



Meeting Date: 01/12/10

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Richard R. Bryan

Agenda Item No. I-3

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Other (Specify) \_\_\_\_\_

**DATE:** December 28, 2009

**TO:** City Council  
Community Development Commission

**FROM:** Curtis P. Cannon  
Community Development Department

**SUBJECT:** Requested \$2,800,000 Additional Funding for the Reimbursement of the Cost to Acquire Land for and Install and Construct the Cypress Neighborhood Garden City Acres Park (Formerly Referred to as Cypress Park) Located at the Corner of Cypress Road and Eugene Walk in the Historic Enhancement and Revitalization Of Oxnard (HERO) Project Area

**RECOMMENDATION**

That City Council:

1. Approve a Resolution Consenting to the Payment or Reimbursement by the Community Development Commission (CDC) of a Certain Portion of the Costs Related to Certain Public Improvements in the HERO Project Area and Making Certain Determinations and Findings, in Accordance with California Community Redevelopment Law (CRL).
2. Approve and authorize the Mayor to execute the Cooperation Agreement with the CDC in the amount of \$3,300,000 for payment of costs associated with the development of the Garden City Acres Park.

That Community Development Commission:

1. Approve a Resolution Consenting to the Payment or Reimbursement by the CDC of a Certain Portion of the Costs Related to Certain Public Improvements in the HERO Project Area and Making Certain Determinations and Findings, in Accordance with CRL.
2. Approve and authorize the Chairman to execute the Cooperation Agreement with the City of Oxnard in the amount of \$3,300,000 for payment of costs associated with the development of the Garden City Acres Park.

3. Approve the appropriation of additional funds in the amount of \$2,800,000 from the HERO Project Area Fund Balance for payment of costs associated with the development of the Garden City Acres Park.

## **DISCUSSION**

On November 9, 2004 the City entered into an agreement with CC Communities, LLC (Applicant therein) and agreed to reimburse Applicant an estimated cost of \$4,487,791 to acquire land for and to install the Garden City Acres Park improvements (Park Improvements) in the Cypress Neighborhood. On March 13, 2007 the City entered into an Amendment to Park Agreement with Applicant that established a date for the delivery of the park and a City payment schedule. On November 20, 2007 the City entered into a Second Amendment to Park Agreement (collectively, the Park Agreement) with Applicant and Westwind Tiburon Associates, LLC (as Assignee therein) that increased the City's reimbursement amount to \$4,941,283.

The Development Services staff reports that accompanied the original Park Agreement and the Amendments thereto approved by the City Council all indicated that the park land acquisition and improvement cost would be funded with Quimby Funds from the Cypress Neighborhood and redevelopment funds. In Fiscal Year 2008-2009 Community Development staff submitted a three year Capital Improvement Program funding request in the total amount of \$3,300,000. The CDC approved \$500,000 for Fiscal Year 2008-2009. The special budget request is being made to fund a \$500,000 reimbursement payment to Assignee due November 2009. A final \$2,300,000 reimbursement payment to Assignee will be due November 2010, for a total commitment from the CDC of \$3,300,000.

The purpose of the Cooperation Agreement between the City and the CDC is to evidence the agreement of the CDC and City for the CDC to pay up to \$3,300,000 of the City's \$4,941,283 obligation under the Park Agreement and Amendments.

In accordance with section 33445 of the Health and Safety Code, the CDC may, with the consent of the City Council, pay all or part of the value of the land for and the cost of the installation and construction of any facility, structure, or other improvement which is publicly owned inside or contiguous to a project area, if the City Council makes certain determinations. These findings are contained in the attached CDC and City Resolutions.

## **FINANCIAL IMPACT**

Funds in the amount of \$500,000 were previously appropriated to the Garden City Acres Park Project as part of the City's overall budget process. If approved, the attached Special Budget Appropriation will allow for \$2,800,000 of redevelopment funds from the HERO Project Area to be appropriated to Project Number 098702, Account Number 405-8724-827-8605. This Special Budget Appropriation request will have no impact on the City's General Fund.

Subject: Park Funding  
January 5, 2010  
Page 3

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Attachment #1 - City Resolution  
#2 - Community Development Commission Resolution  
#3 - Cooperation Agreement  
#4 - Special Budget Appropriation Form

CITY COUNCIL OF THE CITY OF OXNARD

Resolution No. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD, CALIFORNIA, CONSENTING TO PAYMENT OR REIMBURSEMENT BY THE OXNARD COMMUNITY DEVELOPMENT COMMISSION OF A PORTION OF THE COSTS RELATED TO CERTAIN PUBLIC IMPROVEMENTS IN THE HISTORIC ENHANCEMENT AND REVITALIZATION OF OXNARD (HERO) PROJECT AREA, AND MAKING CERTAIN DETERMINATIONS AND FINDINGS (GARDEN CITY ACRES PARK)

WHEREAS, the Oxnard Community Development Commission ("Commission") is engaged in activities necessary to implement the Redevelopment Plan ("Redevelopment Plan") for the HERO Project Area ("Project Area"); and

WHEREAS, the Commission has adopted a Five Year Implementation Plan for the Project Area, as amended, in accordance with Section 33490 of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) ("CRL") ("Implementation Plan"); and

WHEREAS, pursuant to Section 33445(a) of the CRL, the Commission may, with the consent of the City Council ("City Council") of the City of Oxnard ("City"), pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned inside or contiguous to the project area, if the City Council makes certain determinations; and

WHEREAS, the City and Commission desire to cooperate in the acquisition of land for and the installation and construction of a six (6) acre public park ("Park Improvements") on certain real property within the Cypress Neighborhood located at the corner of Cypress Road and Eugene Walk ("Property"). The Park Improvements are public improvements located within the Project Area; and

WHEREAS, the Commission desires to pay for or reimburse a portion of the costs for the acquisition of land for and the installation and construction of the Park Improvements and the Commission and City have negotiated a Cooperation Agreement to that effect ("Cooperation Agreement"); and

WHEREAS, it is in the best interests of the City and for the common benefit of residents, employees, business tenants and property owners within the Project Area and the City as a whole for the Park Improvements to be installed and constructed; and

WHEREAS, since there are no other reasonable means available to the City to fully finance the Park Improvements, the Commission proposes to pay for or reimburse a portion of the costs for the acquisition of land for and the installation and construction of the Park Improvements in accordance with the Cooperation Agreement; and

WHEREAS, the Park Improvements are of benefit to the Project Area in which the Park Improvements are located; and

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

NOW, THEREFORE, the City Council of the City of Oxnard, California hereby resolves as follows:

1. The City hereby finds and determines that all recitals set forth in this Resolution are true and correct and incorporated herein in full by this reference.

2. Based on substantial evidence in the record, the City hereby finds and determines that:

a. The acquisition of land or installation or construction of the Park Improvements are of benefit to the Project Area by helping to eliminate blight within the Project Area. This finding is based, in part, on the fact that six major goals of the City contained in the Implementation Plan include: (1) establishment, by effective use of the redevelopment process, a planning and implementation framework that will ensure proper, long-term development of identified blighted areas; (2) development of underdeveloped or poorly developed areas; (3) elimination and prevention of the spread of blight and deterioration; (4) strengthening the economic base of the Project Areas by installation of needed improvements; (5) elimination or mitigation certain environmental deficiencies such as insufficient off-street and on-street parking, facilities and utility deficiencies that adversely affect the Project Area; and (6) promotion of private sector investment within the Project Area. The acquisition of land for and the installation and construction of the Park Improvements assist in obtaining these goals. One of the programs undertaken pursuant to the Implementation Plan to facilitate the achievement of these goals is a Public Facilities program which includes urban design improvements, public utilities, and street construction. As described in the Implementation Plan, activities grouped under the Public Facilities program are designed to enhance the physical image of public spaces and rectify public improvement deficiencies. Moreover, one of the five year priorities for the Project Area in the Implementation Plan is "construct neighborhood pocket parks". The relationship between specific activities and blight elimination in the Project Area is summarized in Table 11 of the Implementation Plan. The Park Improvements assist in obtaining the goals listed in the Implementation Plan, is consistent with the Implementation Plan and will assist in the elimination of one or more blighting conditions in the Project Area.

b. No other reasonable means of financing the acquisition of the land or the installation or construction of the Park Improvements are available to the City. This finding is based, in part, on the fact that the City itself is not in a position to fully finance the acquisition of land for and the installation and construction of the Park Improvements. Without the assistance of tax increment funding from the Project Area, capital improvements in other parts of the City would have to be deferred or eliminated. Given the constraints on financing sources which are under the direction of the City, it is clear that all anticipated and needed public capital improvements cannot be completed using only City funds. There must be a combination of tax increment and non-tax increment funding.

c. The payment of funds for the acquisition of land or the cost of the Park Improvements is consistent with the Implementation Plan adopted pursuant to CRL Section 33490. This finding is based, in part, on the fact that as discussed above in Section 2.a., the Park Improvements assist in obtaining the goals listed in the Implementation Plan, are consistent with the Implementation Plan and will assist in the elimination of one or more blighting conditions in the Project Area.

ATTACHMENT 1

3. The City hereby consents to the Commission's payment or reimbursement for a portion of the costs for the Park Improvements in accordance with the Cooperation Agreement.

4. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 12 day of January, 2010, by the following vote:

AYES:

NOES:

ABSENT:

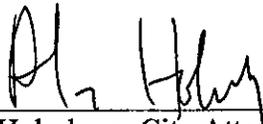
ABSTAIN:

\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Alan Holmberg, City Attorney

rb1024cpc

OXNARD COMMUNITY DEVELOPMENT COMMISSION

Resolution No. \_\_\_\_\_

A RESOLUTION OF THE OXNARD COMMUNITY DEVELOPMENT COMMISSION AGREEING TO PAY OR REIMBURSE A PORTION OF THE COSTS RELATED TO CERTAIN PUBLIC IMPROVEMENTS IN THE HISTORIC ENHANCEMENT AND REVITALIZATION OF OXNARD (HERO) PROJECT AREA, AND MAKING CERTAIN DETERMINATIONS AND FINDINGS (GARDEN CITY ACRES PARK)

WHEREAS, the Oxnard Community Development Commission ("Commission") is engaged in activities necessary to implement the Redevelopment Plan ("Redevelopment Plan") for the HERO Project Area ("Project Area"); and

WHEREAS, the Commission has adopted a Five Year Implementation Plan for the Project Area, as amended, in accordance with Section 33490 of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) ("CRL") ("Implementation Plan"); and

WHEREAS, pursuant to Section 33445(a) of the CRL, the Commission may, with the consent of the City Council ("City Council") of the City of Oxnard ("City"), pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned inside or contiguous to the project area, if the City Council makes certain determinations; and

WHEREAS, the City and Commission desire to cooperate in the acquisition of land for and the installation and construction of a six (6) acre public park ("Park Improvements") on certain real property within the Cypress Neighborhood located at the corner of Cypress Road and Eugene Walk ("Property"). The Park Improvements are public improvements located within the Project Area; and

WHEREAS, the Commission desires to pay for or reimburse a portion of the costs for the acquisition of land for and the installation and construction of the Park Improvements and the Commission and City have negotiated a Cooperation Agreement to that effect ("Cooperation Agreement"); and

WHEREAS, it is in the best interests of the City and for the common benefit of residents, employees, business tenants and property owners within the Project Area and the City as a whole for the Park Improvements to be installed and constructed; and

WHEREAS, since there are no other reasonable means available to the City to fully finance the Park Improvements, the Commission proposes to pay for or reimburse a portion of the costs for the acquisition of land for and the installation and construction of the Park Improvements in accordance with the Cooperation Agreement; and

WHEREAS, the Park Improvements are of benefit to the Project Area in which the Park Improvements are located; and

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

ATTACHMENT   2  

PAGE   1   OF   3  

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NOW, THEREFORE, the Oxnard Community Development Commission hereby resolves as follows:

1. The Commission hereby finds and determines that all recitals set forth in this Resolution are true and correct and incorporated herein in full by this reference.

2. Based on substantial evidence in the record, the Commission hereby finds and determines that:

a. The acquisition of land or installation or construction of the Park Improvements are of benefit to the Project Area by helping to eliminate blight within the Project Area. This finding is based, in part, on the fact that six major goals of the City contained in the Implementation Plan include: (1) establishment, by effective use of the redevelopment process, a planning and implementation framework that will ensure proper, long-term development of identified blighted areas; (2) development of underdeveloped or poorly developed areas; (3) elimination and prevention of the spread of blight and deterioration; (4) strengthening the economic base of the Project Areas by installation of needed improvements; (5) elimination or mitigation certain environmental deficiencies such as insufficient off-street and on-street parking, facilities and utility deficiencies that adversely affect the Project Area; and (6) promotion of private sector investment within the Project Area. The acquisition of land for and the installation and construction of the Park Improvements assist in obtaining these goals. One of the programs undertaken pursuant to the Implementation Plan to facilitate the achievement of these goals is a Public Facilities program which includes urban design improvements, public utilities, and street construction. As described in the Implementation Plan, activities grouped under the Public Facilities program are designed to enhance the physical image of public spaces and rectify public improvement deficiencies. Moreover, one of the five year priorities for the Project Area in the Implementation Plan is "construct neighborhood pocket parks". The relationship between specific activities and blight elimination in the Project Area is summarized in Table 11 of the Implementation Plan. The Park Improvements assist in obtaining the goals listed in the Implementation Plan, is consistent with the Implementation Plan and will assist in the elimination of one or more blighting conditions in the Project Area.

b. No other reasonable means of financing the acquisition of the land or the installation or construction of the Park Improvements are available to the City. This finding is based, in part, on the fact that the City itself is not in a position to fully finance the acquisition of land for and the installation and construction of the Park Improvements. Without the assistance of tax increment funding from the Project Area, capital improvements in other parts of the City would have to be deferred or eliminated. Given the constraints on financing sources which are under the direction of the City, it is clear that all anticipated and needed public capital improvements cannot be completed using only City funds. There must be a combination of tax increment and non-tax increment funding.

c. The payment of funds for the acquisition of land or the cost of the Park Improvements is consistent with the Implementation Plan adopted pursuant to CRL Section 33490. This finding is based, in part, on the fact that as discussed above in Section 2.a., the Park Improvements assist in obtaining the goals listed in the Implementation Plan, are consistent with the Implementation Plan and will assist in the elimination of one or more blighting conditions in the Project Area.

3. The Commission hereby agrees to pay for or reimburse a portion of the costs for the Park Improvements in accordance with the Cooperation Agreement.

ATTACHMENT 2

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PAGE 2 OF 3

4. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 12 day of January

, 2010, by the following vote:

AYES:

NOES:

ABSENT:

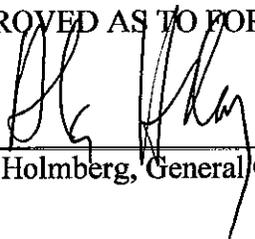
ABSTAIN:

\_\_\_\_\_  
Dr. Thomas E. Holden, Chairman

ATTEST:

\_\_\_\_\_  
Daniel Martinez, Secretary Designate

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Alan Holmberg, General Counsel

rb1025cpc

ATTACHMENT 2

PAGE 3 OF 3

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**Cooperation Agreement  
By And Between  
City Of Oxnard And  
Oxnard Community Development Commission  
(Garden City Acres Park)**

THIS COOPERATION AGREEMENT ("Agreement") is entered into this 12 day of January, 2010, by and between the City of Oxnard ("City") and the Oxnard Community Development Commission ("Commission"), with reference to the following facts:

**RECITALS**

A. The City has heretofore entered into that certain Park Agreement dated November 9, 2004, as amended by the Amendment to Park Agreement dated March 13, 2007, and as further amended by the Second Amendment to Park Agreement dated November 20, 2007, with CC Communities, LLC, a California limited liability company (Applicant therein) and Westwind Tiburon Associates, LLC, a California limited liability company (Assignee therein), to provide public funding for the acquisition of certain real property within the Cypress Neighborhood located at the corner of Cypress Road and Eugene Walk ("Property") and the installation and construction of a six (6) acre public park ("Park Improvements") thereon.

B. The City and Commission desire to cooperate in the acquisition of land for and the installation and construction of the Park Improvements on the Property.

C. The City has adopted a Redevelopment Plan for the Historic Enhancement and Revitalization of Oxnard (HERO) Project Area ("Project Area"). The Property is located within the Project Area.

D. Pursuant to Section 33445(a) of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*), the Commission may, with the consent of the City Council, pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned inside or contiguous to the project area, if the City Council makes certain determinations. The City Council and the Commission have made the determinations required by Section 33445.

E. The Commission desires to pay for a portion of the costs for the acquisition of land for and the installation and construction of the Park Improvements on the Property.

NOW, THEREFORE, the parties hereto mutually agree as follows:

**ARTICLE I COMMISSION'S CONTRIBUTION**

**Section 101                      Commission Contribution**

The Commission agrees to pay for or reimburse a portion of the costs for the acquisition of land for and the installation and construction of the Park Improvements on the Property in an amount not to exceed \$3,300,000 ("Commission Funds"). Such payment or reimbursement shall be in accordance with procedures acceptable to the Commission Executive Director, the Community Development Director, or either of their respective designees.

**Section 102                    City's Obligation**

The City agrees to utilize the Commission Funds solely to pay the costs of acquisition of land for and the installation and construction of the Park Improvements on the Property.

**ARTICLE II   GENERAL PROVISIONS**

**Section 201                    Liability and Indemnification**

In contemplation of the provisions of California Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code Section 895, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve the above-stated purpose, each party indemnifies, defends and holds harmless the other parties for any liability, losses, cost or expenses that may be incurred by such other parties solely by reason of Government Code Section 895.2.

**Section 202                    Recitals**

The "Recitals" of this Agreement constitute a material part of this Agreement and are incorporated by reference as though fully set forth hereto.

**Section 203                    Entire Agreement**

This Agreement may be executed in counterpart originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

**Section 204                    No Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the City and the Commission. There shall be no third party beneficiaries under this Agreement.

**Section 205                    Waivers and Amendments**

All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

**Section 206                    Enforced Delay**

For purposes of any provision of this Agreement, no party, nor any successors or assign of any party, shall be considered in breach of, or default in, its obligations under this Agreement as a result of

the enforced delay in the performance of such obligations due to causes beyond such party's reasonable control, including, without limitation, failure of governmental agencies to act or to issue necessary permits or licenses, acts of God, acts of the public enemy, acts of the State or Federal governments, acts of any other party (including, but not limited to, delays in performing such other party's obligations pursuant to this Agreement), fires, floods, epidemics, quarantine restrictions, strikes, labor disputes, freight embargoes, inability to obtain materials or supplies or unusually severe weather or delays of contractors and subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such party shall be extended for the period of the enforced delay.

**Section 207                    Indebtedness**

The Commission's obligation under this Agreement shall constitute an indebtedness of the Commission for the purpose of carrying out the Redevelopment Plan for the Project Area.

**Section 208                    Notices**

Any notice to be given or other document to be delivered by either party to the other may be delivered in person or may be deposited in the United States mail, with first class postage prepaid, and addressed as follows:

City:                    City of Oxnard  
                             214 South C Street  
                             Oxnard, California 93030  
                             Attn: City Manager

Commission: Oxnard Community Development Commission  
                             214 South C Street  
                             Oxnard, California 93030  
                             Attn: Executive Director

**Section 209                    Further Documents**

The parties hereto hereby agree to execute such other documents and to take such other actions as may be reasonably necessary to further the purposes of this Agreement.

**Section 210                    Time of the Essence**

Time is of the essence in this Agreement.

**Section 211                    Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

**Section 212                    Invalidity**

If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction

to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

**Section 213                    Interpretation**

No provision in this Agreement is to be interpreted for or against any party because that party or its legal representatives drafted such provision.

**Section 214                    Voluntary Agreement**

The parties hereto further represent and declare that they carefully read this Agreement and know the contents thereof, and that they sign the same freely and voluntarily.

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

CITY OF OXNARD

OXNARD COMMUNITY DEVELOPMENT  
COMMISSION

\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

\_\_\_\_\_  
Dr. Thomas E. Holden, Chairman

ATTEST:

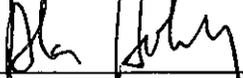
ATTEST:

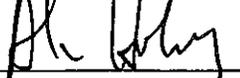
\_\_\_\_\_  
Daniel Martinez, City Clerk

\_\_\_\_\_  
Daniel Martinez, Secretary Designate

APPROVED AS TO FORM:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Alan Holmberg, City Attorney

  
\_\_\_\_\_  
Alan Holmberg, General Counsel

**CITY OF OXNARD**  
**REQUEST FOR SPECIAL BUDGET APPROPRIATION**

To the City Manager:

January 12, 2010

Request is hereby made for an appropriation of total . . . . .

\$ 2,800,000

Reason for appropriation:

<u>FUND</u>	<u>DESCRIPTION/ACCOUNT</u>	<u>AMOUNT</u>
CDC - HERO (405)	HERO 405-8724 (098702) 827-8605 - Improvements Not Bldgs-Repair Net Estimated Change to CDC-HERO Fund	<u>2,800,000</u> (2,800,000)

*Curtis O. Cannon*  
*Kerilyn Hunt (for)*  
 \_\_\_\_\_  
 Manager CURTIS CANNON

DOES NOT REQUIRE CITY COUNCIL APPROVAL

CHIEF FINANCIAL OFFICER

*James Cameron*  
 \_\_\_\_\_

Disposition

Approved \_\_\_\_\_

Rejected \_\_\_\_\_

Transfer by Journal Voucher \_\_\_\_\_

City Manager

ATTACHMENT 4

PAGE 1 OF 1