

**AGENDA
MCFARLAND CITY COUNCIL
MCFARLAND SUCCESSOR AGENCY
MCFARLAND PUBLIC FINANCE AUTHORITY
MCFARLAND IMPROVEMENT AUTHORITY
MCFARLAND PARKING AUTHORITY**

**SPECIAL MEETING
CITY COUNCIL CHAMBERS
103 W. SHERWOOD AVE, MCFARLAND, CA**

**March 25, 2021
5:00 P.M.**

VIA ZOOM MEETING

NOTICE TO THE PUBLIC

CORONAVIRUS (COVID-19) Due to the Coronavirus pandemic, the City of McFarland will not be holding in person meetings. Governor Newsom, by State of California Executive Order N-29-20 issued on March 17, 2020, and, to the extent applicable, Government Code Section 54953(b) in-person participation by the public will not be permitted. Remote public participation is allowed in the following ways via Zoom Meeting; please see instructions below:

To participate via video: Please enter the link below to join the webinar
<https://us02web.zoom.us/j/82606563214>

To participate via telephone: Please dial
1(669) 900-9128 or 1 (346) 248-7799 or 1 (646) 558-8656 or 1 (253) 215-8782 or
1 (301) 715-8592 or 1 (312) 626-6799
Once connected, it will ask for the WEBINAR/MEETING ID: **826 0656 3214#**

*All participants will be muted on entry.

How to submit public comments:

- If you have a comment, a statement or question, please submit these in writing to the City Clerk by mail at 401 W. Kern Ave, McFarland, CA 93250, or email at falvarado@mcfarlandcity.org. Such comments must be identified by adding the Agenda Item Number in the subject line of the email. Please include your name and address for the record.
- To provide public comment via telephone during the designated time of the meeting, you must press *9 on your phone keypad to raise your hand.
- To provide public comment via video on a laptop or desktop application you must use the webinar controls hand icon to raise your hand or press Alt + Y on your keyboard for Windows or press Option + Y on your keyboard for MAC.
- You will be called on by the phone number or name listed on the screen.
- Speakers are limited to two (2) minutes.

CALL TO ORDER

ROLL CALL:

Mayor/Chairman, Sally Gonzalez
Mayor Pro Tem, Maria T. Pérez
Council Member/Board Member, Eric Rodriguez
Council Member/Board Member, Saul Ayon
Council Member/Board Member, Ricardo Cano

PUBLIC COMMENT: The public may address the Council/Board Member on items that appear on the agenda. Council/Board Members may respond briefly to statements made or questions posed. They may ask a question for clarification; may refer the item to staff for further study or for placement on a future agenda. **Speakers are limited to two minutes for each person. Please state your name and address for the record prior to making a presentation. Fifteen minutes total will be allowed for any one subject.**

ADMINISTRATIVE AGENDA

1. Per Council Request, Approve **Resolution No. 2021-0012**, A Resolution of the City of McFarland, California Appointing Nathan M. Hodges of Hodges Law Group as Interim City Attorney for the City of McFarland, California.

ADJOURNMENT

This is to certify this agenda was posted at McFarland City Hall on March 24, 2021.

Francisca Alvarado, City Clerk

Next Meeting: Regular City Council Meeting March 25, 2021.

The City of McFarland does not discriminate on the basis of disability and complies with the provisions of the Americans with Disabilities Act (ADA). If you need special assistance to participate in this meeting, please contact the City Clerk's Office at (661) 792-3091 at least one business day prior to the meeting to make reasonable arrangements to ensure accessibility to this meeting.

RESOLUTION NO. 2021-0012

A RESOLUTION OF THE CITY OF
MCFARLAND, CALIFORNIA, APPOINTING
NATHAN M. HODGES OF HODGES LAW
GROUP AS INTERIM CITY ATTORNEY FOR
THE CITY OF MCFARLAND, CALIFORNIA

WHEREAS, the City of McFarland terminated the legal services agreement with its former City Attorney on March 23, 2021;

WHEREAS, the City of McFarland will submit a Request for Proposal to recruit a permanent City Attorney;

WHEREAS, based upon Nathan M. Hodges' background, experience, and expertise, he is qualified to serve as City Attorney for the City of McFarland; and

WHEREAS, the City Council of the City of McFarland hereby appoints Mr. Hodges to the position of Interim City Attorney under Government Code §36505, an appointment deemed to be for interim purposes and requiring specialized skills, effective March 25, 2021, for a period not to exceed six (6) months, or when the City hires a permanent City Attorney, whichever is earlier.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MCFARLAND, CALIFORNIA, DOES HEREBY FIND, ORDER, AND RESOLVE AS FOLLOWS:

SECTION 1. Nathan M. Hodges is hereby appointed as Interim City Attorney for the City of McFarland.

SECTION 2. Mr. Hodges shall serve as the Interim City Attorney pursuant to the Legal Services Agreement dated March 25, 2021;

SECTION 3. The City Clerk shall certify to the passage and adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 25th day of March 2021.

Sally Gonzalez, Mayor

ATTEST

Francisca Alvarado,
City Clerk

ATTACHMENT
EXHIBIT A: Legal Services Agreement dated March 25, 2021

**AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BETWEEN CITY OF MCFARLAND AND HODGES LAW GROUP**

This Agreement for legal services (“Agreement”) is made and entered into this 25th day of March, 2021 (“Effective Date”), by and between City of McFarland, a California Municipal Corporation (hereinafter referred to as the “City” or “Client”), and Hodges Law Group (“HLG”). The City and HLG shall each be referred to as “Party” and jointly as “Parties” in this Agreement.

WITNESSES

WHEREAS, it is the desire of the Parties hereto to enter into this Agreement and establish the terms and conditions for rendition of legal services to the City and the compensation therefor.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 Appointment of City Attorney (“City Attorney”).

The City hereby retains HLG to perform the professional services described herein. The City shall appoint Nathan M. Hodges, Hodges Law Group, as Interim City Attorney to serve at the pleasure of the City. The City shall appoint Kelly A. Francisco as Interim Deputy City Attorney to serve at the pleasure of the City. HLG shall expend its best efforts to carry out the professional services described herein, and faithfully represent the interests of the City during the term of this Agreement. No change to this appointment shall be made without the written consent of the City signed by an authorized representative of the City.

2.0 Attorney’s Services and Scope of Work.

HLG shall serve as Interim City Attorney and shall perform legal services (“Services”) as may be required from time to time by the Client as set forth by this Agreement, unless otherwise agreed to by the Client and HLG. As part of the Services to be performed hereunder, HLG shall provide representation and advice to City as provided in this Agreement, either personally or by assigning and supervising other HLG attorneys or by managing the performance and work of other attorneys who are engaged by the City (unless otherwise directed by the City Council). Any HLG attorney assigned as described herein shall be familiar with the City and have the necessary expertise and experience to provide and advise the City on the assigned matters (“HLG Attorneys”). City Attorney shall review charges for services rendered by other attorneys to ensure that they are consistent with this Agreement and/or the terms of the specific engagement and otherwise reasonable. City Attorney shall monitor the work of other attorneys to ensure that it is done efficiently and competently and, when appropriate in her judgment, shall adjust charges for work by HLG attorneys that does not meet these standards. As used in this paragraph, “other attorneys” shall include HLG Attorneys and, unless otherwise directed by the City Council, other firms and attorneys who are retained by the City as provided herein.

City Attorney shall attend City Council meetings unless prevented by illness or vacation or excused by the Mayor or City Manager, in which case the Deputy City Attorney or a HLG Attorney shall attend. The City Attorney will use best efforts to have the same HLG Attorney attend when he is not available, unless he determines another attorney is better suited to attend a particular meeting.

The Deputy City Attorney, or HLG Attorneys (a) may assist the City Attorney as he directs, and (b)

shall perform the duties of the City Attorney whenever he is unavailable due to illness, vacation or other reason, as approved by the Mayor or City Manager.

3.0 Compensation

3.1 Basic Legal Services – Description and Rate

Basic Legal Services shall include all services provided to Client that are not otherwise specifically identified below as Special Legal Services, Third Party Reimbursable Legal Services (which are more particularly described in Exhibit “B,” which is incorporated herein), or Public Finance Legal Services (“Basic Legal Services”) and which are more particularly described in Exhibit “A,” which is incorporated herein.

The City shall pay HLG a flat-rate retainer in the amount of \$4,375.00 per month for up to 25 hours per month for the Basic Services. Hourly billing to apply after 25 hours per month for Basic Services at the following rates:

Attorneys:	\$225.00
Paralegals and Law Clerks:	\$100.00

3.2 Special Legal Services - Description

Special Legal Services shall include the following types of services:

- Litigation and formal administrative or other adjudicatory hearing matters
- Labor relations and employment matters
- Non-routine real estate matters (e.g. CC&R’s, deed or title work)
- Land acquisition and disposal matters (including pre-condemnation)
- Successor Agency and housing matters
- Taxes, fees and charges matters (e.g. Prop. 218 & Mitigation Fee Act)
- Public construction disputes
- Non-routine contract negotiation matters
- Non-routine land use and development matters (including general plan updates, Williamson Act issues, annexations and development agreements)
- Environmental matters (e.g. CEQA, NEPA, endangered species)
- Water law matters (e.g. water rights & quality)
- Tax and ERISA related matters
- Toxic substances matters (e.g. CERCLA, RCRA)
- Complex public utility matters (e.g. electric, natural gas, telecommunications, water, rail or transit that involve state or federal regulatory issues)
- Renewable energy and energy efficiency project contracts and power purchase agreements
- Intergovernmental Relations and Advocacy efforts (e.g. legislative and regulatory representation) at the federal and state level.
- Other matters mutually agreed upon between HLG and the City Manager; with notification given to the City Council regarding such matters.

Upon receipt of a request related to Special Services, HLG shall provide a proposed engagement letter describing the scope of the engagement. If the request involves services that are outside the expertise

of HLG or that it cannot undertake because of conflicts or any other reason, HLG shall recommend that outside counsel be engaged to provide the services and, when permitted by applicable Rules of Professional Conduct, suggest specific firms or attorneys for consideration by the City. City Council can require that the selection of an outside counsel on a particular matter be pre-approved by City Council. In cases of unusual significance or complexity, HLG may recommend that the City retain other counsel in addition to, or in lieu of HLG. In all cases, retention of counsel for litigation or Special Services shall be at the discretion of the City; however, it is the expectation of the Parties that HLG will be engaged when it has the requisite experience, expertise and resources to perform the work, and will manage any such counsel unless otherwise directed by Council.

3.3 Special Legal Services – Rates

The City shall pay HLG for Special Legal Services at the following hourly rates:

Partner/Of Counsel:	\$295.00
Associate:	\$225.00
Paralegals and Law Clerks:	\$100.00

Other specialists may be called upon from time to time to work on matters as particular needs arise. Special Counsel work would be billed at individual rates depending upon the area of expertise. Hourly rates for those attorneys fall within the following ranges: Partners and Of Counsel range from \$275 to \$450 per hour, Associates range from \$215 to \$275 per hour.

3.4 Agreement Regarding Rate Categories

If HLG believes that a matter falls within the Special Legal Services, Third Party Reimbursable Legal Services, or Public Finance Legal Services rate categories, HLG shall seek approval from the City Manager or his/her designee. The City Manager's or his/her designee's approval of such a request from HLG shall not be unreasonably withheld.

3.5 Annual Adjustments; Other Mutual Adjustments

The rates or amounts provided for in in this Agreement shall be automatically increased as follows: At the start of the Client's fiscal year, beginning July 1, 2022 and every July 1st thereafter during the term of this Agreement, flat-rate retainer amounts, and rates related to Special Legal Services shall be increased by three percent (3%) per year. Individual rates which are specific to individual attorneys and/or legal personnel are reviewed annually and may be increased from time to time with advanced written notice to the client. In addition to the automatic rate increases, either HLG or the Client may initiate consideration of a rate at any time.

3.6 Reimbursable Expenses

Litigation costs and expenses for statutory fees, witness fees, reporters' per diem and stenographic transcriptions, photocopying, jury fees, electronic research, travel, and the expenses of serving process shall be advanced and billed by HLG at actual costs and reimbursed by the City. Expert consultants and witnesses may be retained by HLG on terms acceptable to City, approved in advance by email or letter by an authorized City representative, in which case City shall reimburse HLG or pay such consultants or experts directly.

4.0 Litigation by City

All litigation in which the City is plaintiff shall be initiated only at the direction of the City Council.

4.1 Defense of Litigation

Unless otherwise determined by the City, HLG shall defend all actions and other proceedings brought against the City, its elected officials, appointed offices and agents (“City parties”).

4.2 Compensation for Litigation and Special Services

Prior approval by the City Council is required for Special Services and litigation as defined in section 3.2. In any event, except when precluded by a conflict of interest, HLG shall provide representation until such time as the City has specifically engaged HLG or other counsel as directed by the City Council and as necessary to maintain the status quo or prevent the entry of a default or other adverse ruling against the City.

5.0 Billings

The charges for Litigation, Special Project services, Basic Services and any other services are to be billed and paid monthly. With its statement, HLG shall provide an accounting of the number of hours billed for legal services. Billing statements will be in a form acceptable to the City Manager or designee. The billings will be reviewed by the City Council, or designee, and if in order, in the Council’s opinion, approved for payment.

6.0 Assistance

The City agrees to provide all information and documents necessary for the attorneys at HLG to perform their obligations under this Agreement.

7.0 Priorities

If there are more requests for service than can be accomplished in the time allowed, City Attorney or HLG may request the City Manager to establish priorities as directed by the City Council. Otherwise, City Attorney shall respond in a reasonable time to all requests.

8.0 Termination

This Agreement shall continue until terminated. Both Parties understand that HLG, without cause, may terminate this Agreement upon 60 days’ written notice to the City, and the City, without cause, may terminate this Agreement upon 30 days’ written notice to HLG. The City shall be required to pay only for approved services rendered and charges incurred before the effective date of termination and shall not be responsible for services rendered or charges incurred thereafter, unless otherwise authorized by the City. The City can terminate this Agreement for cause immediately upon written notice to HLG. Upon termination of this Agreement, HLG agrees to provide a written memorandum to the City on the status of all pending matters at the time of the termination, no later than 30 days after the effective date of the termination, and all files related to City business and legal activities will be returned to the City within thirty days of notice of termination of the Agreement, unless otherwise agreed to by City Council.

9.0 No Assignment

This Agreement is entered into by the City and HLG and the rights and obligations may not be assigned or delegated by HLG to any other attorney without the express written consent of the City Council. This Agreement is not assignable.

10.0 Insurance

HLG carries errors and omissions insurance.

11.0 Legal Opinions

All written opinions requested by the City Council and prepared by City Attorney or HLG shall be provided to the City Manager and all City Council members, unless otherwise directed by the City Council.

12.0 Performance Review

At the request of the City Council, the City Attorney shall participate in a performance review, which shall not occur more than twice annually.

13.0 Amendments

All amendments to this Agreement must be in writing and signed by authorized representatives of the Parties

14.0 Delegation

The City Council is authorized to represent the City under this Agreement and may delegate any of its duties, obligations, discretion or authority under this Agreement to its City Manager.

15.0 Confidentiality and Privileged Communication

Communication between the City and HLG shall be confidential and protected by the Attorney-Client Privilege as provided and defined under applicable laws. Both Parties agree to use best efforts to label all communications with "Confidential". Failure to do so, however, will not diminish or eliminate the confidentiality of the communication.

16.0 Governing Law

This Agreement will be governed by and interpreted in accordance with the laws of the State of California, including but not limited to any requirements or interpretation related to confidentiality. Venue shall be in the County of Kern.

17.0 Notices

All notices permitted or required under this Agreement notices shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage

prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Client: City of McFarland
401 W Kern Ave,
McFarland, CA 93250
Attention: City Manager

HLG: Hodges Law Group
1925 G Street
Bakersfield, CA 93301
Attention: Nathan M. Hodges

18.0 Indemnification

HLG agrees to indemnify the City, its officers, employees, and agents against and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities that may be asserted or claimed by any person, firm or entity arising out of or in connection with the work, operations or activities of HLG, its agents, employees, subcontractors or invitees, provided for herein or arising from the acts of omissions of HLG hereunder, or arising from HLG's performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except to the extent such claims or liabilities arise from the negligence or willful misconduct of the City, its employees, officers or agents.

City acknowledges HLG is being appointed as City Attorney pursuant to the authority of Government Code Section 36505, and has the authority of that office. Accordingly, the City is responsible pursuant to Government Code Section 825 for providing a defense for the City Attorney for actions within the scope of its engagement hereunder. Therefore, City agrees to undertake its statutory duty and indemnify HLG, its officers, employees and agents against and will hold and save each of them harmless from, any and all claims or liabilities that may be asserted or claims by any person, firm or entity arising out of or in connection with the work, operations or activities of HLG within the course and scope of its performance hereunder, but nothing herein shall require City to indemnify HLG for liability arising from its own negligence or alleged negligence. In connection herewith:

(a) City will promptly provide a defense and pay any judgment rendered against the City, its officers, agency or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of City hereunder; and

(b) In the event HLG, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against City for such damages or other claims solely arising out of or in connection with the work operation or activities of City hereunder, City agrees to pay to HLG, its officers, agents or employees any and all costs and expenses incurred by attorney, its officers, agents or employees in such action or proceeding, including, but not limited to, legal costs and attorneys' fees.

19.0 Independent Contractor

HLG shall perform all legal services required under this Agreement as an independent contractor of the Client and shall remain, at all times as to the Client, a wholly independent contractor with only such obligations as are required under this Agreement. Neither the Client, nor any of its employees, shall have any control over the manner, mode or means by which HLG, its agents or employees, render the legal services required under this Agreement, except as otherwise set forth. The Client shall have no voice in the selection, discharge, supervision, or control of HLG's employees, representatives or agents, or in fixing their number, compensation, or hours of service.

20.0 Waiver

A Party's failure to exercise or delay in exercising any of its rights under this Agreement will not constitute a waiver, forfeiture or modification of such rights. A Party's waiver of any right under this Agreement will not constitute a waiver of any other right under this Agreement or of the same right on another occasion, unless so stated. Any waiver must be in writing and signed by the waiving Party.

21.0 Severability

If any provision of this Agreement is held invalid or unenforceable by a body of competent jurisdiction, such provision will be construed limited or, if necessary, severed only to the extent necessary to eliminate such invalidity or unenforceability.

22.0 Counterparts

This Agreement may be signed in counterparts, each of which shall constitute an original.

23.0 Entire Agreement

This Agreement (as amended from time to time) comprises the entire understanding between the parties with respect to the subject matter contained herein and supersedes any previous and contemporaneous communications, representations, or agreements, including interim agreements, whether written or oral, with respect thereto, provided that any separate confidentiality agreements between the parties will continue unchanged and in full force and effect according to its terms. If there is a conflict between this Agreement and any other written agreements or oral representations by either Party, this Agreement shall govern as to the subject matter contained herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Client and HLG have executed this Agreement for City Attorney Legal Services as of the date first written above.

CITY OF MCFARLAND

By: _____

Date: _____

Name: _____

Its: _____

HODGES LAW GROUP

By: _____

Date: _____

Nathan M. Hodges

EXHIBIT "A"
TO AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES BETWEEN
CITY OF MCFARLAND AND HODGES LAW GROUP

BASIC SERVICES

Basic Services shall include those generally understood within the field of municipal law to fall within the category of "general counsel" work and shall include, but not necessarily be limited to, the following legal services listed below. Unless specifically noted below, the City Attorney may rely on other attorneys in his or her firm to provide the legal service. The City Attorney is still ultimately responsible and accountable for such legal services:

1.1 Representation of the Council, committees and commissions and all City officials in legal matters of municipal government.

1.2 Attendance by the City Attorney or Deputy City Attorney at all regular City Council meetings, including closed sessions, unless excused by Mayor or City Manager. City Attorney is expected to use best efforts to limit any such absences. If excused, the City Attorney's designee should be in attendance and City Attorney will ensure that such a designee is well prepared for the meeting.

1.3 Attendance at special meetings or study sessions by City Attorney or his/her designee, as requested by Mayor or City Manager.

1.4 Attendance at meetings of other commissions or public forums, as requested by the City Council or City Manager.

1.5 Provide at least 2 training sessions per year to the City Council, Commissions and/or staff, such as Brown Act training.

1.6 Consultation with City Manager, City staff, or authorized representatives to provide legal advice on proposed policies and activities that require City Council action.

1.7 Provide legal advice to Council, Commissions, committees and staff on legal matters, including but not limited to the Brown Act, California Public Records Act and California Fair Political Practices Commission.

1.8 Advise City Council and City Manager on communications in response to members of the public and press/media.

1.9 Preparation/review of all proposed ordinances, resolutions, land use application related documents, contracts, letters, and other documents related to any action taken or to be taken by the Planning Commission or City Council.

1.10 Provide advice regarding code enforcement matters, including but not limited to drafting letters and taking other actions in an attempt to obtain pre-litigation/administrative proceedings/resolution.

1.11 Available to assist with personnel issues (excluding collective bargaining) in coordination with employment law counsel and with general liability claims and litigation in

coordination with the City's insurance legal counsel.

1.12 Keep the Council and City Manager informed of the status of litigation involving City. City Attorney shall submit a quarterly status report briefly outlining the status of each litigation, including code enforcement litigation. This status report shall be submitted between the first and fifteenth of the following months (April, July, October and January). City Attorney shall also advise the City Council and City Manager of significant developments in litigation involving City as they occur.

1.13 Provide written legal opinions when requested by any three Council members.

1.14 Assist with management of outside legal counsel.

1.15 Consultation with individual City Council members on questions regarding City legal matters as it relates to them as Council members and City business.

1.16 Keep the Council and City Manager informed of any proposed or new legislation or court decisions that may impact the City, including but not limited to land use, pension reform, and housing and work with staff to ensure the City's local codes and policies are updated to comply with any such decisions or legislation.

1.17 Assist City Council, City Manager and appropriate staff in continuing to identify feasible options toward implementing and achieving the goals, policies and objectives of the City Council.

1.18 Review and approve as to form all City contracts and agreements.

EXHIBIT "B"
**TO AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES BETWEEN
CITY OF MCFARLAND AND HODGES LAW GROUP**

THIRD PARTY REIMBURSABLE BILLING POLICIES

1. Third Party Reimbursable Legal Services - Description. Third Party Reimbursable Legal Services shall include legal services provided to the City for which the City receives reimbursement from a developer or other third party. These reimbursable legal services include, but are not limited to, review of CC&Rs; establishment of financing districts (i.e., Community Facilities Districts; Assessment Districts; Landscape and Lighting Maintenance Districts); the processing of land use/environmental projects for which the City is entitled to reimbursement, as well as defending any challenges to project entitlements or any dispute or litigation related to such reimbursable legal services.

2. Third Party Reimbursable Legal Services - Rates. The Client shall pay for Third Party Reimbursable Legal Services at HLG's the following current standard private client rates:

Partner/Of Counsel:	\$350.00 per hour
Associate:	\$275.00 per hour
Paralegals and Law Clerks:	\$125.00 per hour

HLG shall provide annual written updates to the Client when changes are made to the standard rate schedule.