

ATTACHMENT 2

**AGREEMENT BETWEEN CITY OF HESPERIA AND MOJAVE DESERT
AIR QUALITY MANAGEMENT DISTRICT**

This Agreement is made and entered between the **City of Hesperia** (hereinafter **Hesperia**), located at **9700 Seventh Avenue, Hesperia, CA 92345**; and the Mojave Desert Air Quality Management District (hereinafter MDAQMD), located at 14306 Park Avenue, Victorville, California 92392-2310 (**Hesperia** and MDAQMD are collectively referred to as "the Parties"). This Agreement shall be effective from **June 6, 2017** until it is terminated as provided herein.

WITNESSETH:

WHEREAS, the MDAQMD established the AB 2766 Competitive Bidding program pursuant to the authority granted by H & S Code §§44220 et. seq. (AB 2766, Statutes of 1990); and

WHEREAS, the AB 2766 Competitive Bidding Program funds projects to reduce air pollution from motor vehicles and for related planning, monitoring, enforcement, and technical studies necessary to implement the California Clean Air Act; and

WHEREAS, **Hesperia** submitted a proposal to the AB 2766 Competitive Bidding Program for the cost of the **Main Street Traffic Signal Synchronization Phase II project**; and

WHEREAS, the AB 2766 Competitive Bidding Program Evaluation Committee recommended, and the MDAQMD Governing Board approved, funding for **\$484,482.00** which was proposed by **Hesperia**; and

WHEREAS, **Hesperia** and/or its consultants are willing, able, and qualified to render competently the services as described herein and pursuant to the terms and conditions contained herein and its exhibit.

NOW THEREFORE, in consideration of mutual covenants and conditions, the Parties hereto agree as follows:

TERMS AND CONDITIONS

1. Due Diligence: Upon the commencement of the term of this Agreement, **Hesperia** agrees to proceed with due diligence to perform the work as described in the Scope of Work, attached hereto and incorporated herein as Exhibit "A".

2. Purpose: The purpose of this Agreement is for **Hesperia** to fund the **Main Street Traffic Signal Synchronization Phase II project**. **Hesperia** shall produce deliverables and a Final Report as specified in “Exhibit A” and containing sufficient information to substantiate that the AB 2766 funds were used for activities related to reduction of emissions from motor vehicles.

3. Schedule: **Hesperia** shall follow the general schedule specified in the Scope of Work, and shall provide, on or before the completion date set forth therein, five (5) copies of the Final Report to the Air Pollution Control Officer, MDAQMD, 14306 Park Avenue, Victorville, CA 92392-2310.

4. Term: This Agreement shall commence on **June 6, 2017**, and terminate thirty days after the performance of the last obligation of the Parties as provided herein, or thirty days after the delivery of the Final Report as specified in “Exhibit A” whichever is later; or a later date as mutually agreed upon in writing by MDAQMD and **Hesperia**.

5. Cost: The total payment to **Hesperia** shall not exceed **\$484,482.00**. **Hesperia** shall obtain through other sources sufficient additional monies to fund the total cost of the project as outlined in the Scope of Work. **Hesperia** shall provide written evidence of commitment for such funding to MDAQMD and the MDAQMD may not release any funds under this Agreement until it finds such evidence satisfactory. In the event funding from such other sources is not received by **Hesperia**, MDAQMD reserves the right to terminate or re negotiate this Agreement.

a. Payments.

i. MDAQMD shall not make any advance payment under this Agreement.

Payment will not be made for items not detailed in Exhibit “A”. Payment will not be made for items specifically excluded from payment as listed in Exhibit “A”.

ii. **Hesperia** shall support each claim for payment under this Agreement by proper invoice(s) that set forth the work completed, receipt(s) and/or other documents necessary for the MDAQMD to verify the validity of each claim. Claims for payment must be submitted to MDAQMD, Attention: Holly Noel, Grants Specialist. Such claims for payment may be submitted on a monthly basis.

1 iii. MDAQMD will pay **Hesperia** for claims in arrears within forty-five (45) calendar
2 days of receipt of proper documentation and verification that **Hesperia** has satisfactorily
3 completed the work for which payment is sought.

4 iv The amount to be paid to **Hesperia** under this Agreement includes all sales and
5 use taxes incurred pursuant to this Agreement, including but not limited to any taxes due
6 on equipment purchased by **Hesperia**. **Hesperia** shall not receive additional funds for
7 reimbursement of such taxes and shall not decrease work to compensate therefore.

8 v. Concurrently with the submission of any claim for payment, **Hesperia** shall
9 certify that complete payment has been made to any and all subcontractors. **Hesperia**
10 shall support such certification by appropriate copies of invoices issued, checks, receipts,
11 and similar documents.

12 b. Close-out Period: All final claims shall be submitted by **Hesperia** within sixty (60) days
13 following the final month of activities for which payment is claimed. MDAQMD will have no
14 obligation to pay or take any action on claims submitted after the 60-day close-out period.

15 6. Non-Allocation of Funds: The terms of this Agreement and the services to be provided
16 thereunder are contingent on the approval of funds by the appropriating government agency. Should
17 sufficient funds not be allocated, the services provided may be modified or this Agreement terminated at
18 any time by giving **Hesperia** 30 days prior written notice.

19 7. Independent Contractors:

20 a. The relationship of **Hesperia** to MDAQMD under this Agreement is that of an
21 independent Contractor. **Hesperia** is to exercise its own discretion as to the method and manner
22 of performing its duties. MDAQMD will not exercise control over **Hesperia**, its employees,
23 agents, or subcontractors, except regarding the result to be obtained and to verify compliance
24 with the terms of this Agreement. **Hesperia** and MDAQMD shall comply with all applicable
25 provisions of law and the rules and regulations, if any, of governmental authorities having
26 jurisdiction over matters the subject thereof.

27 b. **Hesperia** understands that this Agreement does not preclude **Hesperia** from performing
28 services for other projects under the jurisdiction of the MDAQMD as long as such services are

not in conflict with this Agreement and as long as such services do not create conflict of interest under applicable laws.

c. The Parties further agree that since the status of **Hesperia** is that of an independent contractor, **Hesperia** shall not become entitled to any employment rights or benefits that are available to the employees of MDAQMD. The Parties further agree that **Hesperia** shall be solely responsible for providing to itself, and on behalf of itself, all legally required employment benefits.

8. Termination:

a. Breach of Agreement: MDAQMD may immediately suspend or terminate this Agreement, in whole or in part, where in the reasonable determination of MDAQMD there is:

- i. An illegal or improper use of funds;
- ii. A breach by **Hesperia** of any material term of this Agreement and failure to cure such breach within thirty (3) days following written notice from MDAQMD; or
- iii. A substantially incorrect or incomplete report submitted to MDAQMD that is not corrected within thirty (3) days following written notice by the MDAQMD of the reported deficiencies.

In no event shall any payment by MDAQMD constitute a waiver by MDAQMD of any breach of this Agreement or any default which may then exist on the part of **Hesperia**. Neither shall such payment impair or prejudice any remedy available to MDAQMD with respect to the breach or default. MDAQMD shall have the right to demand of **Hesperia** the repayment to MDAQMD of any funds disbursed to **Hesperia** under this Agreement which in the judgment of MDAQMD were not expended in accordance with the terms of this Agreement. **Hesperia** shall promptly refund any such funds upon demand.

In addition to immediate suspension or termination, MDAQMD may seek any other remedies available at law, in equity, or otherwise specified in this Agreement.

b. Without Cause: Either Party may terminate this Agreement upon giving written notice to the other Party at least 30 days before the effective date of such termination. In the event of such termination, **Hesperia** shall, subject to section 5 of this Agreement, be paid the actual, reasonable

costs incurred up to the time of termination for those portions of the project which were satisfactorily completed, provided that the completed tasks achieve, or provide the means of achieving, actual emission reductions from motor vehicles as determined by MDAQMD. If completed project tasks do not achieve or provide the means of achieving actual emission reductions from motor vehicles, **Hesperia** shall reimburse MDAQMD for all funds which MDAQMD has paid. Upon such termination, all the work produced by **Hesperia** shall be delivered promptly to MDAQMD.

c. For Cause: MDAQMD may terminate this Agreement upon the conviction for any criminal act by **Hesperia**, its agents, officers, and employees if such act directly relates to this Agreement.

9. Indemnification: **Hesperia** agrees to indemnify, defend and hold harmless MDAQMD and its authorized agents, officers, volunteers and employees against any and all claims or actions arising from **Hesperia's** acts, errors or omissions in performing services pursuant to this Agreement. **Hesperia** agrees to indemnify, defend, and hold harmless MDAQMD against any and all losses sustained due to the installation and use of equipment pursuant to this Agreement for the life of the equipment. MDAQMD agrees to indemnify, defend and hold harmless **Hesperia** and its authorized agents, officers, volunteers and employees against any and all claims or actions arising from MDAQMD's acts, errors or omissions in performing services pursuant to this Agreement.

10. Insurance:

a. In order to accomplish the indemnification herein provided for, **Hesperia** shall secure and maintain, throughout the term of the Agreement, the following types of insurance issued by companies reasonably acceptable to MDAQMD. **Hesperia** will procure and maintain insurance as required by law or regulation. At a minimum, **Hesperia** will procure and maintain the following types of insurance:

- i. Workers' compensation insurance in amounts to satisfy applicable state laws;
- ii. Employer's liability insurance in the amount of \$1,000,000;
- iii. Automobile liability insurance in the amount of \$1,000,000 per occurrence;

1 iv. General commercial liability insurance for bodily injury, death or loss of or
2 damage to property of third persons in the minimum amount of \$1,000,000 per
3 occurrence and in the aggregate.

4 b. Such insurance policies shall name MDAQMD, its officers, agents, employees,
5 individually and collectively, as additional insured (except workers' compensation insurance),
6 for purposes of the matter covered under this Agreement. Such coverage for additional insured
7 shall apply as primary insurance, and any other insurance maintained by MDAQMD, its officers,
8 agents, and employees, shall be excess only and not contributing with insurance provided under
9 **Hesperia** policies herein. This insurance shall not be canceled or changed without a minimum of
10 thirty (30) days prior written notice given to MDAQMD.

11 c. Prior to the commencement of performing its obligations under this Agreement,
12 **Hesperia** shall provide to MDAQMD appropriate certificates from its insurance carrier or
13 carriers stating that such insurance coverages have been obtained and are in full force; that
14 MDAQMD, its officers, agents and employees will not be responsible for any premiums on the
15 policies; that such insurance names MDAQMD, its officers, agents, and employees, individually
16 and collectively, as additional insureds and stating policy number, dates of expiration, limits of
17 liability thereunder, and special endorsements (except workers' compensation insurance), for
18 purposes of the matter covered under this Agreement; that such coverage for additional insured
19 shall apply as primary insurance and any other insurance maintained by MDAQMD, its officer,
20 agents, and employees, shall be excess only and not contributing with insurance provided under
21 **Hesperia** policies herein.

22 d. If **Hesperia** is a government entity, then it may self-insure such of those risks identified
23 in subsections 10.a.i-iv of this Agreement, provided, however, that:

24 i. MDAQMD, its officers, agents, and employees, individually and collectively,
25 shall be named as additional insured (except for workers' compensation insurance) on
26 **Hesperia** self-insurance plans, but only insofar as the operations under this Agreement
27 are concerned;

28 ii. Such self-insurance plans shall be reasonably satisfactory to MDAQMD; and

1 iii. All those provisions identified in subsection 10.c. of this Agreement concerning
2 the relationship of **Hesperia** primary and MDAQMD's excess insurance to each other,
3 the requirement of **Hesperia** delivering a certificate of insurance or other suitable
4 evidence to MDAQMD, and the cancellation/change of insurance requirements shall
5 apply to such self-insurance plans.

6 11. Audits and Inspections:

7 a. **Hesperia** shall at any time during regular business hours, and as often as MDAQMD
8 may deem necessary, make available to MDAQMD for examination all of its records and data
9 with respect to the matters covered in this Agreement. **Hesperia** shall, and upon request by
10 MDAQMD, permit MDAQMD to audit and inspect all of such records and data necessary to
11 ensure **Hesperia** compliance with the terms of this Agreement.

12 b. **Hesperia** shall be subject to an audit by MDAQMD or its authorized representative to
13 determine if the funds received by **Hesperia** were spent for the reduction of pollution as provided
14 in AB 2766 and to determine whether said funds were spent as provided by law and this
15 Agreement. If after audit MDAQMD makes a determination that funds provided to **Hesperia**
16 pursuant to this Agreement were not spent in conformance with this Agreement or the
17 requirements of AB 2766 or any other applicable provisions of law, **Hesperia** agrees to
18 immediately reimburse MDAQMD all funds determined to have been expended not in
19 conformance with said provisions.

20 c. **Hesperia** shall retain all records and data for activities performed under this Agreement
21 for at least three (3) years from the date of final payment under beyond the performance of the
22 final obligation required pursuant to this Agreement or until all state and federal audits are
23 completed for that fiscal year, whichever is later.

24 12. Notices: The persons and their addresses having authority to give and receive notices under this
25 Agreement are as follows:

City of Hesperia	MDAQMD	MDAQMD
Nils Bentsen	Jean Bracy	Brad Poiriez
City Manager	Director, Administrative Services	APCO
9700 Seventh Avenue	14306 Park Avenue	14306 Park Avenue
Hesperia, CA 92345	Victorville, CA 92392	Victorville, CA 92392

Any and all notices to MDAQMD and **Hesperia** provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered, or in lieu of such personal service, when actually received or when deposited in the United States mail, postage prepaid, addressed to such party.

13. Political Activity Prohibited: None of the funds, materials, property, or services provided under this Agreement shall be used for any political activity, or to further the election or defeat of any candidate for public office contrary to federal or state laws, statutes, regulations, rules, or guidelines.

14. Lobbying Prohibited: None of the funds provided under this Agreement shall be used for publicity, lobbying, or propaganda purposes designed to support or defeat legislation before the Congress of the United States of America or the Legislature of the State of California.

15. Conflict Of Interest: No officer, employee or agent of MDAQMD who exercises any function or responsibility for planning and carrying out the services provided under this Agreement shall have any direct or indirect personal financial interest in this Agreement. **Hesperia** shall comply with all federal, state and local conflict of interest laws, statutes, and regulations.

16. Succession:

a. Each Party and the partners, successors, and legal representatives of each Party, and to the extent permitted herein the assigns of each Party, are hereby bound to the other Party and to the partners, successors, legal representatives and assigns, of such other Party, in respect to all covenants, agreements and obligations of this Agreement.

b. Neither Party will assign, sublet or transfer any rights or obligations under this Agreement without the written consent of the other. However, **Hesperia** is authorized to use employees of or assign this Agreement to an affiliate as it may deem appropriate to assist in the performance of services or as result of an internal reorganization.

17. Time is of Essence: Time is of the essence in completion of the services in this Agreement.

18. Benefit to Parties: Nothing contained in this Agreement will be construed to give any rights or benefits to any person other than the Parties, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Parties and not for the benefit of any other person.

19. Change in Scope of Work: Changes or amendments to the Scope of Work contained in this Agreement, including any increase or decrease in the amount of program funds awarded, and changes in the terms of this Agreement, shall be mutually agreed upon in writing by and between MDAQMD and **Hesperia**, and shall only be effective by duly executed written amendments to this Agreement.

20. Severability: In the event that any word, phrase, clause, sentence, paragraph, section, article or provision contained in this Agreement is held to be unenforceable for any reason by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement, and the Agreement shall then be construed as if such unenforceable provisions are not a part hereof.

21. Captions: The paragraph captions of this Agreement shall have no effect on its interpretations.

22. Entire Agreement: This Agreement, together with its Exhibit "A," constitutes the entire Agreement between the Parties and will supersede all prior written or oral understandings. This Agreement and its Exhibits may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by the Parties.

23. Governing Law: This Agreement shall be interpreted under the laws of the State of California. Venue for any action arising out of this Agreement shall only be in San Bernardino County, California. This Agreement was entered into in Victorville, California.

MOJAVE DESERT AIR QUALITY
MANAGEMENT DISTRICT

CITY OF HESPERIA, CA

BRAD POIRIEZ

NILS BENTSEN

Air Pollution Control Officer

CITY MANAGER

Dated: _____

Dated: _____

1 Approved as to legal form:

2
3 _____

4 KAREN NOWAK

5 District Counsel

6 Dated: _____

City of Hesperia
Exhibit "A"
Scope of Work
Main Street Traffic Signal Synchronization Project – Phase II

Scope of Work Tasks		Start Date	Date of Completion
1.	MDAQMD notifies Hesperia of grant award; Hesperia prepares Scope of Work for contract documents; MDAQMD prepares and processes contract documents for execution by both parties.	June 2017	September 2017
2.	Prepare CEQA Compliance (In-House).	September 2017	January 2018
3.	Engineering Department prepares a Sole Source Request for Proposal (RFP).	October 2017	December 2017
4.	Review proposal for compliance with Sole Source RFP; prepare staff report to Council recommending award of contract.	December 2017	January 2018
5.	Execute contract; schedule and conduct pre-construction meeting; set project start date; deliver "Notice to Proceed" letter to contractor.	February 2018	February 2018
6.	Coordinate project mobilization, start-up, insurance, bonds, etc.	March 2018	March 2018
7.	Begin Project	March 2018	November 2018
8.	Project completion; process final invoice; project acceptance by City of Hesperia; schedule media event with MDAQMD.	November 2018	January 2020
9.	Begin process to measure before and after conditions of the Traffic Signal Synchronization for delays, stops, travel time, fuel consumption and emissions over multiple time periods throughout the weekday peak periods - after first month, six months, and one year of operation.	March 2018	January 2021
10.	Provide Traffic Signal Synchronization Final Report.	February 2021	March 2021