviewed and approves of the provisions included in the Memorandum of Understanding.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE HESPERIA WATER DISTRICT AS FOLLOWS:

Section 1. That the recitals are true and correct.

Section 2. That the Board of Directors approves the Memorandum of Understanding (Exhibit A on file in the City Clerk's Office) made and entered into between the City of Hesperia and the Teamsters Local 1932, effective February 1, 2020 through January 31, 2022.

Section 4. That the Board Secretary shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

ADOPTED AND APPROVED this 21st day of January 2020.

Larry Bird, Chair

ATTEST:

Melinda Sayre, City Clerk

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City of Hesperia

STAFF REPORT



DATE: January 21, 2020

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager

BY: Rachel Molina, Assistant to the City Manager
Victor Knight, Information Systems Manager

SUBJECT: Phone System Update

RECOMMENDED ACTION

It is recommended that the City Council authorize the City Manager to execute a contract with ConvergeOne in the amount of \$112,574 to update the City's phone system and related network hardware to a supported version.

BACKGROUND

The City's phone system is in need of updating in order to ensure that telephone services are available and reliable. A critical component of the system, the Water Billing call center, has not been updated since 2012, and is no longer supported by the manufacturer or third parties. In response to this need, funding for a phone system update project was included in the Fiscal Year (FY) 2019-20 Budget to address the issue.

ISSUES/ANALYSIS

In December 2019, the Water Billing call center experienced a significant system failure. The unexpected system failure, occurring before services could be contracted, necessitates utilizing the Unforeseen Circumstances section of the City's Purchasing Ordinance to timely contract with a vendor.

A temporary workaround is currently in place, which allows the call center to function. The workaround is not a long-term solution, and relies on licensing that will expire. While constituents are currently able to contact Water Billing customer service to remit payment, receive customer service, initiate and terminate service or report emergencies related to water and sewer service, the system's stability in its current state is not sustainable. Phone service at City Hall, Animal Services, and Public Works are at risk for a long-term outage if the update is not performed.

The recommended vendor, ConvergeOne is familiar with the City's communications infrastructure, and has advised on how to temporarily sustain service continuity following the recently experienced failure.

FISCAL IMPACT

Adequate budget exists within the FY 2019-20 Budget.

Ongoing annual costs in the amount of \$15,911 for maintenance, support and licensing is comparable to existing phone system annual requirements, will continue for an additional 4 years, and will be budgeted annually.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

None.

City of Hesperia

STAFF REPORT



DATE: January 21, 2020

TO: Chair and Commissioners, Hesperia Housing Authority
Chair and Commissioners, Hesperia Community Development Commission

FROM: Nils Bentsen, City Manager and Executive Director

BY: Rod Yahnke, Economic Development Manager

SUBJECT: Real Property Purchase and Sale Agreement – APN 0407-261-03, 04 & 20

RECOMMENDED ACTION

It is recommended that the Hesperia Housing Authority (HHA) adopt Resolution No. HHA 2020-02 and the Hesperia Community Development Commission (CDC) adopt Resolution No. CDC 2020-01: (i) approving “Agreement for the Purchase and Sale Of Real Property and Joint Escrow Instructions” (Agreement) for real property located at the northwest corner of Ninth and Juniper, Assessor Parcel Numbers 0407-261-03, 04 & 20 (Property) by and between ZAB LLC, a California limited liability company (Buyer) and the Hesperia Housing Authority and Hesperia Community Development Commission (Seller); and (ii) authorizing the City Manager and Executive Director to execute all documents necessary to complete the transaction and adjust book value of properties accordingly.

BACKGROUND

The Hesperia Community Redevelopment Agency (HCRA) purchased the aforementioned three parcels in 2011 for future development of multi-family housing. At the time it was zoned for such a project. Since then, zoning has gone through various iterations of change including the current Neighborhood Commercial zoning.

The City was approached by ZAB LLC with interest in developing a mixed use project including retail on the first floor and high-end multi-family housing on the upper floors. Numerous amenities centric to current life styles, e-Commerce, and conveniences such as laundry facilities in each unit are proposed.

Since these properties were purchased by the former HCRA, all three have been vetted through the RDA dissolution process and directed by the State’s Department of Finance (DOF) to sell at the highest price possible, and within the shortest time possible. This transaction will facilitate DOF’s directive, and therefore, no further action is required by City’s Successor Agency nor the County-wide Oversight Board.

ISSUES/ANALYSIS

The sales price was negotiated between Buyer and Seller through Coldwell Banker Commercial (CBC), the City’s commercial real estate broker. The Agreement contains standard real estate deal points including a ten-month due diligence period, twelve-month escrow, and splitting escrow costs pursuant to industry standards. Seller will pay a 5% commission out of sale proceeds pursuant to the City’s contract with CBC. Commission will be split between CBC and Bluestone Realty.

Additional deal points include:

- 1) A Covenant Agreement which includes a project entitlement and construction performance schedule to ensure project is completed in a timely manner and to the standards issued by the City;
- 2) Indemnification from prevailing wage issues;
- 3) Option for HHA and CDC to repurchase the assets if Buyer defaults;

Two PSAs were drafted, one for the CDC properties and one for the HHA property. The HCDC transaction and sale proceeds will be remitted to the County for dissemination to the taxing agencies pursuant to the Long Range Property Management Plan and DOF's direction. The HHA transaction and funds will be deposited with the local HHA.

FISCAL IMPACT

Book value for all three parcels is currently Six Hundred Sixty-One Thousand Two Hundred dollars (\$661,200): 0407-261-03 - \$226,200; 0407-261-04 - \$208,800; and 0407-261-20 - \$226,200.

Total sales price for all three parcels is Four Hundred Thousand dollars (\$400,000): 0407-261-03 - \$137,203.50; 0407-261-04 - \$126,649.38; 0407-261-20 - \$136,147.12 cash at close of escrow. Seller will pay commission and its portion of closing costs and escrow fees through escrow out of sale proceeds. Net proceeds from the sale of each parcel will be determined after escrow closes and all escrow and closing costs are determined and deducted from the overall sales price.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Resolution No. HHA 2020-02
2. Resolution No. CDC 2020-01
3. Purchase & Sale Agreement – HHA
4. Purchase & Sale Agreement – CDC

RESOLUTION NO. HHA 2020-02

A RESOLUTION OF THE HESPERIA HOUSING AUTHORITY (HHA) OF THE CITY OF HESPERIA, CALIFORNIA (I) APPROVING A PURCHASE AND SALE AGREEMENT (PSA) BY AND BETWEEN HHA AND ZAB LLC; (II) AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE PSA AND ALL DOCUMENTS NECESSARY TO CARRY OUT THE INTENT OF THIS RESOLUTION; AND (III) MAKING THE APPROPRIATE FINDINGS HEREWITH

WHEREAS, the City of Hesperia (City), is a municipal corporation duly organized under the laws and Constitution of the State of California; and

WHEREAS, the Hesperia Community Redevelopment Agency (HCRA) was a public body, corporate and politic, organized and existing under Community Redevelopment Law (Health & Safety Code § 33000, *et seq.*) (CRL) responsible for the administration of redevelopment activities within the City of Hesperia; and

WHEREAS, the City Council of the City of Hesperia was recognized as the legislative body of the HCRA that authorized its creation based upon the need for it to transact business and exercise any powers in the community; and

WHEREAS, on June 28, 2011 Governor Jerry Brown signed into law ABx1 26 (Law) abolishing redevelopment in California and thereby setting forth the “winding down” of redevelopment agencies, the designation of successor agencies, and oversight boards; and

WHEREAS, the Law (a) amends, modifies, supplements, or eliminates Parts 1, 1.5, 1.6, and 1.7 of Division 24 of California Health & Safety Code, wherein redevelopment agencies were effectively dissolved February 1, 2012; and (b) established H&SC §34173 which sets forth the requirements for the designation and declaration of “successor agencies” which shall be vested with all the authority, rights, powers, duties and obligations of the former redevelopment agency and be obligated to discharge those functions set out in the amended laws and statutes created by the Law; and

WHEREAS, on April 5, 2011 & January 17, 2012 the City Council of the City of Hesperia adopted Resolution No. 2011-021 electing to serve as the successor agency of the HCRA and its low and moderate income housing functions and pursuant to H&SC §§ 34173 & 34176(a); and

WHEREAS, the City Council after making certain findings adopted Resolution No. 2011-022 established a housing authority to transact business and exercise powers in the City of Hesperia pursuant to California Housing Authorities Law hereinafter “Hesperia Housing Authority” or “HHA;” and

WHEREAS, incorporated within Resolution No 2011-022 the City, as Successor Agency to the HCRA ceded all of the housing activities, functions, powers, and obligations it assumed when it elected to become the Successor Agency of the HCRA plus all assets, including real and personal property, cash and cash equivalents, bond proceeds, and all amounts in the HCRA’s and VVEDA’s Low and Moderate Income Housing Funds (LMIHF), of the HCRA and VVEDA to the HHA; and

WHEREAS, the HHA obtained all rights, title and interest to a specific parcel of real property within the HCRA's Project Area specifically Assessor's Parcel Number 0407-261-20 (Property) as a function of the "wind down" of redevelopment pursuant to ABx1 26; and

WHEREAS, the HHA holds said Property as an investment as allowed under H&SC §§ 34315 and 34316; respectively; and

WHEREAS, the Property was included on the Oversight Board-approved Housing Asset form as required by H&SC §34176(a)(2) and not objected to by the Department of Finance (Finance) thus it was deemed a "housing asset" as defined in H&SC §34176(a)(1) and therefore no longer was under the purview of the Oversight Board of the Successor Agency nor Finance; and

WHEREAS, ZAB, LLC (Buyer) has expressed interest in purchasing the Property to develop for a mixed-use project, and HHA desires to sell Property to the Buyer pursuant to its powers under Housing Authorities Law.

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF THE HESPERIA HOUSING AUTHORITY AS FOLLOWS:

- Section 1. The facts set forth above in this Resolution are true and correct.
- Section 2. Housing Authorities Law (H&SC §§ 34000 *et seq.*), specifically Section 34315(e) authorizes a housing authority, in this case the HHA, to sell or dispose of any real property or interest in it.
- Section 3. That the Property is held by the HHA for the purpose of exchange and therefore is not subject to the Surplus Property Land Act, Government Code §§ 54220 *et seq.* nor H&SC §34315.7.
- Section 4. That the sale of the Property is exempt from H&SC §33433 inasmuch as its conveyance is not in furtherance of the redevelopment plan or implementation plan (H&SC §33490) of the dissolved HCRA, in part due to the findings in Sections 2 and 3 of this Resolution.
- Section 5. That the Property is held for investment purposes pursuant to H&SC §34316(a). Furthermore, the redevelopment plan and implementation plan of the HCRA cannot be amended with the addition of H&SC §34164 to California Redevelopment Law.
- Section 6. That the Property was listed on the HCRA Oversight Board-approved Housing Asset Transfer (HAT) form, approved by Finance pursuant to H&SC §34176(a)(2) and not required to be included on the HCRA Successor Agency's Long Range Property Management Plan (LRPMP) set forth in H&SC §34191.5(b).
- Section 7. As promulgated by H&SC §34320 no other laws, including SB 470 and SB 341) concerning disposition of property by other public bodies is applicable to a housing authority unless specifically so stated by the

Legislature. Therefore, the Commissioners of the HHA find that they have the authority and desire, without reservation to dispose of the property in their sole and absolute discretion.

- Section 8. The HHA hereby approves the Purchase and Sale Agreement (PSA) for sale of Property to ZAB, LLC and hereby authorizes the City Manager/Executive Director, or his designee, to execute PSA on behalf of the HHA.
- Section 9. That the proceeds of the sale of the Property shall be expended in compliance with H&SC §§ 34315.3 & 34176.1 or any other laws governing the use of housing assets transferred to the HHA as a result of the chaptering of ABx1 26 & AB 1484.
- Section 10. The City Manager/Executive Director, or their designee, is hereby authorized and directed to take any appropriate action consistent with the purposes of this Resolution and the PSA approved hereby to carry out the PSA and any subsequent amendments thereto on behalf of the HHA.
- Section 11. 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 this HHA hereby declares that it would have passed the remainder of this resolution if such invalid portion thereof had been declared invalid or unconstitutional.
- Section 12. This activity is not a “project” and therefore exempt from CEQA pursuant to CEQA Guidelines §15060(c)(3).
- Section 13. This Resolution shall go into effect immediately upon its adoption.
- Section 14. The City Clerk shall certify to the passage and adoption hereof and enter it into the book of official resolutions for the HHA.

ADOPTED AND APPROVED this 21st day of January, 2020 by the following vote:

Larry Bird, Chair

ATTEST:

Melinda Sayre, City Clerk

RESOLUTION NO. CDC 2020-01

A RESOLUTION OF THE HESPERIA COMMUNITY DEVELOPMENT COMMISSION (CDC) OF THE CITY OF HESPERIA, CALIFORNIA (I) APPROVING A PURCHASE AND SALE AGREEMENT (PSA) BY AND BETWEEN CDC AND ZAB, LLC; (II) AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE PSA AND ALL DOCUMENTS NECESSARY TO CARRY OUT THE INTENT OF THIS RESOLUTION; AND (III) MAKING THE APPROPRIATE FINDINGS HEREWITH

WHEREAS, the City of Hesperia (City), is a municipal corporation duly organized under the laws and Constitution of the State of California; and

WHEREAS, the Hesperia Community Redevelopment Agency (HCRA) was a public body, corporate and politic, organized and existing under the California Community Redevelopment Law (Health & Safety Code § 33000, *et seq.*) responsible for the administration of redevelopment activities within the City of Hesperia until its dissolution on February 1, 2012; and

WHEREAS, on June 28, 2011 Governor Jerry Brown signed into law ABx1 26 (Law) abolishing redevelopment in California and thereby setting forth the “winding down” of redevelopment agencies, the designation of successor agencies, and oversight boards; and

WHEREAS, the Law (a) amends, modifies, supplements, or eliminates Parts 1, 1.5, 1.6, and 1.7 of Division 24 of California Health & Safety Code, wherein redevelopment agencies were effectively dissolved February 1, 2012; and (b) established H&SC §34173 which sets forth the requirements for the designation and declaration of “successor agencies” which shall be vested with all the authority, rights, powers, duties and obligations of the former redevelopment agency and be obligated to discharge those functions set out in the amended laws and statutes created by the Law; and

WHEREAS, on April 5, 2011 & January 17, 2012 the City Council of the City of Hesperia adopted Resolution No. 2011-021 electing to serve as the successor agency of the HCRA; and

WHEREAS, on April 5, 2011 the City Council of the City of Hesperia as the legislative body for the City of Hesperia adopted Ordinance No. 2011-005 declaring a need for a community development commission to function in the community and declared itself the commissioners thereby establishing the Hesperia Community Development Commission (CDC) to discharge certain community and economic development functions; and

WHEREAS, the CDC obtained all rights, title and interest to a specific parcel of real property within the HCRA’s Project Area specifically Assessor’s Parcel Number 0407-261-03 and 04 (Property) as a function of the “wind down” of redevelopment pursuant to ABx1 26; and

WHEREAS, ZAB, LLC (Buyer) has expressed interest in purchasing the Property to develop a mixed-use project, and CDC desires to sell Property to the Buyer; and

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF THE HESPERIA COMMUNITY DEVELOPMENT COMMISSION AS FOLLOWS:

Section 1. The facts set forth above in this Resolution are true and correct.

- Section 2. That the Property is held by the CDC for the purpose of exchange and therefore is not subject to the Surplus Property Land Act, Government Code §§ 54220 *et seq.*
- Section 3. This activity is not a “project” and therefore exempt from CEQA pursuant to CEQA Guidelines §15060(c)(3).
- Section 4. That the Property is included on the HCRA Successor Agency’s Long Range Property Management Plan (LRPMP) as set forth in H&SC §34191.5(b).
- Section 5. The CDC hereby approves the Purchase and Sale Agreement (PSA) for sale of Property to ZAB, LLC and hereby authorizes the City Manager/Executive Director, or his designee, to execute PSA on behalf of the CDC.
- Section 6. The City Manager/Executive Director, or their designee, is hereby authorized and directed to take any appropriate action consistent with the purposes of this Resolution and the PSA approved hereby to carry out the PSA and any subsequent amendments thereto on behalf of the CDC.
- Section 7. 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 CDC hereby declares that it would have passed the remainder of this resolution if such invalid portion thereof had been declared invalid or unconstitutional.
- Section 8. This Resolution shall go into effect immediately upon its adoption.
- Section 9. The City Clerk shall certify to the passage and adoption hereof and enter it into the book of official resolutions for the CDC.

ADOPTED AND APPROVED this 21st day of January, 2020 by the following vote:

Larry Bird, Chair

ATTEST:

Melinda Sayre, City Clerk

ATTACHMENT 3

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is made this ____ day of _____, 2020 by and between ZAB LLC, a California limited liability company, or its designee ("**Buyer**"), and HESPERIA HOUSING AUTHORITY, a public body, corporate and politic ("**Seller**"). LAWYERS TITLE & ESCROW, a California corporation shall act as escrow ("**Escrow Holder**").

RECITALS:

A. Seller is the owner of that certain unimproved real property in the City of Hesperia, County of San Bernardino, State of California (Assessor Parcel No. 0407-261-20) ("**Property**") more particularly described in **Exhibit A** attached hereto ("**Property**").

B. Hesperia Community Development Commission ("Hesperia CDC") is the owner of the adjacent unimproved real property in the City of Hesperia, County of San Bernardino, State of California consisting of Assessor Parcel Nos. 0407-261-03 and 04 ("Hesperia CDC Property")

C. Concurrently with the acquisition of the Property, Buyer intends to acquire the Hesperia CDC Property pursuant to that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions ("**Hesperia CDC PSA**") in which **Escrow Holder** shall also act as the escrow ("**Hesperia CDC Escrow**"). The closing of the Property under this Agreement is contingent upon the concurrent closing of the Hesperia CDC Escrow and vice versa.

D. The Property and the Hesperia CDC Property are depicted on **Exhibit A-1** and are collectively referred to herein as the "**Development Property**."

E. Buyer intends to develop the Development Property as a mixed-use multi-residential project ("**Proposed Development**").

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and incorporating the Recitals, the parties hereto agree as follows:

TERMS AND CONDITIONS:

1. PURCHASE AND SALE OF PROPERTY. Upon the terms and conditions in this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer the Property AS-IS condition without representations or warranties, except that Seller hereby represents and warrants that Seller owns the Property in fee simple title, free and clear of any encumbrances other than those shown of public record, and that Seller has the requisite power to sell the Property to Buyer.

2. EFFECTIVE DATE; OPENING OF ESCROW.

2.1 Effective Date. This Agreement shall be deemed effective upon execution of the Agreement by Seller after the approval by the Seller's Board as required by law ("**Effective Date**"), which approval shall not take longer than **thirty (30) days** after execution by Seller, subject to Seller's normal public meeting requirements and procedures.

2.2 Opening of Escrow. Within **five (5) days** after the execution of this Agreement by Seller and Seller's Board approval, the parties shall open an escrow ("**Escrow**") with **Escrow Holder** by causing an executed copy of this Agreement to be deposited with Carolyn Lamascus

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located at 10801 Foothill Blvd., Rancho Cucamonga, CA 91730, (909) 660-8888 Carolyn.Lamascus@ltic.com which Escrow Holder shall sign and accept. Escrow shall be deemed opened upon Escrow Holder's receipt of all of the following ("**Opening of Escrow**"): (i) the executed copies of this Agreement (which shall include a copy of Seller's Board approval); and (ii) Buyer delivers the Initial Deposit (defined in Section 3.2a). If Escrow is not opened (as defined above) within **ten (10) days** after the Effective Date, either party shall have the right to terminate this Agreement upon written notice to the other party and Escrow Holder prior to the actual Opening of Escrow, in which event, Escrow Holder shall return the initial Deposit, if received by Escrow Holder, to Buyer.

2.3 Hesperia CDC Escrow. If the Hesperia CDC does not approve the Hesperia CDC PSA within **ten (10) days** of the Opening of Escrow, this Agreement and Escrow shall be terminated and the Deposit (less any cancellation charges) returned to Buyer. Once the Hesperia CDC Escrow has opened, if the Hesperia CDC PSA is terminated by Buyer pursuant to a condition precedent, this Agreement and Escrow shall be concurrently terminated and the Deposit (less any cancellation charges) returned to Buyer. If the Hesperia CDC PSA is terminated due to a breach by Buyer, then Buyer shall be deemed in default under this Agreement and this Agreement and Escrow shall be deemed terminated and the Deposit delivered to Seller pursuant to Section 9.

3. CONSIDERATION; PURCHASE PRICE; PAYMENT OF PURCHASE PRICE.

3.1 Consideration. All of the following is material consideration to Seller for the sale of the Property to Buyer: (i) payment of the Purchase Price (defined in Section 3.2); (ii) the Covenants (defined in Section 3.4); and (iii) Buyer's obligation to provide copies of the Documents (defined in Section 3.5).

3.2 Purchase Price. The purchase price for the Property is One Hundred Thirty-Six Thousand One Hundred Forty-Seven Dollars and Twelve Cents (\$136,147.12) ("**Purchase Price**").

3.3 Payment of Purchase Price.

- a. Deposit.** Upon Opening of Escrow, Seller shall deliver the Deposit to Escrow Holder in the amount of Six Thousand Eight-Hundred dollars (\$6,800) ("**Deposit**"). The Deposit shall be applicable to the Purchase Price.
- b. Release of Deposit.** If Buyer delivers the Disapproval and Termination Notice in accordance with Section 7.2, the Deposit shall be promptly returned to Buyer by Escrow Holder. If Buyer does not deliver the Disapproval and Termination Notice in accordance with Section 7.2, the Deposit shall be promptly released to Seller by Escrow Holder, provided Seller shall promptly return the Deposit to Buyer if Buyer is entitled to the Deposit as provided in Section 12.5 below. Each party agrees to promptly execute and deliver any documents requested by Escrow Holder to effect the release of the Deposit as specified above.
- c. Balance of Purchase Price.** Buyer shall deposit the balance of the Purchase Price with Escrow Holder in Good Funds (as defined below) at least **one (1) business day** prior to the Closing Date.

3.4 Covenants. The development covenants by Buyer with respect to the Development Property as set forth in the Covenant Agreement with Option to Repurchase attached as **Exhibit C** attached hereto ("**Covenant Agreement**") is material consideration to Seller (and Hesperia CDC) for the sale of the Development Property to Buyer. The Covenant Agreement shall

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run with the Development Property until the Covenant Agreement is terminated pursuant to the terms and provisions therein.

3.5 Documents. Buyer covenants and agrees to provide to Seller copies of all contracts, agreements, plans, specifications, reports, investigations and any other documents related to the development of the Property ("**Documents**") at no cost to Seller and the issuer or creator of the respective Documents consenting in writing to allow Seller to use same in the event that (i) Buyer does not acquire the Property due to a breach of Buyer's obligations pursuant to this Agreement; or (ii) if Buyer does acquire the Property but fails, following the applicable notice and cure period, to comply with the requirements of the Covenant Agreement and thereafter, Seller reacquires the Property pursuant to the Covenant Agreement. The term "**Documents**" shall not include any financial information or any documents which are attorney-client privileged. This obligation shall survive termination of this Agreement for any reason until the Covenant Agreement is terminated pursuant to the terms and provisions therein.

3.6 Good Funds. All funds deposited in Escrow shall be in "**Good Funds**" which means a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California.

4. FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

4.1 Seller. Seller agrees that on or before 12:00 noon at least **one (1) business day** prior to the Closing Date (defined in Section 5.1 below), Seller shall deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including without limitation:

- i. Executed and acknowledged Grant Deed substantially in the form attached hereto as **Exhibit B ("Grant Deed")** and such other documents as reasonably required by Title Company.
- ii. Three (3) executed and acknowledged copies of the Covenant Agreement executed by both Seller and Hesperia CDC.
- iii. A Non-Foreign Affidavit as required by federal law.
- iv. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.2 Buyer. Buyer agrees that on or before 12:00 noon at least **one (1) business day** prior to the Closing Date, Buyer shall deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including without limitation:

- a. Three (3) executed copies of the Covenant Agreement.
- b. A Preliminary Change of Ownership Statement completed in the manner required in San Bernardino County ("**PCOR**").
- c. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.3 Lot Tie Agreement. If a new parcel map is not being recorded for the Development Property at the Closing pursuant to the request of Buyer, Buyer shall execute a lot tie agreement, or other method which will merge the three parcels providing that the Buyer may

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construct structures across the three parcels and that such parcels may not be sold separately, in a form acceptable to Seller which shall be recorded against the Development Property at Closing ("**Lot Tie Agreement**").

4.4 Recordation, Filing, Completion and Distribution of Documents. Escrow Holder shall confirm that any documents signed in counterpart are matching documents and shall combine the signature pages thereof so as to create fully executed documents. Escrow Holder shall cause the (i) Grant Deed (with the Acceptance by Buyer attached), (ii) the Grant Deed for the Hesperia CDC Property; (iii) the Lot Tie Agreement (or parcel map) pursuant to Section 4.3; and (iv) the Covenant Agreement (collectively "**Recording Documents**"), to be recorded in **that** order so it can issue the Title Policy in accordance with Section 6.2. Promptly following Close of Escrow, Escrow Holder shall distribute Escrow Holder's final closing statement and conformed copies of all recorded documents to the parties. One (1) executed copy of the Covenant Agreement will be delivered to Hesperia CDC.

5. CLOSING DATE; TIME IS OF ESSENCE; EXTENSION AUTHORITY.

5.1 Closing Date. Escrow shall promptly close upon satisfaction of the Conditions Precedent in Section 8, within **twelve (12) months** from the Effective Date, subject to extension pursuant to the terms of this Agreement, ("**Closing Date**"). The terms "**Close of Escrow**" and/or "**Closing**" are used herein to mean the time the Recording Documents are filed for recording by the Escrow Holder in the Office of the County Recorder of San Bernardino County, California.

5.2 Possession. Upon the Close of Escrow, Seller shall deliver exclusive possession of the Property to Buyer.

5.3 Time is of Essence. Buyer and Seller specifically agree that time is of the essence under this Agreement.

5.4 Executive Director Authority. Seller by its execution of this Agreement agrees that the Executive Director of Seller or his designee (who has been designated by Executive Director's written notice delivered to Buyer and Escrow Holder) shall have the authority to execute documents on behalf of Seller including, but not limited to, issuing approvals, disapprovals and extensions. Any such approval, disapproval or extension executed by the Executive Director or his designee shall be binding on Seller. Notwithstanding the foregoing, Executive Director or his designee may only grant extensions for (i) the Due Diligence Period (defined in Section 7.1) that cumulatively do not exceed ninety (90) days; (ii) the Entitlement Period (defined in Section 8) that cumulatively do not exceed ninety (90) days; or (ii) the Closing Date that cumulatively do not exceed ninety (90) days.

6. TITLE POLICY.

6.1 Approval of Title. Promptly following execution of this Agreement but, in no event later than **ten (10) days** following Opening of Escrow, a preliminary title report shall be issued by Commonwealth Land Title Insurance Company, 4100 Newport Place, Suite 120, Newport Beach, CA 92660 Attn: Chris Maziar (949) 724-3170 ("**Title Company**"), describing the state of title of the Property, together with copies of all exceptions listed therein and a map plotting all easements specified therein ("**Preliminary Title Report**"). Within **thirty (30) days** after Buyer's receipt of both the Preliminary Title Report and the ALTA survey, Buyer shall notify Seller in writing ("**Buyer's Title Notice**") of Buyer's disapproval of any matters contained in the Preliminary Title Report except that Buyer may not disapprove any title exceptions caused by Buyer's entry onto the Property pursuant to Section 7.3 ("**Disapproved Exceptions**").

In the event Buyer delivers Buyer's Title Notice within said period, Seller shall have a period of **ten (10) days** after receipt of Buyer's Title Notice in which to notify Buyer of Seller's election to either (i) agree to remove the Disapproved Exceptions prior to the Close of Escrow; or (ii) decline to remove any such Disapproved Exceptions ("**Seller's Notice**"). If Seller notifies Buyer of its election to decline to remove the Disapproved Exceptions, or if Seller is unable to remove the Disapproved Exceptions, Buyer may elect either to terminate this Agreement and the Escrow, in which event Escrow Holder shall promptly return the Deposit to Buyer, or to accept title to the Property subject to the Disapproved Exception(s). Buyer shall exercise such election by delivery of written notice to Seller and Escrow Holder within **five (5) days** following the earlier of (i) the date of written advice from Seller that such Disapproved Exception(s) cannot be removed; or (ii) the date Seller declines to remove such Disapproved Exception(s).

Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement, provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to **ten (10) days** following receipt of notice of such additional exceptions.

6.2 Title Policy. At the Close of Escrow, Escrow Holder shall furnish Buyer with an ALTA owner's non-extended Policy of Title Insurance insuring title to the Property vested in Buyer with coverage in the amount of the Purchase Price, containing only the exceptions to title (i) which has not been approved or waived by Buyer in accordance with Section 6.1; (ii) the Covenant Agreement; (iii) the Lot Tie Agreement (if applicable); and (iv) the continuing covenants in the Grant Deed ("**Title Policy**"). The cost of the Title Policy to Buyer, including any endorsements required to insure against any Disapproved Exceptions, shall be paid by Seller but Buyer shall, if Buyer so elects to obtain an extended coverage policy, be obligated to pay for the additional costs of such extended coverage policy. If Buyer elects to obtain an ALTA extended owner's title policy, Buyer shall (i) be responsible for the additional costs of that form of title policy; and (ii) must deliver an ALTA survey (obtained at Buyer's cost) to the Title Company not less than **thirty (30) days** prior to the scheduled Closing Date.

7. DUE DILIGENCE; ENTITLEMENTS.

7.1 Due Diligence. Within **ten (10) days** after the Effective Date, Seller shall provide Buyer with any and all documents and information in Seller's possession and control concerning the Property including contracts, leases, and reports. Commencing with the Effective Date, Buyer shall have the right to obtain at its cost to conduct such engineering, feasibility studies, soils tests, environmental studies and other investigations as Buyer in its sole discretion may desire, to permit Buyer to determine the suitability of the Property for Buyer's contemplated uses and to conduct such other review and investigation which Buyer deems appropriate to satisfy itself to acquire the Property

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for Buyer's Proposed Development. Buyer shall be solely responsible to obtain any documents pertaining to the Property from the County of San Bernardino or the City of Hesperia ("**City**").

Within ten (10) days of Opening of Escrow, Escrow shall order and deliver to Buyer a commercial natural hazards disclosure report issued on the Property ("**NHD Report**"). Buyer must review and approve the NHD Report as part of its due diligence under this Section 7.

7.2 Disapproval of Due Diligence Matters. No later than **one hundred twenty (120) days** from the Opening of Escrow ("**Due Diligence Expiration Date**"), Buyer may, in its sole discretion, notify Seller in writing (with a copy to Escrow Holder) of (i) its disapproval of the due diligence matters (excluding title matters which are to be approved or disapproved pursuant to Section 6, and excluding entitlements which are to be approved or disapproved pursuant to Section 7.4), and (ii) its election to terminate this Agreement and Escrow ("**Disapproval and Termination Notice**").

If Buyer sends the Disapproval and Termination Notice in the time and manner specified above, the parties shall execute any documents required by Escrow Holder and upon receipt of said documents executed by the parties, Escrow Holder shall return the Deposit (less any cancellation charges) to Buyer. If Buyer does not deliver the Disapproval and Termination Notice in the time and manner specified above, Buyer shall conclusively be deemed to have approved due diligence matters.

7.3 Right to Enter the Property. Commencing with the Effective Date, Seller grants Buyer, its agents and employees a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, reports, investigations and tests shall be done at Buyer's sole cost and expense.

Prior to entry onto the Property, Buyer shall (i) notify Seller the date and purpose of each intended entry together with the names and affiliations of the persons entering the Property; (ii) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (iii) comply with all applicable laws and governmental regulations; (iv) notify Seller of the date for such entry and allow an employee of Seller to be present at Seller's election; (v) keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this provision; (vi) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the Property in the amounts required by the State of f; (vii) provide to Seller prior to initial entry a certificate of insurance evidencing that Buyer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000) for Development Property which insurance names Seller as additional insured. Buyer shall return the Property to substantially its original condition following Buyer's entry. Following Buyer's entry, Buyer will, upon written request by Seller, provide Seller copies of all studies, surveys, reports, investigations and other tests derived from any inspection ("**Reports**"); and to take the Property at closing subject to any title exceptions caused by Buyer exercising this right to enter.

Buyer agrees to indemnify, and hold Seller free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which Seller may suffer or incur as a consequence of Buyer's exercise of the license granted pursuant to this Section or any act or omission by Buyer, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under Buyer (except Seller and its agents) with respect to the entry upon the Property during the

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term of this Agreement, excepting any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) arising from the mere discovery by Buyer of any hazardous materials or conditions and excepting to the extent such claims arise out of the negligence or misconduct of Seller. Buyer's obligations under this Section shall survive termination of this Agreement for any reason for a period of **one (1) year**.

The parties agree that breach of any Property entry or restoration conditions in this Section shall constitute a material breach of this Agreement, unless the Agreement is consummated at Closing; provided, however, that the Closing shall not release Buyer from any of the foregoing obligations.

7.4 Entitlement Process.

a. Commencement. Within **one hundred and eighty (180) days** from the Opening of Escrow, Buyer shall promptly apply for all discretionary governmental permits and approvals for its Proposed Development and diligently prosecute same including, but not limited to, promptly responding to requests and modifications, payment of all necessary fees, etc. ("**Entitlements**"). The Entitlements shall include, without limitation, and if applicable specific site plan approval, a new parcel map, Lot Tie Agreement, or other method acceptable to Seller which will merge the three parcels, and a zone change. Buyer shall diligently prosecute and pursue all applications and permits including providing prompt responses to the City for any additional requests and Seller shall cooperate with Buyer's process. Buyer shall pay all applicable fees to secure all entitlements for the Proposed Development.

b. Buyer Approvals. Upon issuance of final conditions for any Entitlement, Buyer shall have the right to disapprove same by issuing a written notice to Seller within **ten (10) days** which shall also include Buyer's election to terminate this Agreement and the Escrow ("**Termination Notice**"). For example, conditions of approval for the project required by the Planning Commission may be appealed to the City Council. Upon the City Council's final determination, Buyer shall have **ten (10) days** to issue the Termination Notice to Seller for any Entitlement. If Buyer delivers a Termination Notice in the time and manner specified for an Entitlement, this Agreement shall be terminated, Escrow shall be cancelled and the Deposit (less cancellation charges) shall be returned to Buyer. If Buyer fails to deliver the Termination Notice for an Entitlement in the time and manner specified, Buyer shall be deemed to have approved all conditions to such Entitlement.

c. Entitlement Period. Buyer shall use commercially reasonable efforts to obtain all Entitlements within **ten (10) months** from the Effective Date ("**Entitlement Period**"). Provided Buyer has been diligently pursuing the Entitlements, Buyer shall have the right to extend the Entitlement Period for three (3) additional periods of **thirty (30) days** each by providing written notice to Seller at least **ten (10) days** prior to the expiration of the Entitlement Period, and extension period, as the case may be, which notice summarizes in reasonable detail the reason for the extension. It is a material consideration to Buyer for the purchase of the Property that Buyer obtain the necessary Entitlements, including without exception, the rezoning of the Property from "Neighborhood Commercial" to an appropriate zoning classification necessary for such high-density residential and mixed-use commercial application prior to the expiration of the Entitlement Period. In the event, through no fault of Buyer, that the City takes longer to approve the rezoning of the Property and to issue such governmental permits for the Proposed Development, then the Entitlement Period shall be extended day for day, without Buyer having to request an extension.

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8. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

8.1 Conditions to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent ("**Buyer's Conditions Precedent**"):

- i. Title Company will issue the Title Policy as specified in Section 6.2.
- ii. Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement, and is in position to record the Grant Deed as approved by Buyer.
- iii. The Hesperia CDC Escrow closes concurrently.
- iv. Seller is not in default of its obligations under this Agreement.

8.2 Conditions to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Seller of the following conditions precedent:

- i. Buyer has delivered the balance of the Purchase Price to Escrow Holder.
- ii. Title Company will issue the Title Policy as specified in Section 6.2.
- iii. The Hesperia CDC Escrow closes concurrently.
- iv. The Lot Tie Agreement is executed by Buyer (unless a new parcel map is to be recorded at Closing) pursuant to Section 4.3.
- v. Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- vi. Buyer is not in default of its obligations under this Agreement.

9. LIQUIDATED DAMAGES.

IF BUYER SHOULD MATERIALLY DEFAULT UNDER THIS AGREEMENT, BUYER AND SELLER AGREE THAT SELLER WILL INCUR DAMAGES BY REASON OF SUCH DEFAULT WHICH DAMAGES SHALL BE IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN. THEREFORE, BUYER AND SELLER, IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF SUCH DEFAULT BY BUYER HAVE AGREED BY PLACING THEIR INITIALS BELOW THAT THE DEPOSIT SHALL CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES UNDER THE PROVISIONS OF SECTIONS 1671 AND 1677 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE FOR A BREACH PRIOR TO THE CLOSING. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE CHARGES SHALL BE PAID BY SELLER FROM SUCH SUM. THIS PROVISION DOES NOT APPLY TO OR LIMIT IN ANY WAY THE INDEMNITY OBLIGATIONS OF BUYER UNDER THIS AGREEMENT.

Seller's Initials

Buyer's Initials

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10. CONDITION OF THE PROPERTY.

10.1 Disclaimer of Warranties. Upon the Close of Escrow, Buyer shall, subject to Seller's representation and warranty of (i) free and clear fee simple title to the Property, and (ii) no actual knowledge by the Seller, its employees or agents, of the presence of any Hazardous Materials (defined below) or underground storage tanks in, on, under or about the Property, acquire the Property in its "AS-IS" condition and Buyer shall be responsible for any defects in the Property, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Property, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, or other structures located on, under or about the Property, and, Seller makes no other representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property, and Seller specifically disclaims all representations or warranties of any nature concerning the Property made by it. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, soil, subsoil, existence of known Hazardous Materials or similar substances, the purpose for which the Property is suited, or drainage. Seller hereby represents and warrants to Buyer that Rod Yahnke, Economic Development Manager (as the representative of the Seller), without any obligation to investigate, has no actual knowledge of the presence of any Hazardous Materials or storage tanks in, on, under or about the Property. Seller acknowledges and agrees that Rod Yahnke's representations are made in his official capacity and that he shall have no personal liability whatsoever for any claims arising out of this Agreement.

10.2 Hazardous Materials. Buyer understands and agrees that, in the event Buyer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or underground storage tanks whether attributable to events occurring prior to or following the Closing, then Buyer may look to current or prior owners of the Property, but in no event shall Buyer look to Seller for any liability or indemnification regarding Hazardous Materials and/or underground storage tanks. Buyer, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges Seller, and each of the entities constituting Seller, if any, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Property, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials there from, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of Seller, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Buyer, its successors, assigns or any affiliated entity of Buyer, against the Seller, arising by virtue of the physical or environmental condition of the Property, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material there from, whether existing prior to, at or after the Closing, are by this release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release.

In connection therewith and subject to the representation and warranty of Seller's representative as noted in Section 10.1 above, Buyer and each of the entities constituting Buyer, expressly agree to waive any and all rights which said party may have with respect to such released claims under Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Buyer Initials _____

Seller Initials _____

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For purposes of this Agreement, the following terms shall have the following meanings:

“Environmental Claim” means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Property or its operations and arising or alleged to arise under any Environmental Law.

“Environmental Cleanup Liability” means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Property, including the ground water hereunder, including, without limitation, (i) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (ii) any cost, expense, loss or damage incurred with respect to the Property or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

“Environmental Compliance Cost” means any cost or expense of any nature whatsoever necessary to enable the Property to comply with all applicable Environmental Laws in effect. “Environmental Compliance Cost” shall include all costs necessary to demonstrate that the Property is capable of such compliance.

“Environmental Law” means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

“Hazardous Material” is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (iii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code; (iv) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501(o) and (p) and 25501.1 of the California Health and Safety Code (Hazardous Materials Release Response Plans and Inventory); (v) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code (Underground Storage of Hazardous Substances); (vi) “used oil” as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 1 of Title 22 of the California Code of Regulations, Division 4, Chapter 30; (ix) defined as “waste” or a “hazardous substance” pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a “toxic pollutant” pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §1317; (xi) defined as a “hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); (xii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. (42 U.S.C. §9601); (xiii) defined as “Hazardous Material” or a “Hazardous Substance” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; or (xiv) defined as such or

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regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials, oil wells, underground storage tanks, and/or pipelines, as now, or at any time hereafter, in effect.

Notwithstanding any other provision of this Agreement, Buyer's release as set forth in the provisions of this Section, as well as all other provisions of this Section, shall, in the event Buyer acquires the Property through the Close of Escrow, survive the termination of this Agreement and shall continue in perpetuity.

11. **ESCROW PROVISIONS.**

11.1 Escrow Instructions. Sections 1 through 6, inclusive, 8, 11, 13 and 14 constitute the escrow instructions to Escrow Holder. If required by Escrow Holder, Buyer and Seller agree to execute Escrow Holder's standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder's request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller agree to execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close Escrow.

11.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the San Bernardino County Recorder to mail after recordation: (i) the Grant Deed to Buyer at the address set forth in Section 13; and (ii) the Covenant Agreement and Lot Tie Agreement to Seller at the address set forth in Section 13. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in San Bernardino County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that party's instructions.

11.3 Proration of Real Property Taxes. As a public agency, Seller is not subject to real property taxes and, accordingly, real property taxes shall not be prorated, however, Seller shall pay any previous real property taxes that may be in arrears prior to the Close of Escrow.

11.4 Payment of Costs.

- a. Cost Allocation.** Seller shall pay the costs for the Title Policy (non-extended ALTA owner's policy), any documentary transfer taxes, recording charges for the Grant Deed, and one-half (1/2) of the escrow costs ("**Seller's Charges**"). Buyer shall pay the cost of any additional endorsements that are not required to clear a Seller imposed encumbrance, in which event Seller shall pay for such endorsement, to the Title Policy requested by Buyer (including an extended coverage ALTA owner's policy), one-half (1/2) of the escrow fees, and any charges incurred by Buyer's acts ("**Buyer's Charges**"). All other costs of Escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder.
- b. Closing Statement.** At least **five (5) business days** prior to the Closing Date, Escrow Holder shall furnish Buyer and Seller with a preliminary escrow closing statement which shall include each party's respective shares of costs. The preliminary

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closing statement shall be approved in writing by the parties. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to the parties.

11.5 Termination and Cancellation of Escrow. If Escrow fails to close due to a failure of a condition precedent, then the party in whose favor the condition precedent runs may elect to cancel this Escrow upon written notice to the other party and Escrow Holder. Upon cancellation, Escrow Holder is instructed to return (i) the Deposit to Buyer (less any cancellation fees) unless Seller is entitled to same pursuant to Section 9, and (ii) all documents then in Escrow to the respective depositor of the same with Escrow Holder. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

11.6 Information Report. Escrow Holder shall file and Buyer and Seller agree to cooperate with Escrow Holder and with each other in completing any report ("**Information Report**") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045I regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. Buyer and Seller also agree that Buyer and Seller, their respective employees and attorneys, and escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045I, and further agree that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

11.7 No Withholding as Foreign Seller. Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to Buyer on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

11.8 Brokerage Commissions. If, and only if, Close of Escrow occurs, Escrow Holder shall pay from Seller's funds a broker's commission of five percent (5%) of the Purchase Price ("**Commission**") as follows: (i) fifty percent (50%) of the Commission shall be paid to Coldwell Banker Commercial RES (Ron Barbieri and Steven Thompson) ("**Seller's Broker**"); and (ii) fifty percent (50%) of the Commission shall be paid to Bluestone Realty (Celina Noriega) ("**Buyer's Broker**"). Except for the commission referred to in the foregoing sentence, Buyer and Seller each represent and warrant to the other parties that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other parties harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

12. NON-COLLUSION. Buyer represents and warrants to Seller that no officer, official or employee of Seller has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the Seller participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any

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corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or "non-interest" pursuant to California Government Code Sections 1091 and 1091.5. Seller warrants and represents that (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, any official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement. Buyer further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Seller, as a result or consequence of obtaining or being awarded any agreement. Buyer is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Buyer's Initials: _____

Seller's Initials: _____

13. NOTICES. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and may be given (i) by personal delivery which will be deemed received on the day of delivery; (ii) by national overnight delivery service which shall be deemed received the following day; or (ii) by mailing the same by registered or certified US mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the party to whom the notice is directed as set forth below, or such other address and to such other persons as the parties may hereafter designate:

To Seller: Hesperia Housing Authority
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

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

To Buyer: ZAB LLC.
16502 Walnut St, Suite C
Hesperia, CA 92345
Attn: Luis Benites, Managing Member

With a Copy to: Gregory A. York, Esq.
gyorklaw@frontier.com

14. GENERAL PROVISIONS.

14.1 Assignment. Buyer has no right to assign this Agreement without the prior written consent of Seller in its sole discretion. Notwithstanding the foregoing, Buyer may assign this Agreement to any entity owned and controlled by Luis Benites provided that (i) evidence of such ownership and control is provided to Seller; (ii) the transferee or its underlying owners are financially viable and capable to consummating the transaction; (iii) the assignment and assumption agreement executed by the original Buyer under this Agreement and the transferee is a form reasonably acceptable to Seller; and (iv) Buyer must be concurrently assigning the Hesperia CDC PSA to the

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same transferee. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

14.2 Attorney's Fees. In any action between the parties hereto, seeking enforcement of any of the terms and provisions of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled, to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

14.3 Interpretation; Governing Law; Venue. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. The venue for any dispute shall be San Bernardino County.

14.4 No Waiver. No delay or omission by either party in exercising any right or power accruing upon the compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

14.5 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

14.6 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14.7 Merger. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior to contemporaneous agreements, understandings, representations and statements, oral or written are merged herein and shall be of no further force or effect.

14.8 Construction. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against a party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

14.9 Qualification and Authority. Each individual executing this Agreement on behalf of Buyer represents, warrants and covenants to the Authority that (a) such person is duly authorized to execute and deliver this Agreement on behalf of Buyer in accordance with authority granted under the organizational documents of such entity, and (b) Buyer is bound under the terms of this Agreement. Each individual executing this Agreement on behalf of Seller represents, warrants and

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covenants to the Buyer that (a) such person is duly authorized to execute and deliver this Agreement on behalf of Seller in accordance with authority granted under the organizational documents of such entity, and (b) Seller is bound under the terms of this Agreement.

14.10 No Third-Party Beneficiaries. This Agreement is only between the parties and is not intended to be nor shall it be construed as being for the benefit of any third party.

14.11 No Liability. No official, officer, employee or agent of Seller shall have personal liability under this Agreement.

14.12 Execution in Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

14.13 Exhibits. Exhibits A, A-1, B and C attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

NOTE: Each of Sections 9, 10.2 & 12 must also be initialed by Buyer & Seller as applicable.

BUYER:

ZAB LLC, a California limited liability company

By: _____
Luis Benites, Managing Member

SELLER:

HESPERIA HOUSING AUTHORITY, a public body, corporate and politic

By: _____
Larry Bird, Chair

_____, 2020

ATTEST:

Melinda Sayre, Authority Secretary

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Authority Counsel

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The real property located in the City of Hesperia, County of San Bernardino, State of California described as follows:

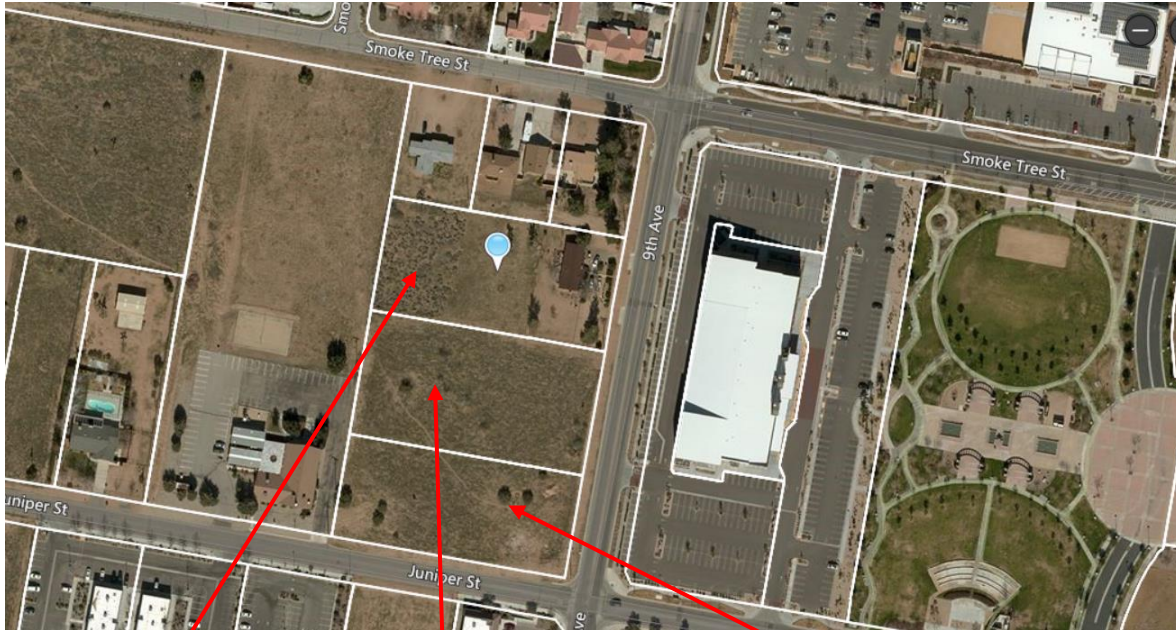
0407-261-20

TOWN OF HESPERIA S 1/2 E 1/2 LOT B BLK 254 1.29 AC M/L

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EXHIBIT A-1

DEPICTION OF THE DEVELOPMENT PROPERTY



APN 0407-261-20
Hesperia Housing
Authority

APN 0407-261-03
Hesperia Community
Development Commission

APN 0407-261-04
Hesperia Community
Development Commission

EXHIBIT B

GRANT DEED

**Recording requested by and
When Recorded Return to:**

ZAB LLC.
16502 Walnut St, Suite C
Hesperia, CA 92345
Attn: Luis Benites, Managing Member

APN. 0407-261-20
THE UNDERSIGNED DECLARES that the documentary
transfer tax (computer on full value) is \$_____

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code §6103)

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged and subject to the covenants set forth below HESPERIA HOUSING AUTHORITY, a public body, corporate and politic ("**Grantor**") grants to ZAB LLC, a California limited liability company ("**Grantee**"), all of its rights, title, and interest in that certain real property in the City of Hesperia, County of San Bernardino, State of California, as more particularly described in **Exhibit A** attached hereto and incorporated by this reference ("**Property**").

Grantor has determined that the Property is not required for its foreseeable needs and it is being disposed of pursuant to the Health & Safety Code.

Developer agrees to refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, age, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

(a) **Deeds:** In deeds the following language shall appear: "The Developer herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the Developer itself, or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) **Leases:** In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or

national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) Contracts: In contracts pertaining to conveyance of the realty the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The forgoing covenants shall remain in effect in perpetuity.

IN WITNESS WHEREOF, Hesperia Housing Authority has caused this Grant Deed to be executed on its behalf as of the date written below.

HESPERIA HOUSING AUTHORITY:

HESPERIA HOUSING AUTHORITY, a public body,
corporate and politic

By: _____
Larry Bird, Chair

_____, 2020

ATTEST:

Melinda Sayre, Authority Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Authority Counsel

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

That certain real property located in the City of Hesperia, County of San Bernardino, State of California, and is described as follows:

0407-261-20

TOWN OF HESPERIA S 1/2 E 1/2 LOT B BLK 254 1.29 AC M/L

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

Notary Public

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EXHIBIT C

COVENANT AGREEMENT

**Recording requested by and
When Recorded Return to:**

Hesperia Community Development Commission
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

APN. 0407-261-03, 04 & 20

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code §6103)

COVENANT AGREEMENT WITH OPTION TO REPURCHASE

THIS COVENANT AGREEMENT WITH OPTION TO REPURCHASE ("**Agreement**") is entered into as of the _____, 2020 by and between (i) HESPERIA COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic ("**Hesperia CDC**") and HESPERIA HOUSING AUTHORITY, a public body, corporate and politic ("**Hesperia HA**") (jointly the "**Hesperia Agencies**") and (ii) ZAB LLC, a California limited liability company ("**Developer**").

RECITALS

A. Developer owns that certain real property in the City of Hesperia, County of San Bernardino, State of California, as more particularly described in **Exhibit 1** attached hereto and incorporated by this reference ("**Property**").

B. Developer acquired the Property as follows:

i. A portion of the Property was acquired from the Hesperia HA pursuant to that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated _____, 2020 ("**Hesperia HA PSA**"); and

ii. A portion of the Property was acquired from the Hesperia CDC pursuant to that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated _____, 2020 ("**Hesperia CDC PSA**").

The Hesperia HA PSA and the Hesperia CDC PSA are jointly hereinafter referred to as the "**Purchase Agreements**."

C. As material consideration to the Hesperia Agencies for the sale of the Property to Developer pursuant to the Purchase Agreements, Developer agreed to develop the Property as set forth below.

NOW, THEREFORE, the obligations of Developer under this Agreement shall run with a burden the Property as covenants, equitable servitudes, restrictions and easements in favor of the Hesperia Agencies in gross.

1. Effective Date. This Agreement shall be effective upon recordation in the Official Records of San Bernardino County ("**Effective Date**").

2. Development Covenant.

- 2.1. **Covenant.** Immediately following the Effective Date, Developer covenants to promptly commence and diligently process all applicable governmental approvals to construct the improvements as described on **Exhibit 2** attached hereto together with components and requirements imposed through the planning process ("**Project**").
- 2.2. **Compliance Date.** Developer shall commence and diligently prosecute to completion the construction of the Project in accordance with the schedule set forth on **Exhibit 3** attached hereto ("**Schedule of Performance.**") It is understood by the parties hereto that the time periods outlined in the Schedule of Performance may be extended automatically due to the City failing to perform its requirements within the time periods established in the Schedule.
- 2.3. **Compliance with Laws.** Developer shall construct the Project in compliance with all applicable laws. Developer understands that any public improvements to be constructed as part of the Project will be subject to prevailing wage laws (California Labor Code Section 1720 et seq.) and Developer shall indemnify and hold harmless the Hesperia Agencies with respect to same, however, it is recognized and agreed upon by Developer and the Hesperia Agencies that: (i) the Property is being purchased at "fair market value", (ii) the Hesperia Agencies are not granting, loaning or otherwise paying for any improvements to the Property, and (iii) Developer is not applying for any credits or reimbursements from the Hesperia Agencies in connection with the Proposed Development.
- 2.4. **Termination.** If Developer reasonably believes that the Covenants in this Agreement have been satisfied, Developer may send a written notice requesting the Hesperia Agencies to confirm such compliance by execution of an appropriate document terminating this Agreement which shall be concurrently submitted with the notice and which document, upon execution by Developer and the Hesperia Agencies, shall be recorded in the Official Records of San Bernardino County ("**Release**"). Upon receipt of the Release, The Hesperia Agencies shall review and promptly execute, acknowledge and return the document to Developer or otherwise specify in reasonable detail in writing what remains to be completed.
- 2.5. **City as Separate Legal Entity from the Hesperia Agencies.** The City of Hesperia ("**City**") is a separate legal entity from the Hesperia Agencies. The Hesperia Agencies have no authority to bind the City in any discretionary matter, including, but not limited to, any land use or planning entitlements or the approvals required for the Project. Developer acknowledges that the terms of this Agreement do not pre-approve any land use or planning entitlements or approvals Developer may be required to obtain from City for the Project or any other purpose.
- 2.6. **Obligations Run with the Land.** This Agreement shall constitute covenants, equitable servitudes, restrictions and easements in favor of the Hesperia Agencies in gross and City which, without regard to technical classification and designation, run with the land and shall be binding on the owner of the Property and all successors.
- 2.7. **Indemnification.** Developer agrees, at its sole cost and expense, to defend, indemnify and hold harmless the Hesperia Agencies and City (and their respective officers, employees, agents and consultants) from any claim, action or proceeding brought by a third party with respect to all aspects of the Project including, but not limited to, approvals or permits issued by the City and/or the Hesperia Agencies, but specifically excluding any claim, action or proceeding relating to Environmental Claims, Environmental Cleanup Liabilities or Environmental Compliance Costs (each as defined in the Purchase Agreements). The Hesperia Agencies and City agree to promptly notify Developer of any such claim filed against City or the Hesperia Agencies and to fully cooperate in the defense

of any such action at no cost or expense to City or the Hesperia Agencies. City and the Hesperia Agencies may elect to participate in the defense of any such claim.

3. **Option to Repurchase.** If Developer is in default of the Covenants in Section 2 of this Covenant Agreement beyond the applicable notice and cure period, and prior to the commencement of construction of the Project (defined in Section 2.2) or recordation of the Release (defined in Section 2.3), Hesperia Agencies shall have the option to buy back the Property ("**Option**") from Developer for the sum of ("**Option Purchase Price**"): (i) the original Purchase Price paid by Developer to the Hesperia Agencies ("**Original Purchase Price**"), plus (ii) actual costs paid by Buyer to third parties for entitling and designing, the Property to the date of the closing including, without limitation, architects, engineers, government fees and costs paid to the City but **not** including any hard costs, attorney fees or commissions ("**Additional Costs**"). Upon exercise of the Option, Developer shall promptly deliver to Hesperia Agencies a detailed summary of all claimed Additional Costs as part of the Option Purchase Price together with proof of payment, copies of the applicable agreements and the plans, specifications, reports and documents. Upon confirmation of the Option Purchase Price, the parties shall cooperate with opening escrow to facilitate the transfer of the Property to Hesperia Agencies for the Option Purchase Price which shall include the assignment of the various plans, specifications, reports, agreements, surveys and documents for which Developer is being reimbursed as part of the Option Purchase Price. At closing, Hesperia Agencies shall have the right to take possession of the Property free of any claims or rights of possession.

14. **Notice.** Any notice which either party may desire to give to the other party must be in writing and may be given (i) by personal delivery which will be deemed received on the day of delivery; (ii) by national overnight delivery service which shall be deemed received the following day; or (iii) by mailing the same by registered or certified US mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the party to whom the notice is directed as set forth below, or such other address and to such other persons as the parties may hereafter designate:

To Hesperia Agencies:

Hesperia Housing Authority
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

Hesperia Community Development Commission
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

With Copy to:

Aleshire & Wynder, LLP
3880 Lemon Street Suite 520
Riverside, CA 92501
Attention: Eric Dunn

To Developer:

ZAB LLC.
16502 Walnut St, Suite C
Hesperia, CA 92345
Attn: Luis Benites, Managing Member

With Copy to:

Gregory York, Esq.
gyorklaw@frontier.com

4. **California Law.** The Covenants contained in this Agreement shall be construed in accordance with the laws of the State of California.
5. **Interpretation.** If an ambiguity or question of intent or interpretation arises, then the terms of this Agreement, including but not limited to, the Covenants, shall be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party to this Agreement, including but not limited to, the Covenants, by virtue of the authorship of any of the provisions of this Agreement.
6. **Severability.** If any provision of this Agreement or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of the covenants contained in this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby.
7. **Attorney's fees.** In the event any action or suit is brought by a party hereto against another party hereunder by reason of any uncured breach beyond the applicable notice and cure period of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorneys' fees, expert witness fees, accounting and engineering fees, and any other professional fees resulting therefrom.
8. **Default.** If Developer is deemed to be in default of the provisions of this Covenant Agreement, Hesperia Agencies shall deliver written notice to Developer stating in sufficient detail the nature and extent of such default and allowing Developer thirty (30) days from receipt of such notice to cure same.

IN WITNESS WHEREOF, the parties have executed this Covenant Agreement as of the date set forth above.

HESPERIA AGENCIES:

HESPERIA HOUSING AUTHORITY,
a public body, corporate and politic

By: _____
Larry Bird, Chair

_____, 2020

ATTEST:

Melinda Sayre, Authority Secretary

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Authority Counsel

DEVELOPER:

ZAB LLC, a California limited liability
company

By: _____
Luis Benites, Managing Member

HESPERIA COMMUNITY DEVELOPMENT
COMMISSION, a public body, corporate and
politic

By: _____
Larry Bird, Chair

_____, 2020

ATTEST:

Melinda Sayre, Commission Secretary

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Commission Counsel

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

That certain real property located in the City of Hesperia, County of San Bernardino, State of California, and is described as follows:

0407-261-03

TOWN HESPERIA E 1/2 LOT C BLK 254 EX S 150 FT THEREOF 1.3 AC

APN 0407-261-04

TOWN HESPERIA S 150 FT E 1/2 LOT C BLK 254 1.18 AC M/L

APN 0407-261-20

TOWN OF HESPERIA S 1/2 E 1/2 LOT B BLK 254 1.29 AC M/L

EXHIBIT 2
SUMMARY OF PROJECT

[TBD]

EXHIBIT 3

SCHEDULE OF PERFORMANCE

NOTE: The City may require more time than depicted in this Schedule of Performance to approve the entitlements and building plans/permits. A zone change will be required to permit multi-family mixed use zoning at this site. The City and the Planning Department will support this zone change, however the staff of the City may require more than two (2) months to obtain Planning Commission and City Council approval. Should the City require more time than shown in this Schedule to obtain the necessary approvals, the affected Events and the Close of Escrow shall be extended for the additional time required by the City. Therefore, in the event, through no fault of Buyer, the Time for Performance Event(s) is/are not met by the City, then the Time For Performance for such Event shall be extended day for day of such period of time as the City actually performs the Event, and all Events thereafter shall be extended accordingly.

Event	Event Description	Time For Performance
1	Opening of Escrow	Within 5 days after the Effective Date as specified in Section 2.1 of PSA
2	Developer makes deposit	Within 5 days of Event 1
3	Developer submits Site Plan Application including parcel map, CEQA and other documents as required by the City	Within 4 months of Event 1
4	City accepts application as complete or advises Developer of deficiencies	Within 30 days of Event 3
5	Developer revises and resubmits Site Plan and other documents if necessary	Within 30 days of Event 4
6	City accepts resubmittal or advises Developer of deficiencies	Within 30 days of Event 5
7	Developer revises and resubmits Site Plan and other documents if necessary	Within 30 days of Event 6
8	City accepts resubmittal or advises Developer of deficiencies	Within 30 days of Event 7
9	Expiration of Due Diligence period	Within 10 months of Event 1
10	Close Escrow	Within 12 months of Event 1
11	Developer submits construction drawings	Within 4 months of Event 10
12	Developer starts construction	Within 5 months of Event 11
13	Developer completes construction	Within 12 months of Event 12

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2020 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2020 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2020 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

ATTACHMENT 4

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is made this ____ day of _____, 2020 by and between ZAB LLC, a California limited liability company, or its designee ("**Buyer**"), and HESPERIA COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic ("**Seller**"). LAWYERS TITLE & ESCROW, a California corporation shall act as escrow ("**Escrow Holder**").

RECITALS:

A. Seller is the owner of that certain unimproved real property in the City of Hesperia, County of San Bernardino, State of California (Assessor Parcel No. 0407-261-03 AND -04) ("**Property**") more particularly described in **Exhibit A** attached hereto ("**Property**").

B. Hesperia Housing Authority ("**Hesperia HA**") is the owner of the adjacent unimproved real property in the City of Hesperia, County of San Bernardino, State of California consisting of Assessor Parcel Nos. 0407-261-20 ("**Hesperia HA Property**").

C. Concurrently with the acquisition of the Property, Buyer intends to acquire the Hesperia HA Property pursuant to that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions ("**Hesperia CDC PSA**") in which **Escrow Holder** shall also act as the escrow ("**Hesperia CDC Escrow**"). The closing of the Property under this Agreement is contingent upon the concurrent closing of the Hesperia HA Escrow and vice versa.

D. The Property and the Hesperia HA Property are depicted on **Exhibit A-1** and are collectively referred to herein as the "**Development Property**."

E. Buyer intends to develop the Development Property as a mixed-use multi-residential project ("**Proposed Development**").

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and incorporating the Recitals, the parties hereto agree as follows:

TERMS AND CONDITIONS:

1. PURCHASE AND SALE OF PROPERTY. Upon the terms and conditions in this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer the Property AS-IS condition without representations or warranties, except that Seller hereby represents and warrants that Seller owns the Property in fee simple title, free and clear of any encumbrances other than those shown of public record, and that Seller has the requisite power to sell the Property to Buyer.

2. EFFECTIVE DATE; OPENING OF ESCROW.

2.1 Effective Date. This Agreement shall be deemed effective upon execution of the Agreement by Seller after the approval by the Seller's Board as required by law ("**Effective Date**"), which approval shall not take longer than **thirty (30) days** after execution by Seller, subject to Seller's normal public meeting requirements and procedures.

2.2 Opening of Escrow. Within **five (5) days** after the execution of this Agreement by Seller and Seller's Board approval, the parties shall open an escrow ("**Escrow**") with **Escrow Holder** by causing an executed copy of this Agreement to be deposited with Carolyn Lamascus

ATTACHMENT 4

located at 10801 Foothill Blvd., Rancho Cucamonga, CA 91730, (909) 660-8888 Carolyn.Lamascus@ltic.com which Escrow Holder shall sign and accept. Escrow shall be deemed opened upon Escrow Holder's receipt of all of the following ("**Opening of Escrow**"): (i) the executed copies of this Agreement (which shall include a copy of Seller's Board approval); and (ii) Buyer delivers the Initial Deposit (defined in Section 3.2a). If Escrow is not opened (as defined above) within **ten (10) days** after the Effective Date, either party shall have the right to terminate this Agreement upon written notice to the other party and Escrow Holder prior to the actual Opening of Escrow, in which event, Escrow Holder shall return the initial Deposit, if received by Escrow Holder, to Buyer.

2.3 Hesperia HA Escrow. If the Hesperia HA does not approve the Hesperia HA PSA within **ten (10) days** of the Opening of Escrow, this Agreement and Escrow shall be terminated and the Deposit (less any cancellation charges) returned to Buyer. Once the Hesperia HA Escrow has opened, if the Hesperia HA PSA is terminated by Buyer pursuant to a condition precedent, this Agreement and Escrow shall be concurrently terminated and the Deposit (less any cancellation charges) returned to Buyer. If the Hesperia HA PSA is terminated due to a breach by Buyer, then Buyer shall be deemed in default under this Agreement and this Agreement and Escrow shall be deemed terminated and the Deposit delivered to Seller pursuant to Section 9.

3. CONSIDERATION; PURCHASE PRICE; PAYMENT OF PURCHASE PRICE.

3.1 Consideration. All of the following is material consideration to Seller for the sale of the Property to Buyer: (i) payment of the Purchase Price (defined in Section 3.2); (ii) the Covenants (defined in Section 3.4); and (iii) Buyer's obligation to provide copies of the Documents (defined in Section 3.5).

3.2 Purchase Price. The purchase price for the Property is Two-Hundred Sixty – Three Thousand Eight Hundred Fifty-Two dollars (\$263,852) ("**Purchase Price**").

3.3 Payment of Purchase Price.

- a. Deposit.** Upon Opening of Escrow, Seller shall deliver the Deposit to Escrow Holder in the amount of Thirteen Thousand Two-Hundred dollars (\$13,200) ("**Deposit**"). The Deposit shall be applicable to the Purchase Price.
- b. Release of Deposit.** If Buyer delivers the Disapproval and Termination Notice in accordance with Section 7.2, the Deposit shall be promptly returned to Buyer by Escrow Holder. If Buyer does not deliver the Disapproval and Termination Notice in accordance with Section 7.2, the Deposit shall be promptly released to Seller by Escrow Holder, provided Seller shall promptly return the Deposit to Buyer if Buyer is entitled to the Deposit as provided in Section 12.5 below. Each party agrees to promptly execute and deliver any documents requested by Escrow Holder to effect the release of the Deposit as specified above.
- c. Balance of Purchase Price.** Buyer shall deposit the balance of the Purchase Price with Escrow Holder in Good Funds (as defined below) at least **one (1) business day** prior to the Closing Date.

3.4 Covenants. The development covenants by Buyer with respect to the Development Property as set forth in the Covenant Agreement with Option to Repurchase attached as **Exhibit C** attached hereto ("**Covenant Agreement**") is material consideration to Seller (and Hesperia HA) for the sale of the Development Property to Buyer. The Covenant Agreement shall run

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with the Development Property until the Covenant Agreement is terminated pursuant to the terms and provisions therein.

3.5 Documents. Buyer covenants and agrees to provide to Seller copies of all contracts, agreements, plans, specifications, reports, investigations and any other documents related to the development of the Property ("**Documents**") at no cost to Seller and the issuer or creator of the respective Documents consenting in writing to allow Seller to use same in the event that (i) Buyer does not acquire the Property due to a breach of Buyer's obligations pursuant to this Agreement; or (ii) if Buyer does acquire the Property but fails, following the applicable notice and cure period, to comply with the requirements of the Covenant Agreement and thereafter, Seller reacquires the Property pursuant to the Covenant Agreement. The term "**Documents**" shall not include any financial information or any documents which are attorney-client privileged. This obligation shall survive termination of this Agreement for any reason until the Covenant Agreement is terminated pursuant to the terms and provisions therein.

3.6 Good Funds. All funds deposited in Escrow shall be in "**Good Funds**" which means a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California.

4. FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

4.1 Seller. Seller agrees that on or before 12:00 noon at least **one (1) business day** prior to the Closing Date (defined in Section 5.1 below), Seller shall deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including without limitation:

- i. Executed and acknowledged Grant Deed substantially in the form attached hereto as **Exhibit B ("Grant Deed")** and such other documents as reasonably required by Title Company.
- ii. Three (3) executed and acknowledged copies of the Covenant Agreement executed by both Seller and Hesperia HA.
- iii. A Non-Foreign Affidavit as required by federal law.
- iv. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.2 Buyer. Buyer agrees that on or before 12:00 noon at least **one (1) business day** prior to the Closing Date, Buyer shall deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including without limitation:

- a. Three (3) executed copies of the Covenant Agreement.
- b. A Preliminary Change of Ownership Statement completed in the manner required in San Bernardino County ("**PCOR**").
- c. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.3 Lot Tie Agreement. If a new parcel map is not being recorded for the Development Property at the Closing pursuant to the request of Buyer, Buyer shall execute a lot tie agreement, or other method which will merge the three parcels providing that the Buyer may

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construct structures across the three parcels and that such parcels may not be sold separately, in a form acceptable to Seller which shall be recorded against the Development Property at Closing ("**Lot Tie Agreement**").

4.4 Recordation, Filing, Completion and Distribution of Documents. Escrow Holder shall confirm that any documents signed in counterpart are matching documents and shall combine the signature pages thereof so as to create fully executed documents. Escrow Holder shall cause the (i) Grant Deed (with the Acceptance by Buyer attached), (ii) the Grant Deed for the Hesperia HA Property; (iii) the Lot Tie Agreement (or parcel map) pursuant to Section 4.3; and (iv) the Covenant Agreement (collectively "**Recording Documents**"), to be recorded in **that** order so it can issue the Title Policy in accordance with Section 6.2. Promptly following Close of Escrow, Escrow Holder shall distribute Escrow Holder's final closing statement and conformed copies of all recorded documents to the parties. One (1) executed copy of the Covenant Agreement will be delivered to Hesperia HA.

5. CLOSING DATE; TIME IS OF ESSENCE; EXTENSION AUTHORITY.

5.1 Closing Date. Escrow shall promptly close upon satisfaction of the Conditions Precedent in Section 8, within **twelve (12) months** from the Effective Date, subject to extension pursuant to the terms of this Agreement, ("**Closing Date**"). The terms "**Close of Escrow**" and/or "**Closing**" are used herein to mean the time the Recording Documents are filed for recording by the Escrow Holder in the Office of the County Recorder of San Bernardino County, California.

5.2 Possession. Upon the Close of Escrow, Seller shall deliver exclusive possession of the Property to Buyer.

5.3 Time is of Essence. Buyer and Seller specifically agree that time is of the essence under this Agreement.

5.4 Executive Director Authority. Seller by its execution of this Agreement agrees that the Executive Director of Seller or his designee (who has been designated by Executive Director's written notice delivered to Buyer and Escrow Holder) shall have the authority to execute documents on behalf of Seller including, but not limited to, issuing approvals, disapprovals and extensions. Any such approval, disapproval or extension executed by the Executive Director or his designee shall be binding on Seller. Notwithstanding the foregoing, Executive Director or his designee may only grant extensions for (i) the Due Diligence Period (defined in Section 7.1) that cumulatively do not exceed ninety (90) days; (ii) the Entitlement Period (defined in Section 8) that cumulatively do not exceed ninety (90) days; or (ii) the Closing Date that cumulatively do not exceed ninety (90) days.

6. TITLE POLICY.

6.1 Approval of Title. Promptly following execution of this Agreement but, in no event later than **ten (10) days** following Opening of Escrow, a preliminary title report shall be issued by Commonwealth Land Title Insurance Company, 4100 Newport Place, Suite 120, Newport Beach, CA 92660 Attn: Chris Maziar (949) 724-3170 ("**Title Company**"), describing the state of title of the Property, together with copies of all exceptions listed therein and a map plotting all easements specified therein ("**Preliminary Title Report**"). Within **thirty (30) days** after Buyer's receipt of both the Preliminary Title Report and the ALTA survey, Buyer shall notify Seller in writing ("**Buyer's Title Notice**") of Buyer's disapproval of any matters contained in the Preliminary Title Report except that Buyer may not disapprove any title exceptions caused by Buyer's entry onto the Property pursuant to Section 7.3 ("**Disapproved Exceptions**").

In the event Buyer delivers Buyer's Title Notice within said period, Seller shall have a period of **ten (10) days** after receipt of Buyer's Title Notice in which to notify Buyer of Seller's election to either (i) agree to remove the Disapproved Exceptions prior to the Close of Escrow; or (ii) decline to remove any such Disapproved Exceptions ("**Seller's Notice**"). If Seller notifies Buyer of its election to decline to remove the Disapproved Exceptions, or if Seller is unable to remove the Disapproved Exceptions, Buyer may elect either to terminate this Agreement and the Escrow, in which event Escrow Holder shall promptly return the Deposit to Buyer, or to accept title to the Property subject to the Disapproved Exception(s). Buyer shall exercise such election by delivery of written notice to Seller and Escrow Holder within **five (5) days** following the earlier of (i) the date of written advice from Seller that such Disapproved Exception(s) cannot be removed; or (ii) the date Seller declines to remove such Disapproved Exception(s).

Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement, provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to **ten (10) days** following receipt of notice of such additional exceptions.

6.2 Title Policy. At the Close of Escrow, Escrow Holder shall furnish Buyer with an ALTA owner's non-extended Policy of Title Insurance insuring title to the Property vested in Buyer with coverage in the amount of the Purchase Price, containing only the exceptions to title (i) which has not been approved or waived by Buyer in accordance with Section 6.1; (ii) the Covenant Agreement; (iii) the Lot Tie Agreement (if applicable); and (iv) the continuing covenants in the Grant Deed ("**Title Policy**"). The cost of the Title Policy to Buyer, including any endorsements required to insure against any Disapproved Exceptions, shall be paid by Seller but Buyer shall, if Buyer so elects to obtain an extended coverage policy, be obligated to pay for the additional costs of such extended coverage policy. If Buyer elects to obtain an ALTA extended owner's title policy, Buyer shall (i) be responsible for the additional costs of that form of title policy; and (ii) must deliver an ALTA survey (obtained at Buyer's cost) to the Title Company not less than **thirty (30) days** prior to the scheduled Closing Date.

7. DUE DILIGENCE; ENTITLEMENTS.

7.1 Due Diligence. Within **ten (10) days** after the Effective Date, Seller shall provide Buyer with any and all documents and information in Seller's possession and control concerning the Property including contracts, leases, and reports. Commencing with the Effective Date, Buyer shall have the right to obtain at its cost to conduct such engineering, feasibility studies, soils tests, environmental studies and other investigations as Buyer in its sole discretion may desire, to permit Buyer to determine the suitability of the Property for Buyer's contemplated uses and to conduct such other review and investigation which Buyer deems appropriate to satisfy itself to acquire the Property

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for Buyer's Proposed Development. Buyer shall be solely responsible to obtain any documents pertaining to the Property from the County of San Bernardino or the City of Hesperia ("**City**").

Within ten (10) days of Opening of Escrow, Escrow shall order and deliver to Buyer a commercial natural hazards disclosure report issued on the Property ("**NHD Report**"). Buyer must review and approve the NHD Report as part of its due diligence under this Section 7.

7.2 Disapproval of Due Diligence Matters. No later than **one hundred twenty (120) days** from the Opening of Escrow ("**Due Diligence Expiration Date**"), Buyer may, in its sole discretion, notify Seller in writing (with a copy to Escrow Holder) of (i) its disapproval of the due diligence matters (excluding title matters which are to be approved or disapproved pursuant to Section 6, and excluding entitlements which are to be approved or disapproved pursuant to Section 7.4), and (ii) its election to terminate this Agreement and Escrow ("**Disapproval and Termination Notice**").

If Buyer sends the Disapproval and Termination Notice in the time and manner specified above, the parties shall execute any documents required by Escrow Holder and upon receipt of said documents executed by the parties, Escrow Holder shall return the Deposit (less any cancellation charges) to Buyer. If Buyer does not deliver the Disapproval and Termination Notice in the time and manner specified above, Buyer shall conclusively be deemed to have approved due diligence matters.

7.3 Right to Enter the Property. Commencing with the Effective Date, Seller grants Buyer, its agents and employees a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, reports, investigations and tests shall be done at Buyer's sole cost and expense.

Prior to entry onto the Property, Buyer shall (i) notify Seller the date and purpose of each intended entry together with the names and affiliations of the persons entering the Property; (ii) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (iii) comply with all applicable laws and governmental regulations; (iv) notify Seller of the date for such entry and allow an employee of Seller to be present at Seller's election; (v) keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this provision; (vi) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the Property in the amounts required by the State of f; (vii) provide to Seller prior to initial entry a certificate of insurance evidencing that Buyer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000) for Development Property which insurance names Seller as additional insured. Buyer shall return the Property to substantially its original condition following Buyer's entry. Following Buyer's entry, Buyer will, upon written request by Seller, provide Seller copies of all studies, surveys, reports, investigations and other tests derived from any inspection ("**Reports**"); and to take the Property at closing subject to any title exceptions caused by Buyer exercising this right to enter.

Buyer agrees to indemnify, and hold Seller free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which Seller may suffer or incur as a consequence of Buyer's exercise of the license granted pursuant to this Section or any act or omission by Buyer, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under Buyer (except Seller and its agents) with respect to the entry upon the Property during the

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term of this Agreement, excepting any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) arising from the mere discovery by Buyer of any hazardous materials or conditions and excepting to the extent such claims arise out of the negligence or misconduct of Seller. Buyer's obligations under this Section shall survive termination of this Agreement for any reason for a period of **one (1) year**.

The parties agree that breach of any Property entry or restoration conditions in this Section shall constitute a material breach of this Agreement, unless the Agreement is consummated at Closing; provided, however, that the Closing shall not release Buyer from any of the foregoing obligations.

7.4 Entitlement Process.

a. Commencement. Within **one hundred and eighty (180) days** from the Opening of Escrow, Buyer shall promptly apply for all discretionary governmental permits and approvals for its Proposed Development and diligently prosecute same including, but not limited to, promptly responding to requests and modifications, payment of all necessary fees, etc. ("**Entitlements**"). The Entitlements shall include, without limitation, and if applicable specific site plan approval, a new parcel map, Lot Tie Agreement, or other method acceptable to Seller which will merge the three parcels, and a zone change. Buyer shall diligently prosecute and pursue all applications and permits including providing prompt responses to the City for any additional requests and Seller shall cooperate with Buyer's process. Buyer shall pay all applicable fees to secure all entitlements for the Proposed Development.

b. Buyer Approvals. Upon issuance of final conditions for any Entitlement, Buyer shall have the right to disapprove same by issuing a written notice to Seller within **ten (10) days** which shall also include Buyer's election to terminate this Agreement and the Escrow ("**Termination Notice**"). For example, conditions of approval for the project required by the Planning Commission may be appealed to the City Council. Upon the City Council's final determination, Buyer shall have **ten (10) days** to issue the Termination Notice to Seller for any Entitlement. If Buyer delivers a Termination Notice in the time and manner specified for an Entitlement, this Agreement shall be terminated, Escrow shall be cancelled and the Deposit (less cancellation charges) shall be returned to Buyer. If Buyer fails to deliver the Termination Notice for an Entitlement in the time and manner specified, Buyer shall be deemed to have approved all conditions to such Entitlement.

c. Entitlement Period. Buyer shall use commercially reasonable efforts to obtain all Entitlements within **ten (10) months** from the Effective Date ("**Entitlement Period**"). Provided Buyer has been diligently pursuing the Entitlements, Buyer shall have the right to extend the Entitlement Period for three (3) additional periods of **thirty (30) days** each by providing written notice to Seller at least **ten (10) days** prior to the expiration of the Entitlement Period, and extension period, as the case may be, which notice summarizes in reasonable detail the reason for the extension. It is a material consideration to Buyer for the purchase of the Property that Buyer obtain the necessary Entitlements, including without exception, the rezoning of the Property from "Neighborhood Commercial" to an appropriate zoning classification necessary for such high-density residential and mixed-use commercial application prior to the expiration of the Entitlement Period. In the event, through no fault of Buyer, that the City takes longer to approve the rezoning of the Property and to issue such governmental permits for the Proposed Development, then the Entitlement Period shall be extended day for day, without Buyer having to request an extension.

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8. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

8.1 Conditions to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent ("**Buyer's Conditions Precedent**"):

- i. Title Company will issue the Title Policy as specified in Section 6.2.
- ii. Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement, and is in position to record the Grant Deed as approved by Buyer.
- iii. The Hesperia HA Escrow closes concurrently.
- iv. Seller is not in default of its obligations under this Agreement.

8.2 Conditions to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Seller of the following conditions precedent:

- i. Buyer has delivered the balance of the Purchase Price to Escrow Holder.
- ii. Title Company will issue the Title Policy as specified in Section 6.2.
- iii. The Hesperia HA Escrow closes concurrently.
- iv. The Lot Tie Agreement is executed by Buyer (unless a new parcel map is to be recorded at Closing) pursuant to Section 4.3.
- v. Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- vi. Buyer is not in default of its obligations under this Agreement.

9. LIQUIDATED DAMAGES.

IF BUYER SHOULD MATERIALLY DEFAULT UNDER THIS AGREEMENT, BUYER AND SELLER AGREE THAT SELLER WILL INCUR DAMAGES BY REASON OF SUCH DEFAULT WHICH DAMAGES SHALL BE IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN. THEREFORE, BUYER AND SELLER, IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF SUCH DEFAULT BY BUYER HAVE AGREED BY PLACING THEIR INITIALS BELOW THAT THE DEPOSIT SHALL CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES UNDER THE PROVISIONS OF SECTIONS 1671 AND 1677 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE FOR A BREACH PRIOR TO THE CLOSING. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE CHARGES SHALL BE PAID BY SELLER FROM SUCH SUM. THIS PROVISION DOES NOT APPLY TO OR LIMIT IN ANY WAY THE INDEMNITY OBLIGATIONS OF BUYER UNDER THIS AGREEMENT.

Seller's Initials

Buyer's Initials

ATTACHMENT 4

10. CONDITION OF THE PROPERTY.

10.1 Disclaimer of Warranties. Upon the Close of Escrow, Buyer shall, subject to Seller's representation and warranty of (i) free and clear fee simple title to the Property, and (ii) no actual knowledge by the Seller, its employees or agents, of the presence of any Hazardous Materials (defined below) or underground storage tanks in, on, under or about the Property, acquire the Property in its "AS-IS" condition and Buyer shall be responsible for any defects in the Property, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Property, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, or other structures located on, under or about the Property, and, Seller makes no other representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property, and Seller specifically disclaims all representations or warranties of any nature concerning the Property made by it. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, soil, subsoil, existence of known Hazardous Materials or similar substances, the purpose for which the Property is suited, or drainage. Seller hereby represents and warrants to Buyer that Rod Yahnke, Economic Development Manager (as the representative of the Seller), without any obligation to investigate, has no actual knowledge of the presence of any Hazardous Materials or storage tanks in, on, under or about the Property. Seller acknowledges and agrees that Rod Yahnke's representations are made in his official capacity and that he shall have no personal liability whatsoever for any claims arising out of this Agreement.

10.2 Hazardous Materials. Buyer understands and agrees that, in the event Buyer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or underground storage tanks whether attributable to events occurring prior to or following the Closing, then Buyer may look to current or prior owners of the Property, but in no event shall Buyer look to Seller for any liability or indemnification regarding Hazardous Materials and/or underground storage tanks. Buyer, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges Seller, and each of the entities constituting Seller, if any, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Property, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials there from, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of Seller, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Buyer, its successors, assigns or any affiliated entity of Buyer, against the Seller, arising by virtue of the physical or environmental condition of the Property, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material there from, whether existing prior to, at or after the Closing, are by this release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release.

In connection therewith and subject to the representation and warranty of Seller's representative as noted in Section 10.1 above, Buyer and each of the entities constituting Buyer, expressly agree to waive any and all rights which said party may have with respect to such released claims under Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Buyer Initials _____

Seller Initials _____

ATTACHMENT 4

For purposes of this Agreement, the following terms shall have the following meanings:

“Environmental Claim” means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Property or its operations and arising or alleged to arise under any Environmental Law.

“Environmental Cleanup Liability” means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Property, including the ground water hereunder, including, without limitation, (i) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (ii) any cost, expense, loss or damage incurred with respect to the Property or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

“Environmental Compliance Cost” means any cost or expense of any nature whatsoever necessary to enable the Property to comply with all applicable Environmental Laws in effect. “Environmental Compliance Cost” shall include all costs necessary to demonstrate that the Property is capable of such compliance.

“Environmental Law” means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

“Hazardous Material” is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (iii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code; (iv) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501(o) and (p) and 25501.1 of the California Health and Safety Code (Hazardous Materials Release Response Plans and Inventory); (v) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code (Underground Storage of Hazardous Substances); (vi) “used oil” as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 1 of Title 22 of the California Code of Regulations, Division 4, Chapter 30; (ix) defined as “waste” or a “hazardous substance” pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a “toxic pollutant” pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §1317; (xi) defined as a “hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); (xii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. (42 U.S.C. §9601); (xiii) defined as “Hazardous Material” or a “Hazardous Substance” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; or (xiv) defined as such or

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regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials, oil wells, underground storage tanks, and/or pipelines, as now, or at any time hereafter, in effect.

Notwithstanding any other provision of this Agreement, Buyer's release as set forth in the provisions of this Section, as well as all other provisions of this Section, shall, in the event Buyer acquires the Property through the Close of Escrow, survive the termination of this Agreement and shall continue in perpetuity.

11. ESCROW PROVISIONS.

11.1 Escrow Instructions. Sections 1 through 6, inclusive, 8, 11, 13 and 14 constitute the escrow instructions to Escrow Holder. If required by Escrow Holder, Buyer and Seller agree to execute Escrow Holder's standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder's request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller agree to execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close Escrow.

11.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the San Bernardino County Recorder to mail after recordation: (i) the Grant Deed to Buyer at the address set forth in Section 13; and (ii) the Covenant Agreement and Lot Tie Agreement to Seller at the address set forth in Section 13. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in San Bernardino County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that party's instructions.

11.3 Proration of Real Property Taxes. As a public agency, Seller is not subject to real property taxes and, accordingly, real property taxes shall not be prorated, however, Seller shall pay any previous real property taxes that may be in arrears prior to the Close of Escrow.

11.4 Payment of Costs.

- a. Cost Allocation.** Seller shall pay the costs for the Title Policy (non-extended ALTA owner's policy), any documentary transfer taxes, recording charges for the Grant Deed, and one-half (1/2) of the escrow costs ("**Seller's Charges**"). Buyer shall pay the cost of any additional endorsements that are not required to clear a Seller imposed encumbrance, in which event Seller shall pay for such endorsement, to the Title Policy requested by Buyer (including an extended coverage ALTA owner's policy), one-half (1/2) of the escrow fees, and any charges incurred by Buyer's acts ("**Buyer's Charges**"). All other costs of Escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder.
- b. Closing Statement.** At least **five (5) business days** prior to the Closing Date, Escrow Holder shall furnish Buyer and Seller with a preliminary escrow closing statement which shall include each party's respective shares of costs. The preliminary

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closing statement shall be approved in writing by the parties. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to the parties.

11.5 Termination and Cancellation of Escrow. If Escrow fails to close due to a failure of a condition precedent, then the party in whose favor the condition precedent runs may elect to cancel this Escrow upon written notice to the other party and Escrow Holder. Upon cancellation, Escrow Holder is instructed to return (i) the Deposit to Buyer (less any cancellation fees) unless Seller is entitled to same pursuant to Section 9, and (ii) all documents then in Escrow to the respective depositor of the same with Escrow Holder. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

11.6 Information Report. Escrow Holder shall file and Buyer and Seller agree to cooperate with Escrow Holder and with each other in completing any report ("**Information Report**") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045I regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. Buyer and Seller also agree that Buyer and Seller, their respective employees and attorneys, and escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045I, and further agree that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

11.7 No Withholding as Foreign Seller. Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to Buyer on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

11.8 Brokerage Commissions. If, and only if, Close of Escrow occurs, Escrow Holder shall pay from Seller's funds a broker's commission of five percent (5%) of the Purchase Price ("**Commission**") as follows: (i) fifty percent (50%) of the Commission shall be paid to Coldwell Banker Commercial RES (Ron Barbieri and Steven Thompson) ("**Seller's Broker**"); and (ii) fifty percent (50%) of the Commission shall be paid to Bluestone Realty (Celina Noriega) ("**Buyer's Broker**"). Except for the commission referred to in the foregoing sentence, Buyer and Seller each represent and warrant to the other parties that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other parties harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

12. NON-COLLUSION. Buyer represents and warrants to Seller that no officer, official or employee of Seller has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the Seller participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any

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corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or "non-interest" pursuant to California Government Code Sections 1091 and 1091.5. Seller warrants and represents that (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, any official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement. Buyer further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Seller, as a result or consequence of obtaining or being awarded any agreement. Buyer is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Buyer's Initials: _____

Seller's Initials: _____

13. NOTICES. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and may be given (i) by personal delivery which will be deemed received on the day of delivery; (ii) by national overnight delivery service which shall be deemed received the following day; or (ii) by mailing the same by registered or certified US mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the party to whom the notice is directed as set forth below, or such other address and to such other persons as the parties may hereafter designate:

To Seller: Hesperia Community Development Commission
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

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

To Buyer: ZAB LLC.
16502 Walnut St, Suite C
Hesperia, CA 92345
Attn: Luis Benites, Managing Member

With a Copy to: Gregory A. York, Esq.
gyorklaw@frontier.com

14. GENERAL PROVISIONS.

14.1 Assignment. Buyer has no right to assign this Agreement without the prior written consent of Seller in its sole discretion. Notwithstanding the foregoing, Buyer may assign this Agreement to any entity owned and controlled by Luis Benites provided that (i) evidence of such ownership and control is provided to Seller; (ii) the transferee or its underlying owners are financially viable and capable to consummating the transaction; (iii) the assignment and assumption agreement executed by the original Buyer under this Agreement and the transferee is a form reasonably acceptable to Seller; and (iv) Buyer must be concurrently assigning the Hesperia HA PSA to the

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same transferee. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

14.2 Attorney's Fees. In any action between the parties hereto, seeking enforcement of any of the terms and provisions of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled, to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

14.3 Interpretation; Governing Law; Venue. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. The venue for any dispute shall be San Bernardino County.

14.4 No Waiver. No delay or omission by either party in exercising any right or power accruing upon the compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

14.5 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

14.6 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14.7 Merger. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior to contemporaneous agreements, understandings, representations and statements, oral or written are merged herein and shall be of no further force or effect.

14.8 Construction. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against a party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

14.9 Qualification and Authority. Each individual executing this Agreement on behalf of Buyer represents, warrants and covenants to the Authority that (a) such person is duly authorized to execute and deliver this Agreement on behalf of Buyer in accordance with authority granted under the organizational documents of such entity, and (b) Buyer is bound under the terms of this Agreement. Each individual executing this Agreement on behalf of Seller represents, warrants and

ATTACHMENT 4

covenants to the Buyer that (a) such person is duly authorized to execute and deliver this Agreement on behalf of Seller in accordance with authority granted under the organizational documents of such entity, and (b) Seller is bound under the terms of this Agreement.

14.10 No Third-Party Beneficiaries. This Agreement is only between the parties and is not intended to be nor shall it be construed as being for the benefit of any third party.

14.11 No Liability. No official, officer, employee or agent of Seller shall have personal liability under this Agreement.

14.12 Execution in Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

14.13 Exhibits. Exhibits A, A-1, B and C attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

NOTE: Each of Sections 9, 10.2 & 12 must also be initialed by Buyer & Seller as applicable.

BUYER:

ZAB LLC, a California limited liability company

By: _____
Luis Benites, Managing Member

SELLER:

HESPERIA COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic

By: _____
Larry Bird, Chair

_____, 2019

ATTEST:

Melinda Sayre, Commission Secretary

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Commission Counsel

ATTACHMENT 4

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The real property located in the City of Hesperia, County of San Bernardino, State of California described as follows:

0407-261-03

TOWN HESPERIA E 1/2 LOT C BLK 254 EX S 150 FT THEREOF 1.3 AC

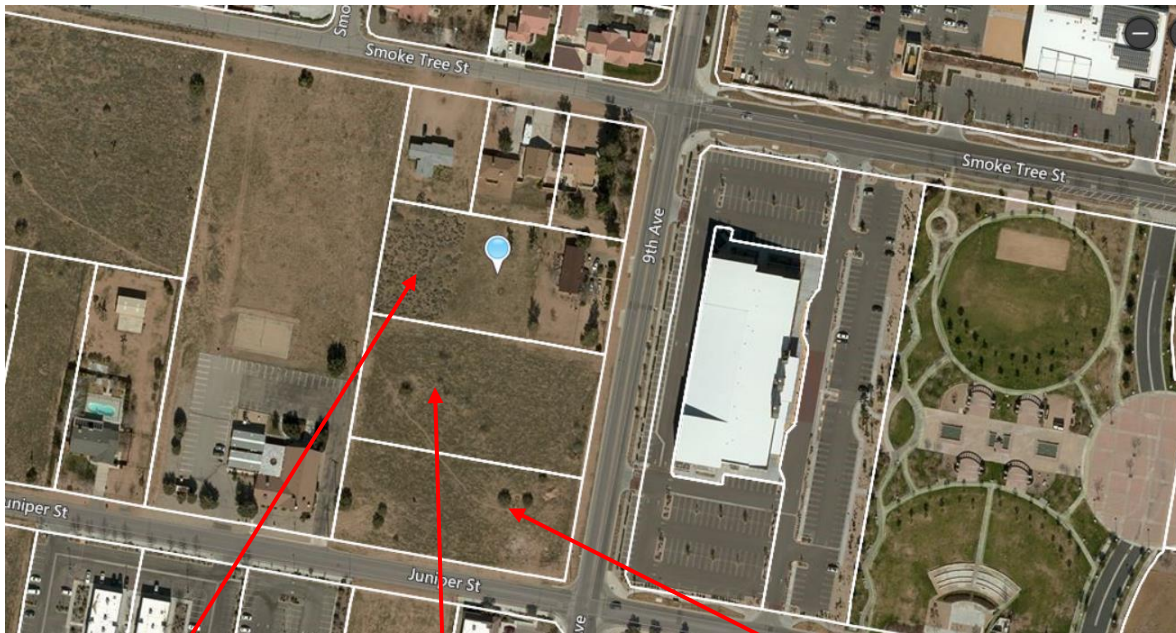
APN 0407-261-04

TOWN HESPERIA S 150 FT E 1/2 LOT C BLK 254 1.18 AC M/L

ATTACHMENT 4

EXHIBIT A-1

DEPICTION OF THE DEVELOPMENT PROPERTY



APN 0407-261-20
Hesperia Housing
Authority

APN 0407-261-03
Hesperia Community
Development Commission

APN 0407-261-04
Hesperia Community
Development Commission

EXHIBIT B

GRANT DEED

**Recording requested by and
When Recorded Return to:**

ZAB LLC.
16502 Walnut St, Suite C
Hesperia, CA 92345
Attn: Luis Benites, Managing Member

APN. 0407-261-03 and 04
THE UNDERSIGNED DECLARES that the documentary
transfer tax (computer on full value) is \$_____

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code §6103)

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged and subject to the covenants set forth below HESPERIA COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic ("**Grantor**") grants to ZAB LLC, a California limited liability company ("**Grantee**"), all of its rights, title, and interest in that certain real property in the City of Hesperia, County of San Bernardino, State of California, as more particularly described in **Exhibit A** attached hereto and incorporated by this reference ("**Property**").

Grantor has determined that the Property is not required for its foreseeable needs and it is being disposed of pursuant to the Health & Safety Code.

Developer agrees to refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, age, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

(a) **Deeds:** In deeds the following language shall appear: "The Developer herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the Developer itself, or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) **Leases:** In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or

national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) Contracts: In contracts pertaining to conveyance of the realty the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The forgoing covenants shall remain in effect in perpetuity.

IN WITNESS WHEREOF, Hesperia Agencies has caused this Grant Deed to be executed on its behalf as of the date written below.

HESPERIA AGENCIES:

HESPERIA COMMUNITY DEVELOPMENT
COMMISSION, a public body, corporate and politic

By: _____
Larry Bird, Chair

_____, 2020

ATTEST:

Melinda Sayre, Commission Secretary

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Commission Counsel

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

That certain real property located in the City of Hesperia, County of San Bernardino, State of California, and is described as follows:

0407-261-03

TOWN HESPERIA E 1/2 LOT C BLK 254 EX S 150 FT THEREOF 1.3 AC

APN 0407-261-04

TOWN HESPERIA S 150 FT E 1/2 LOT C BLK 254 1.18 AC M/L

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

Notary Public

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EXHIBIT C

COVENANT AGREEMENT

**Recording requested by and
When Recorded Return to:**

Hesperia Community Development Commission
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

APN. 0407-261-03, 04 & 20

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code §6103)

COVENANT AGREEMENT WITH OPTION TO REPURCHASE

THIS COVENANT AGREEMENT WITH OPTION TO REPURCHASE ("**Agreement**") is entered into as of the _____, 2020__ by and between (i) HESPERIA COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic ("**Hesperia CDC**") and HESPERIA HOUSING AUTHORITY, a public body, corporate and politic ("**Hesperia HA**") (jointly the "**Hesperia Agencies**") and (ii) ZAB LLC, a California limited liability company ("**Developer**").

RECITALS

A. Developer owns that certain real property in the City of Hesperia, County of San Bernardino, State of California, as more particularly described in **Exhibit 1** attached hereto and incorporated by this reference ("**Property**").

B. Developer acquired the Property as follows:

i. A portion of the Property was acquired from the Hesperia HA pursuant to that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated _____, 2020 ("**Hesperia HA PSA**"); and

ii. A portion of the Property was acquired from the Hesperia CDC pursuant to that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated _____, 2020 ("**Hesperia CDC PSA**").

The Hesperia HA PSA and the Hesperia CDC PSA are jointly hereinafter referred to as the "**Purchase Agreements**."

C. As material consideration to the Hesperia Agencies for the sale of the Property to Developer pursuant to the Purchase Agreements, Developer agreed to develop the Property as set forth below.

NOW, THEREFORE, the obligations of Developer under this Agreement shall run with a burden the Property as covenants, equitable servitudes, restrictions and easements in favor of the Hesperia Agencies in gross.

1. Effective Date. This Agreement shall be effective upon recordation in the Official Records of San Bernardino County ("**Effective Date**").

2. Development Covenant.

- 2.1. **Covenant.** Immediately following the Effective Date, Developer covenants to promptly commence and diligently process all applicable governmental approvals to construct the improvements as described on **Exhibit 2** attached hereto together with components and requirements imposed through the planning process ("**Project**").
- 2.2. **Compliance Date.** Developer shall commence and diligently prosecute to completion the construction of the Project in accordance with the schedule set forth on **Exhibit 3** attached hereto ("**Schedule of Performance.**") It is understood by the parties hereto that the time periods outlined in the Schedule of Performance may be extended automatically due to the City failing to perform its requirements within the time periods established in the Schedule.
- 2.3. **Compliance with Laws.** Developer shall construct the Project in compliance with all applicable laws. Developer understands that any public improvements to be constructed as part of the Project will be subject to prevailing wage laws (California Labor Code Section 1720 et seq.) and Developer shall indemnify and hold harmless the Hesperia Agencies with respect to same, however, it is recognized and agreed upon by Developer and the Hesperia Agencies that: (i) the Property is being purchased at "fair market value", (ii) the Hesperia Agencies are not granting, loaning or otherwise paying for any improvements to the Property, and (iii) Developer is not applying for any credits or reimbursements from the Hesperia Agencies in connection with the Proposed Development.
- 2.4. **Termination.** If Developer reasonably believes that the Covenants in this Agreement have been satisfied, Developer may send a written notice requesting the Hesperia Agencies to confirm such compliance by execution of an appropriate document terminating this Agreement which shall be concurrently submitted with the notice and which document, upon execution by Developer and the Hesperia Agencies, shall be recorded in the Official Records of San Bernardino County ("**Release**"). Upon receipt of the Release, The Hesperia Agencies shall review and promptly execute, acknowledge and return the document to Developer or otherwise specify in reasonable detail in writing what remains to be completed.
- 2.5. **City as Separate Legal Entity from the Hesperia Agencies.** The City of Hesperia ("**City**") is a separate legal entity from the Hesperia Agencies. The Hesperia Agencies have no authority to bind the City in any discretionary matter, including, but not limited to, any land use or planning entitlements or the approvals required for the Project. Developer acknowledges that the terms of this Agreement do not pre-approve any land use or planning entitlements or approvals Developer may be required to obtain from City for the Project or any other purpose.
- 2.6. **Obligations Run with the Land.** This Agreement shall constitute covenants, equitable servitudes, restrictions and easements in favor of the Hesperia Agencies in gross and City which, without regard to technical classification and designation, run with the land and shall be binding on the owner of the Property and all successors.
- 2.7. **Indemnification.** Developer agrees, at its sole cost and expense, to defend, indemnify and hold harmless the Hesperia Agencies and City (and their respective officers, employees, agents and consultants) from any claim, action or proceeding brought by a third party with respect to all aspects of the Project including, but not limited to, approvals or permits issued by the City and/or the Hesperia Agencies, but specifically excluding any claim, action or proceeding relating to Environmental Claims, Environmental Cleanup Liabilities or Environmental Compliance Costs (each as defined in the Purchase Agreements). The Hesperia Agencies and City agree to promptly notify Developer of any such claim filed against City or the Hesperia Agencies and to fully cooperate in the defense

of any such action at no cost or expense to City or the Hesperia Agencies. City and the Hesperia Agencies may elect to participate in the defense of any such claim.

3. **Option to Repurchase.** If Developer is in default of the Covenants in Section 2 of this Covenant Agreement beyond the applicable notice and cure period, and prior to the commencement of construction of the Project (defined in Section 2.2) or recordation of the Release (defined in Section 2.3), Hesperia Agencies shall have the option to buy back the Property ("**Option**") from Developer for the sum of ("**Option Purchase Price**"): (i) the original Purchase Price paid by Developer to the Hesperia Agencies ("**Original Purchase Price**"), plus (ii) actual costs paid by Buyer to third parties for entitling and designing, the Property to the date of the closing including, without limitation, architects, engineers, government fees and costs paid to the City but **not** including any hard costs, attorney fees or commissions ("**Additional Costs**"). Upon exercise of the Option, Developer shall promptly deliver to Hesperia Agencies a detailed summary of all claimed Additional Costs as part of the Option Purchase Price together with proof of payment, copies of the applicable agreements and the plans, specifications, reports and documents. Upon confirmation of the Option Purchase Price, the parties shall cooperate with opening escrow to facilitate the transfer of the Property to Hesperia Agencies for the Option Purchase Price which shall include the assignment of the various plans, specifications, reports, agreements, surveys and documents for which Developer is being reimbursed as part of the Option Purchase Price. At closing, Hesperia Agencies shall have the right to take possession of the Property free of any claims or rights of possession.

14. **Notice.** Any notice which either party may desire to give to the other party must be in writing and may be given (i) by personal delivery which will be deemed received on the day of delivery; (ii) by national overnight delivery service which shall be deemed received the following day; or (iii) by mailing the same by registered or certified US mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the party to whom the notice is directed as set forth below, or such other address and to such other persons as the parties may hereafter designate:

To Hesperia Agencies:

Hesperia Housing Authority
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

Hesperia Community Development Commission
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Executive Director

With Copy to:

Aleshire & Wynder, LLP
3880 Lemon Street Suite 520
Riverside, CA 92501
Attention: Eric Dunn

To Developer:

ZAB LLC.
16502 Walnut St, Suite C
Hesperia, CA 92345
Attn: Luis Benites, Managing Member

With Copy to:

Gregory York, Esq.
gyorklaw@frontier.com

4. **California Law.** The Covenants contained in this Agreement shall be construed in accordance with the laws of the State of California.
5. **Interpretation.** If an ambiguity or question of intent or interpretation arises, then the terms of this Agreement, including but not limited to, the Covenants, shall be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party to this Agreement, including but not limited to, the Covenants, by virtue of the authorship of any of the provisions of this Agreement.
6. **Severability.** If any provision of this Agreement or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of the covenants contained in this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby.
7. **Attorney's fees.** In the event any action or suit is brought by a party hereto against another party hereunder by reason of any uncured breach beyond the applicable notice and cure period of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorneys' fees, expert witness fees, accounting and engineering fees, and any other professional fees resulting therefrom.
8. **Default.** If Developer is deemed to be in default of the provisions of this Covenant Agreement, Hesperia Agencies shall deliver written notice to Developer stating in sufficient detail the nature and extent of such default and allowing Developer thirty (30) days from receipt of such notice to cure same.

IN WITNESS WHEREOF, the parties have executed this Covenant Agreement as of the date set forth above.

HESPERIA AGENCIES:

HESPERIA HOUSING AUTHORITY,
a public body, corporate and politic

By: _____
Larry Bird, Chair

_____, 20__

ATTEST:

Melinda Sayre, Authority Secretary

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Authority Counsel

DEVELOPER:

ZAB LLC, a California limited liability
company

By: _____
Luis Benites, Managing Member

HESPERIA COMMUNITY DEVELOPMENT
COMMISSION, a public body, corporate and
politic

By: _____
Larry Bird, Chair

_____, 20__

ATTEST:

Melinda Sayre, Commission Secretary

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, Commission Counsel

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

That certain real property located in the City of Hesperia, County of San Bernardino, State of California, and is described as follows:

0407-261-03

TOWN HESPERIA E 1/2 LOT C BLK 254 EX S 150 FT THEREOF 1.3 AC

APN 0407-261-04

TOWN HESPERIA S 150 FT E 1/2 LOT C BLK 254 1.18 AC M/L

APN 0407-261-20

TOWN OF HESPERIA S 1/2 E 1/2 LOT B BLK 254 1.29 AC M/L

EXHIBIT 2
SUMMARY OF PROJECT

[TBD]

EXHIBIT 3

SCHEDULE OF PERFORMANCE

NOTE: The City may require more time than depicted in this Schedule of Performance to approve the entitlements and building plans/permits. A zone change will be required to permit multi-family mixed use zoning at this site. The City and the Planning Department will support this zone change, however the staff of the City may require more than two (2) months to obtain Planning Commission and City Council approval. Should the City require more time than shown in this Schedule to obtain the necessary approvals, the affected Events and the Close of Escrow shall be extended for the additional time required by the City. Therefore, in the event, through no fault of Buyer, the Time for Performance Event(s) is/are not met by the City, then the Time For Performance for such Event shall be extended day for day of such period of time as the City actually performs the Event, and all Events thereafter shall be extended accordingly.

Event	Event Description	Time For Performance
1	Opening of Escrow	Within 5 days after the Effective Date as specified in Section 2.1 of PSA
2	Developer makes deposit	Within 5 days of Event 1
3	Developer submits Site Plan Application including parcel map, CEQA and other documents as required by the City	Within 4 months of Event 1
4	City accepts application as complete or advises Developer of deficiencies	Within 30 days of Event 3
5	Developer revises and resubmits Site Plan and other documents if necessary	Within 30 days of Event 4
6	City accepts resubmittal or advises Developer of deficiencies	Within 30 days of Event 5
7	Developer revises and resubmits Site Plan and other documents if necessary	Within 30 days of Event 6
8	City accepts resubmittal or advises Developer of deficiencies	Within 30 days of Event 7
9	Expiration of Due Diligence period	Within 10 months of Event 1
10	Close Escrow	Within 12 months of Event 1
11	Developer submits construction drawings	Within 4 months of Event 10
12	Developer starts construction	Within 5 months of Event 11
13	Developer completes construction	Within 12 months of Event 12

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2020 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2020 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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Notary Public

SEAL:

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STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2020 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

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City of Hesperia

STAFF REPORT



DATE: January 7, 2020

TO: Mayor and City Council Members
Chair and Board Members, Hesperia Water District

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

BY: Casey Brooksher, Director of Finance
Anne Duke, Deputy Finance Director
Marc Morales, Customer Service Supervisor

SUBJECT: Amendments to Title 14 of Hesperia Municipal Code – Discontinuation of Residential Water Service

RECOMMENDED ACTION

It is recommended: 1) the City Council introduce and place on first reading Ordinance No. 2020-02 amending Title 14 of the Hesperia Municipal Code to incorporate the provisions set forth in the Water Shutoff Protection Act - Senate Bill 998 and 2) the Council/Board adopt Joint Resolution No. 2020-02 and Hesperia Water District Resolution No. 2020-01, adopting a written policy on the Discontinuation of Residential Water Service for Nonpayment in compliance with Senate Bill 998.

BACKGROUND

Senate Bill 998 (SB 998), known as the Water Shutoff Protection Act (Attachment 1) was approved by Governor Jerry Brown on September 28, 2018 and requires every urban and community water system with more than 200 water service connections to have a written policy on the discontinuation of residential water services in place by February 1, 2020. The written policy on discontinuation of water service shall comply with the following mandates:

- Residential water service shall not be discontinued for nonpayment until the account has been delinquent for at least sixty (60) days.
- No less than seven (7) business days before discontinuation of residential service for nonpayment, the consumer named on the account shall be contacted by telephone or written notice.
- If unable to make contact with the consumer named on the account, a good faith effort is to be made to visit the residence and place a notice of imminent discontinuation of residential service for nonpayment, as well as a written copy of the District's Policy for the Discontinuation of Residential Service for Nonpayment (Policy).
- The written Policy shall be made available in English, Spanish, Chinese, Tagalog, Vietnamese, Korean and any other language spoken by 10% of the service area and shall also be made available on the District's website.
- The Policy shall contain:
 - A plan for deferred or reduced payments for those who qualify.
 - Alternative payment schedules for those who qualify.
 - A formal mechanism for a consumer to contest or appeal a bill.

- A telephone number for a consumer to contact and discuss options for averting discontinuation of water service for nonpayment.
- For the consumer to avoid discontinuation of residential water service, all the following conditions must be met:
 - The consumer shall submit a certification from a primary care provider that discontinuation of water service will be life threatening to, or pose a serious threat to the health and safety of a resident at the premises.
 - The consumer shall demonstrate a financial inability to pay based upon the receipt of public assistance by a member of the consumer's household or provide a declaration that the household's annual income is less than 200 percent of the federal poverty level.
 - The consumer is willing to enter into an alternative payment schedule, consistent with the Policy.
- If a consumer fails to comply with an alternative payment schedule for sixty (60) days or more, or does not pay his or her current bill for 60 days or more, service can be discontinued five (5) days after posting a notice of intent to discontinue service at property.
- A limitation on reconnection fees for low income consumers whose household is less than 200 percent of the federal poverty level to no more than \$50 during regular business hours and \$150 for after business hours and the waiver of interest charges on delinquent bills once every twelve months.
- A good faith effort at least ten (10) days prior to disconnection (or seven (7) days prior to disconnection if it is a detached single-family dwelling) to inform residential tenants, including mobile home parks and multi-family residents, that their water service is subject to disconnection for nonpayment by their landlord, and that the tenants have the ability to become consumers of the District should the customer meet the District's requirements.
- The requirement to post on the District's website, on an annual basis, the number of residential water service accounts that were disconnected for nonpayment.

ISSUES/ANALYSIS

The provisions outlined in SB 998 require changes to the District's current practices, as well as an amendment to Title 14 of the Hesperia Municipal Code.

Overview of the District's Current Practice for the Discontinuation of Water Service

The District's current billing process is on a bi-monthly basis where water bills are due and payable upon presentation and are considered past due twenty (20) days after the billing date. A past due notice is mailed to the consumer named on the account a minimum of ten days (10) prior to potential disconnection, noting a final due date in order to avoid disconnection of water service and the account is assessed a 1% late fee on the balance due. Within the 10 day period, an additional attempt is made to contact the customer named on the account by automated phone call and email two business days prior to disconnection, indicating the date payment must be received in order to avoid discontinuation of water service.

If the District is unable to contact the consumer by the automated phone call or email, the District will place a door hanger in a conspicuous place at the residence indicating the date to avoid discontinuation of water service. If payment has not been received by the District by the disconnection date, the water service account is considered delinquent and will be discontinued.

In all, the District's current process is to attempt contact multiple times over a minimum of thirty (30) days in order to avoid the disconnection of water service. On the day of disconnection, a delinquent/reconnect fee of \$36 is assessed for regular operating hours of the District's Field Staff

hours (Monday-Thursday 7:30 am to 4:00 pm, Friday 7:30 am to 3:00 pm) and \$109 for after business hours (Monday-Thursday after 4:00 pm, Friday after 3:00 pm). While these hours are different from City Hall hours (Monday-Thursday 7:30 am to 5:30 pm, Friday 7:30 am to 4:30 pm), the field staff are responsible for reconnecting service to the customers.

Currently, the consumer can make arrangements with the District, in the form of a payment extension, which must be made prior to the disconnection date. The due dates for the payment extensions range from fifty two (52) to fifty nine (59) days from the original bill date. Once a payment extension has been made, the District does not attempt any additional contact regarding the payment extension due date and leaves the responsibility with the consumer to meet the agreed-upon payment extension date. If the payment extension has not been paid by the date indicated, the water service account is considered delinquent and will be disconnected the following business day. The same delinquent/reconnect fees for regular and after business hours apply for payment extensions.

Overview of Changes Based Upon SB 998 Compliant Procedure

Under the SB 998 requirements, the water bills will continue to be due and payable upon presentation and will be past due 20 days after the billing date. As defined in the City-wide Fee Schedule, the 1% late fee will continue to be assessed on the balance due when the past due notice is issued and the delinquent/reconnection fee for regular business hours and after business hours will remain at \$36 and \$109. The changes in the billing process to comply with the SB 998 requirements will be:

- District will refrain from discontinuing residential water service for nonpayment until accounts are at least sixty (60) days delinquent from the bill date. For example, the bill date is considered Day 1. Since bills are due and payable upon presentment, disconnection will not occur until at least Day 61.
- District will contact the consumer named on the account no less than seven (7) business days prior to disconnection via automated phone call with a message that offers to provide the consumer with a copy of the written Policy containing information on discontinuation of residential water service, options for alternative payment arrangements, and procedures to contest or appeal the consumer's bill. If the phone message is undeliverable, District will visit the service address and place the written Policy in a conspicuous place no less than seven (7) days prior to disconnection.
- Because SB 998 prohibits the disconnection of residential water service for a minimum of sixty (60) days, there is an automatic built-in payment extension. Therefore, there will no longer be a need for the District to offer payment extensions.
- In compliance with SB 998, District will not discontinue residential water service if all of the following three conditions are met:
 - The consumer submits a certification from a primary care provider that discontinuation of water service will pose a threat to the health and safety of a resident at the premises.
 - The consumer demonstrates a financial inability to pay based on receipt of public assistance or a signed declaration that the household's annual income is less than 200 percent of the federal poverty level.
 - The consumer is willing to enter into an alternative payment schedule consistent with the Policy, which allows the District to work with the consumer to develop a payment plan for up to a twelve (12) month period. If default occurs on the payment arrangement or if the consumer does not pay their current residential services charges for sixty (60) days or more, water service is subject to

disconnection upon posting a notice of intent to disconnect in a prominent and conspicuous location at the service address, no sooner than five (5) business days prior to disconnection..

- An annual report must be submitted to the State Water Resource Control Board indicating the number of discontinuations of residential service for inability to pay. This report shall also be posted on the City/District's website.

In order to implement the provisions of SB 998, an amendment is needed to Title 14 of the Hesperia Municipal Code via Ordinance No. 2020-02 (Attachments 2, 3, and 4). Joint Resolution No. 2020-02/HWD 2020-01 has been included for the adoption of the draft policy, as required by SB 998 (Attachments 5 and 6). These documents have been reviewed by the City Attorney's Office to ensure compliance with the provisions of SB 998.

Non-residential and Sewer Accounts

Although SB 998 references only residential water service accounts, for efficiency in District operations and in order to minimize the potential for error, it is recommended that the District also refrain from discontinuing water service to non-residential accounts (including business, public buildings, industrial, and irrigation) and sewer accounts for nonpayment until accounts are at least sixty (60) days delinquent from the bill date. However, the medical/financial/payment arrangement provisions shall not apply to non-residential accounts.

FISCAL IMPACT

Though there are projected impacts to the District related to the administration of SB 998, the associated costs cannot be estimated at this time. While District cash flow will be delayed temporarily, due to extending the water service discontinuation date from 30 to a minimum of 60 days, staff does not anticipate a reduction in overall revenue. However, additional expenses will be incurred relating to the one-time cost to translate the written Policy and door hanger notifications, as well as the increased cost for printing the this information, which will be supplied upon request and will accompany door hanger notifications in circumstances when the telephone notification is not successful. Also, there will be increased field staff time to provide the required notification to the service address and an increase in administrative costs for staff to administer the alternative payment arrangement plans for those accounts that qualify. It is unknown at this time how many accounts will qualify and will proceed with alternative payment arrangements.

The District's existing fees to reconnect water service are in compliance with the SB 998 allowed parameters for low income consumers. Therefore, fee changes are not required at this time.

ALTERNATIVES

Provide alternative direction to staff.

ATTACHMENTS

1. SB 998 Full Text
2. Ordinance 2020-02
3. Amended Title 14 of the Hesperia Municipal Code – Clean Version
4. Amended Title 14 of the Hesperia Municipal Code – Track Changes Version
5. Joint Resolution No. 2020-02/HWD 2020-01
6. Exhibit A - Written Policy ORG 49 for Discontinuation of Residential Water Service for Non-Payment Pursuant to SB 998

City of Hesperia

STAFF REPORT



DATE: January 21, 2020

TO: Mayor and City Council Members

FROM: Nils Bentsen, City Manager

BY: Rod Yahnke, Economic Development Manager
Jennifer Shove, Administrative Analyst

SUBJECT: Substantial Amendment to the Community Development Block Grant (CDBG) 2019-2020 Action Plan

RECOMMENDED ACTION

It is recommended that the City Council: 1) Conduct a public hearing and upon accepting public testimony, adopt Resolution No. 2020-01 including any modifications or amendments thereto; 2) Approve a Substantial Amendment to the Community Development Block Grant ("CDBG") 2019-2020 Annual Action Plan ("Action Plan") by programming \$200,000 to the 2019-2020 Peach Avenue Drainage Improvement Project ("Drainage Project") and \$326,196 to the 2019-2020 Street Improvement Project ("Street Project"); 3) Approve 2019-20 FY Budget amendment and; 4) Authorize the City Manager and/or Economic Development Manager to execute and transmit all necessary documents, including the Substantial Amendment to the Action Plan, and any additional amendments, to assure the City's timely expenditure of CDBG funds.

BACKGROUND

The U.S. Department of Housing and Urban Development ("HUD") requires all entitlement communities receiving CDBG funds to prepare and submit a Consolidated Plan ("Con Plan") every five years to establish a unified, strategic vision for economic development, housing and community development activities. The City Council adopted the 2015-2019 Con Plan on April 7, 2015.

The Con Plan is carried out through Action Plans, which provide the activities and resources that will be used each year to accomplish the goals identified in the Con Plan. The City is required to submit an Action Plan to HUD each year of the five-year Con Plan period. The City Council adopted the 2019-2020 Action Plan on May 7, 2019 and staff submitted the Action Plan to HUD by the required deadline date in 2019.

Substantial Amendments to a Con Plan and/or Action Plan are required when a "substantial" change is proposed to funding levels, goals, or activities. In this case, the programming of \$200,000 to the Drainage Project and \$326,196 to the Street Project from programmed and unprogrammed funds triggers a "substantial" change.

ISSUES/ANALYSIS

The Drainage Project proposes to raise the profile of the existing roadway on Peach Avenue between Centennial Street and Hinton Street where it crosses the Antelope Valley Wash. The City has had the opportunity to review the general scope of work for the Drainage Project and has projected the engineering and design costs to be \$200,000 through June 30, 2020. Additional funds are anticipated to be programmed during the 2021-2022 program year to pay for the balance of

design and construction costs. The Street Project is a continuation of the City's annual program to construct new pavement on existing dirt roads qualified under the CDBG Low-Mod Area Benefit national objective. Funds for the Street Project will go towards design and engineering services provided by Angenious Engineering Services, Inc. under their current Professional Service Agreement (PSA) with the City, construction and other activity delivery costs. The proposed improvements to both projects will reduce maintenance costs and increase vehicular safety in CDBG eligible areas.

FISCAL IMPACT

While the Drainage Project has been contemplated during previous discussions, funding has not been programmed by City Council. Funding the Substantial Amendment will program Two-Hundred Thousand dollars (\$200,000) to the Drainage Project to use through June 30, 2020. In addition, City Council approved the Street Project budget on May 7, 2019. This budget included Six-Hundred and Fifty-One Thousand Seven-Hundred and Seventy-Six dollars (\$651,776). The Substantial Amendment will add an additional Three-Hundred and Twenty-Six Thousand One-Hundred and Ninety-Six dollars (\$326,196) bringing the total Street Project budget to Nine-Hundred and Seventy-Seven Thousand Nine-Hundred and Seventy-Two dollars (\$977,972). Funds approved by City Council will authorize an increase to the budget in 251.29.700.7158.8000 by Five-Hundred and Twenty-Six Thousand One hundred and Ninety-six dollars (\$526,196) for the Drainage Project and Street Project for a total of One Million One-Hundred and Seventy-Seven Thousand Nine-Hundred Seventy-Two dollars (\$1,177,972).

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Substantial Amendment to Action Plan
2. Resolution No. 2020-01

SUBSTANTIAL AMENDMENT TO THE 2019-2020 ANNUAL ACTION PLAN

A. EXECUTIVE SUMMARY

The U.S. Department of Housing and Urban Development (HUD) requires all entitlement communities receiving Community Development Block Grant (CDBG) funds, such as the City of Hesperia, to prepare and submit a Consolidated Plan every five years to establish a unified, strategic vision for economic development, housing and community development actions. The Consolidated Plan encompasses the analysis of local community needs and coordinates appropriate responses to those needs and priorities. The Hesperia City Council adopted the 2015-2019 Five Year Consolidated Plan ("Consolidated Plan") on April 7, 2015.

The Consolidated Plan is carried out through Annual Action Plans which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that will be used each year to address the priority needs and specific goals identified in the Consolidated Plan. The City must submit an Annual Action Plan to HUD by no later than May 15 of each year during the five-year period (unless otherwise specified by HUD). The Hesperia City Council adopted the 2019-2020 Action Plan ("Action Plan") on May 7, 2019 and submitted the document to HUD before the required deadline date.

Per the City's Citizen Participation Plan (CPP), a Substantial Amendment to a Consolidated Plan and Action Plan is required when a "substantial" change is proposed as it relates to funding priorities, proposed activities, goals and objectives. This substantial amendment to the Action Plan is necessary because the City has identified a new activity that it wishes to allocate funds to and one existing activity that it wishes to allocate additional funds to.

B. CITIZEN PARTICIPATION

A Notice of Public Hearing and 30-day public review period was published in the Hesperia Resorter on December 12, 2019, informing the public of the proposed Substantial Amendment and inviting comments at the public hearing. On January 21, 2020, the Hesperia City Council will be hearing public comments regarding the Substantial Amendment. The public review period will begin on Monday, December 16, 2019 and will end on Tuesday, January 21, 2020. Citizens are able to review copies of the Substantial Amendment at the City's Economic Development Department, the Hesperia Public Library and the City Clerk's Office.

C. CHANGES TO THE 2019-2020 ANNUAL ACTION PLAN

The City is proposing to allocate \$200,000 and \$326,196 of programmed and unprogrammed funds to the new 2019-2020 Peach Avenue Drainage Improvement Project and existing 2019-2020 Street Improvement Project, respectively. The 2019-2020 Peach Avenue Drainage Improvement Project proposes to raise the profile of the existing roadway on Peach Avenue between Centennial Street and Hinton Street where it crosses the Antelope Valley Wash. This initial funding will allow for engineering and design costs associated with the project. The 2019-2020 Street Improvement Project proposes to construct roadway pavement of various existing dirt roadways within the City. The programming of additional funds will allow for engineering, design, other professional services and construction costs associated with the project.

ATTACHMENT 1

The following Table outlines the activity budgets that are being modified to reprogram funds to the proposed activity described in this Substantial Amendment:

Table 1: Proposed Activity Budget Modifications and Reprogrammed Activity Budgets

Program Year/ Activity Title	Existing Budget	New Budget	Difference
Reduce Funding/Unprogrammed			
2019-2020 Administration	\$186,694	\$86,694	(\$100,000)
2018-2019 Street Improvement Project	\$1,156,000	\$1,006,000	(\$150,000)
Prior Year Unprogrammed Funds	\$276,196	\$0	(\$276,196)
Subtotal			(\$526,196)
Increase Funding/Programming			
2019/20 Peach Avenue Drainage Improvement Project	\$0	\$200,000	\$200,000
2019/20 Street Improvement Project	\$651,776	\$977,972	\$326,196
Subtotal			\$526,196

D. 2019-2020 PROPOSED ACTIVITY DETAIL

The following narrative provides activity descriptions, national objectives, and other required information for the proposed activity.

2019/2020 Peach Avenue Drainage Improvement Project

The proposed project includes the construction of pedestrian/drainage structure(s) consisting of Reinforced Concrete Boxes (RCBs - estimated to be 10' x 20' and approximately 180 L.F.), an earthen embankment in order to raise the profile of the existing roadway, new asphalt roadway over the pedestrian/drainage structure(s) with appurtenant improvements, modifications to the existing golf course irrigation system affected by the work, and modifications to the existing golf course cart paths re-routing them through the pedestrian/drainage structure(s), and all appurtenant work. The location of the improvements is between Centennial Street and Hinton Street on Peach Avenue where it crosses the Antelope Valley Wash. The intent of this initial funding is for engineering and design costs associated with the project. Unspent dollars will be utilized on the actual construction of the improvement. The overall improvements will increase the safety of vehicular traffic and reduce maintenance costs due to flooding in the designated area.

2019/2020 Street Improvement Project

This project is a continuation of the City's annual program to construct new pavement on existing dirt roads qualified under the CDBG Low-Mod Area Benefit national objective. The project will provide funding for professional services which include but are not limited to design, engineering and labor compliance services as well as construction costs for the construction of various dirt road paving of streets, all of which will be located in predominantly residential CDBG eligible Census Tract/Block Groups within the City's limits. The improvements will increase the safety of vehicular traffic and reduce maintenance costs.

E. PUBLIC COMMENTS

All public comments received during the 30-day public review period or at the public hearing will be incorporated into the overall Substantial Amendment submitted to HUD.

RESOLUTION NO. 2020-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, APPROVING A SUBSTANTIAL AMENDMENT TO THE 2019-2020 ANNUAL ACTION PLAN, APPROVING AN AMENDMENT TO THE FISCAL YEAR 2019-2020 BUDGET AND AUTHORIZING THE CITY MANAGER AND/OR ECONOMIC DEVELOPMENT MANAGER TO EXECUTE AND TRANSMIT ALL NECESSARY DOCUMENTS TO HUD UPON COMPLETION OF THE PUBLIC REVIEW PERIOD

WHEREAS, the United States Department of Housing and Urban Development (“HUD”) requires the City to adopt and implement a Five-Year Consolidated Plan for the expenditure of the City’s annual allocation of Community Development Block Grant (“CDBG”) funds in support of projects and activities predominantly benefitting low- and moderate-income residents; and

WHEREAS, the City Council adopted the current 2015-2019 Five-Year Consolidated Plan (“Consolidated Plan”) on April 7, 2015; and

WHEREAS, the City Council substantially amended the current Consolidated Plan on November 1, 2016 and September 18, 2018; and

WHEREAS, the Consolidated Plan contains specific goals during the five-year consolidated planning period through the expenditure of CDBG funds and other identified funding sources; and

WHEREAS, the Consolidated Plan is carried out through Annual Action Plans which provide the actions, activities, and the resources that will be used each year to accomplish the goals identified in the Consolidated Plan; and

WHEREAS, City Council adopted the 2019-2020 Annual Action Plan (“Annual Action Plan”) on May 7, 2019; and

WHEREAS, a Substantial Amendment to a Consolidated Plan and Annual Action Plan is required when a “substantial” change is proposed as it relates to funding priorities, proposed activities, goals and objectives; and

WHEREAS, City Council desires to program \$200,000 to the 2019-2020 Peach Avenue Drainage Improvement Project and \$326,196 to the 2019-2020 Street Improvement Project with programmed and unprogrammed funds, thereby triggering a Substantial Amendment; and

WHEREAS, the 2019-2020 budget account number 251-29-700-7158-8000 must be increased by \$526,196 for the Peach Avenue Drainage Improvement Project and Street Improvement Project; and

WHEREAS, the City is in compliance with its Citizen Participation Plan which requires the City to conduct a public hearing and a 30-day public review period to receive public input when a Substantial Amendment to a Consolidated Plan and Annual Action Plan is proposed.

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

- Section 1. The recitals above are true and correct and are adopted as findings.
- Section 2. The City Council approves the Substantial Amendment to the Annual Action Plan.
- Section 3. The City Council approves the FY 2019-2020 Budget amendment.
- Section 4. The City Manager and/or Economic Development Manager are hereby authorized to execute all necessary documents and any certifications to execute the Substantial Amendment to the Annual Action Plan.
- Section 5. The City Council further authorizes the City Manager and/or Economic Development Manager to approve any modifications and/or amendments to the Substantial Amendment to the Annual Action Plan if required to ensure approval by HUD.
- Section 6. 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 21st day of January 2020.

Larry Bird, Mayor

ATTEST:

Melinda Sayre, City Clerk

City of Hesperia

STAFF REPORT



DATE: January 21, 2020
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Mike Blay, Assistant City Manager
Tina Bulgarelli, Administrative Analyst
SUBJECT: Appeal of Revocation of Business License No. BL-45284

RECOMMENDED ACTION

It is recommended that the Council hear evidence and render a decision in the appeal of Business License No. BL-45284 for Supreme Smoke Shop.

BACKGROUND

On October 21, 2019, Code Enforcement visited Supreme Smoke Shop at 17153 Bear Valley Rd. in response to a complaint of the sale of marijuana. Code Enforcement confirmed through conversations with the employees and an inspection of the premises that the store was selling marijuana and marijuana products. The Sheriff's department responded and seized approximately 525 marijuana products. Code Enforcement cited the property owner and the business owner under Municipal Code Section 16.16.460 – Prohibition of Medical Commercial Cannabis Activities.

The Development Services Department is responsible for the issuance and regulation of business licenses. Upon review of the evidence the department elected to revoke the business license of Supreme Smoke Shop per Municipal Code Section 5.04.140(A)(5) to protect the health, safety and welfare of the public; and Municipal Code Section 5.04.10(A)(1) for violation of state and local laws, in this case the sale of marijuana outside of the commercial regulations.

The business owner has requested an appeal of the revocation of the business license. Per Municipal Code Section 5.04.150 the City Council hears and renders a decision on the appeal of the license revocation.

ISSUES/ANALYSIS

The business owner, Magid Ali Abdelhadi allowed the Sheriff's department and Code Enforcement to inspect the property. He was having customers provide a medical recommendation and charging them a membership fee, similar to a collective, where each marijuana product was available for a "donation" of \$25 for each product. He stated to Code Enforcement that he serves approximately ten persons per day.

The proliferation of the illegal market in the cannabis industry is well known. While the business owner purports not to know that the sale of marijuana is without proper licensing and in the right zone, staff does not believe that relieves him of the responsibility to follow state and local law.

The fact that the sale was for medical marijuana only gives the impression that there was at least some knowledge on the part of the business owner about the cannabis regulations in Hesperia. Additionally, the business owner stated to Code Enforcement that he purchases his product from a warehouse in Orange County and only needs a sellers permit to purchase from them. The warehouse is selling marijuana to unlicensed dealers, furthering the illegal market.

Staff is aware from comments made by members of the cannabis industry and the public that smoke shops in Hesperia are selling marijuana and marijuana products, and believe that this issue is ongoing, and will continue enforcement as necessary to continue to combat the illegal marijuana industry in Hesperia.

FISCAL IMPACT

There is no fiscal impact related to this item.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. City Revocation Letter dated January 6, 2020
2. Appeal Packet from Magid Ali Abdelhadi, owner of Supreme Smoke Shop



City of Hesperia

Gateway to the High Desert

January 6, 2020

Supreme Smoke Shop
Magid Ali Abdelhadi
14276 Ranchero Rd.
Hesperia, CA 92345

RE: Revocation of Business License Number BL-45284

Dear Mr. Abdelhadi,

Pursuant to Hesperia Municipal Code Section 5.04.200, this letter is to notify you that the City of Hesperia intends to revoke Business License Number BL-45284 for Supreme Smoke Shop, located at 17153 Bear Valley Unit 2, Hesperia, CA 92345

The reason for this revocation is due to an incident that occurred on October 21, 2019. On this date, Supreme Smoke Shop was inspected by Code Enforcement and cannabis products were being sold.

Pursuant to Hesperia Municipal Code Section 16.16.450 the sale of non-medical commercial cannabis is prohibited within the City of Hesperia.

Pursuant to Hesperia Municipal Code Section 16.16.460 the sale of medical commercial cannabis is prohibited without a valid permit from the City of Hesperia and is limited in zoning and type of license.

Per Hesperia Municipal Code Section 5.04.140 (A)(5) a license may be revoked by the City if "The revocation is necessary to protect the health, safety, or welfare of the public". Additionally per the Hesperia Municipal Code Section 5.04.140(A)(1) a license may be revoked if state or federal laws are being violated.

Per Hesperia Municipal Code Section 5.04.150 you may appeal this revocation by filing a written appeal request with the Hesperia City Clerk at the address listed below within fifteen days of the date of this letter. Should you request a hearing in a timely manner, the City shall schedule a hearing before the City Council at a regularly scheduled City Council meeting and you will be allowed to present evidence as to why your license should not be revoked.

Please be reminded, it is unlawful to carry out business within the City without a valid business license.

Should you choose to not appeal this ruling or should you appeal this ruling and the City's determination is upheld, you may no longer conduct business within the City of Hesperia related to the business name and type noted above at this location for a period of at least one year. Additionally because Hesperia Municipal Code Section 16.16.074 prohibits smoke shops, this location is no longer eligible for a smoke shop.

Larry Bird, Mayor
Cameron Gregg, Mayor Pro Tem
Britt Bennington, Council Member
Rebekah Swanson, Council Member
Bill Holland, Council Member

Nils Bentsen, City Manager



City of Hesperia

City of Hesperia
City Clerk
9700 Seventh Avenue
Hesperia, CA 92345

If you have any questions, please feel free to contact me at (760) 947-1901.

Sincerely,

Michael Blay
Assistant City Manager



City of Hesperia

Gateway to the High Desert

January 6, 2020

Supreme Smoke Shop
Magid Ali Abdelhadi
14276 Ranchero Rd.
Hesperia, CA 92345

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Nils Bentsen, City Manager



City of Hesperia

City of Hesperia
City Clerk
9700 Seventh Avenue
Hesperia, CA 92345

If you have any questions, please feel free to contact me at (760) 947-1901.

Sincerely,

Michael Blay
Assistant City Manager

Appeal Letter
1/15/2020
Magid Abdelhadi
Supreme Smoke Shop
License #BL-45284
17153 bear valley Rd.
Hesperia, CA 92345
Incident date 10/21/2019

Dear City Council Members

I want to start by saying I am sorry for any inconvenience I caused the city of Hesperia, the Code Enforcement and the Sheriff's department. I am not a bad guy just lack of knowledge in the business and stupidity of not researching the matter. I am human we all make mistakes and I am responsible for mine, I have a family that does not deserve what I did in this matter. I have let down a lot of people including myself and I ask the city council to be sympathetic and understand to my situation. The owner of the property was fined \$15,000.00 so was I. I have made agreements that I would pay the balance back from the business and signed documents that the owner can come once a month and observe the property, if any marijuana is found she would have the right to evict me and change my locks.

The day code enforcement officer Montes walked in to the smoke Shop he said "what you are doing here is wrong is wrong" from that point I complied with code enforcement and the sheriffs. I ceased all cannabis activities and turned over everything I had to the officers for destruction. I am not saying I should be let go easy and I understand everyone has a job to do, But I would like to have the chance to sell the business and pay back my loans. I understand the city of Hesperia and sheriffs don't want to keep checking up on the smoke shop that's why for the past 2 months I have posted the business on the internet for sale. I have a buyer and he is ready I was just waiting to see what the city of Hesperia response was to this matter. So if the city council could just let me short sale the business that would be appreciated. That would let me pay off my fines to the code enforcement, my debt to the owner and pay My loans on the business. Whatever the city of Hesperia's city council decision is, I do appreciate all of you taking the time to hear me out. I am very sorry for this inconvenience I cause you all.

Thank you

Sincerely,
Magid Abdelhadi





City of Hesperia
Code Enforcement Department
15840 Smoke Tree St. Hesperia, CA 92345

CITATION NUMBER: ADM-1717

ADMINISTRATIVE CITATION

☐ Warning

☐ Order to Remedy

☒ Order to Pay

Date: 10/21/2019

Time: 4:21 PM

Name: MAGID ALI ABDELHADI

Address: 14276 RANCHERO RD

City: OAK HILLS

State: CA

Zip: 92344

CDL/ID: _____

DOB: _____

Location of Violation: 17153 BEAR VALLEY RD
Case Number: CE19-04051

Parcel Number: 041503211

Occurrence: 1ST

Municipal Code Section, Description of Violation and Correction(s)/Action(s) Required:

Description	Corrective Action	Fine Amt
HMC 16.16.460 PROHIBITION OF MEDICAL COMMERCIAL CANNABIS ACTIVITIES	Cease operation of marijuana dispensary located inside the smoke shop.	\$ 15,000.00
		Fine Amount \$ 15,000.00
		Administrative Fee \$ 0.00
		Total Penalty: \$ 15,000.00*

A Corrective Action Date will only be assigned for an Order to Remedy

Date Corrective Action to be completed:

Receipt Acknowledged By: MAILED

Date: 10/21/2019

ERNESTO MONTES
Code Enforcement Officer

760-947-1074
Phone Number

EMONTES@CITYOFHESPERIA.US
Email

Payment must be made no later than 30 days from the date of the citation. A request for hearing must be made no later than 15 days from the date of this citation. Please see attachment - Options Available to Satisfy This Citation, for additional information.

OPTIONS AVAILABLE TO SATISFY THIS CITATION

ORDER TO REMEDY

If the citation indicates that the violation can be remedied by corrective action, you must correct the violation within the time limit prescribed on the citation. As soon as you have corrected the violation, you must contact the City to make arrangements with the Enforcement Officer to provide proof of the correction. To make arrangements to provide proof of the correction, call the phone number to the issuing agency located on the front side of this citation. You must pay all of the administrative portion of the penalty before the specified date.

If you fail to correct the violation by the specified date on the citation, you will be required to pay the full amount of the penalty. (See ORDER TO PAY, below). However, payment does not excuse the failure to correct the violation. If you fail to correct the violation, you will be subject to further enforcement action and additional penalties imposed by the City.

ORDER TO PAY

If you have been ordered to pay a penalty, payment must be made within thirty (30) days of issuance of this citation.

NOTE: Unless you request an administrative hearing to contest the citation (see below) payment of this penalty waives your right to contest the citation. If the citation indicates that corrective action is required, payment of the penalty does not excuse the failure to correct the violation. If you fail to pay the total penalty of an uncontested citation, the City may pursue any legal remedy to recover the amount of the penalty.

TO CONTEST THE CITATION

To contest the citation, you must complete a hearing application in person, within fifteen (15) days of issuance of this citation. You may obtain an application for hearing at the Code Enforcement Office at 15840 Smoke Tree St., Hesperia, CA 92345. You must state in writing your reasons for contesting the citation, and pay a non-refundable \$25 filing fee. The hearing will be scheduled no less than fifteen (15) days and no more than sixty (60) days after receipt of the written request.

MAKE PAYMENTS TO:

City of Hesperia
15840 Smoke Tree St.
Hesperia, CA 92345

Write the citation number on the check. Make checks payable to City of Hesperia. Do not send cash.

Pursuant to Sections 1.12.280A and 1.12.270B of the Hesperia Municipal Code, administrative citations may be issued for Municipal Code violations. The penalties for each violation are progressive. The total penalty includes a non-refundable administrative fee. Any person who continues to maintain a violation may be charged with a misdemeanor complaint in criminal court.



CALIFORNIA
ASSOCIATION
OF REALTORS®

AMENDMENT OF EXISTING AGREEMENT TERMS No. one
(C.A.R. Form AEA, 12/17)

This is a proposal to amend ("Amendment") the terms and conditions of the following existing Agreement: ☐ Purchase Agreement,
☐ Residential Lease or Month-to-Month Rental Agreement, ☒ Other Commical lease agreement ("Agreement"),
dated December 6, 2018, on property known as 17153 Bear Valley Rd., Hesperia, CA 92345

in which Magid Ali Abdelhadi, /Spreme Smoke Shop is referred to as ("Buyer/Tenant")
and Superpower Investment Inc. is referred to as ("Seller/Landlord").

1. Landlord agrees to dismiss eviction case #UDBS 1902424. In return tenant agrees to the following:

1. Tenant will pay landlord \$15,000. (This is compensation for a \$15,000 official administrative Citation Issued to the landlord by the City of Hesperia. the citation resulted from tenant's unauthorized sale of marijuana on the landlord's property.)

a. The \$15,000 will be paid in five consecutive installments of \$3,000.

b. Payment will submitted with the tenant's rent beginning on February 1, 2020

c. the rent, including the \$3,000 installment will be paid on or before the fourth day of the month.

e. Tenant will not participate in any unlawful activity on landlord's property. This includes but is not limited to the illegal sale of drugs.

2. if the tenant violates the the terms of this agreement the tenant agrees to following:

a. The tenant's lease will be terminated.

b. Tenant's inventory will be forfeited.

c. Landlord may immediately take possession of property and change locks without a court order.

e. Then Tenant will be responsible for any loss of revenue and/ or damage incurred by the landlord resulting from the tenant's failure to honor this agreement.

2. **OFFER/EXPIRATION:** ☐ Buyer/Tenant, ☐ Seller/Landlord proposes this Amendment Of Existing Agreement Terms (i) which may be withdrawn by the party initiating this proposed Amendment at any time prior to acceptance, and (ii) shall be deemed revoked unless by 5:00 pm on the third day after it is signed by the initiating party (or by ☐ AM ☐ PM on 1/08/2020 date) this proposed Amendment is Signed by the other party and a Copy of this Amendment is Delivered to the initiating party.

☐ Buyer/Tenant, ☐ Seller/Landlord [Signature] Date 1/13/2020
☐ Buyer/Tenant, ☐ Seller/Landlord [Signature] Date 1/13/2020

3. **ACCEPTANCE:** The foregoing terms and conditions amending the existing Agreement are hereby agreed to, and the undersigned acknowledge receipt of a copy of this Amendment Of Existing Agreement Terms. Upon acceptance, this Amendment shall be deemed an incorporated addendum to the Agreement.

☐ Buyer/Tenant, ☐ Seller/Landlord [Signature] Date 1/13/2020
☐ Buyer/Tenant, ☐ Seller/Landlord [Signature] Date 1/13/2020

REJECTION OF AMENDMENT: () (). This amendment was rejected by Buyer/Tenant/Seller/Landlord on (date). Buyer/Tenant/Seller/Landlord Initials

/ Confirmation Of Acceptance: A copy of Signed Acceptance was personally received by initiating party or its authorized agent on (date) _____

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525 South Virgil Avenue, Los Angeles, California 90020

AEA 12/17 (PAGE 1 OF 1)

AMENDMENT OF EXISTING AGREEMENT TERMS (AEA PAGE 1 OF 1)

111 Desert International Realty, 17153 Bear Valley Rd. #3 Hesperia, CA 92345
Lee Chen

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Phone: 714-915-1599

Fax: 760-269-3415

bear valley 12/18



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California

County of

San Bernardino

On 11/13/2020
Date

before me,

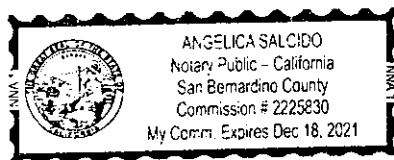
Here Insert Name and Title of the Officer

Angelica Salcido

personally appeared

Magid Ali Abgenadi
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document:

Amendment of Agreement

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

Signer's Name:

☐ Corporate Officer – Title(s):

☐ Corporate Officer – Title(s):

☐ Partner – ☐ Limited ☐ General

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☐ Trustee ☐ Guardian of Conservator

☐ Other:

☐ Other:

Signer is Representing:

Signer is Representing: