



# Council Meeting Agenda

SEPTEMBER 1, 2010

CITY COUNCIL CHAMBERS ~ 4:00 P.M. & 7:00 P.M.

201 N. Broadway, Escondido, CA 92025

MAYOR	<b>Lori Holt Pfeiler</b>
MAYOR PRO TEM	<b>Dick Daniels</b>
COUNCIL MEMBERS	<b>Sam Abed</b>
	<b>Olga Diaz</b>
	<b>Marie Waldron</b>
CITY MANAGER	<b>Clay Phillips</b>
CITY CLERK	<b>Marsha Whalen</b>
CITY ATTORNEY	<b>Jeffrey Epp</b>
DIRECTOR OF COMMUNITY DEVELOPMENT	<b>Barbara Redlitz</b>
DIRECTOR OF ENGINEERING SERVICES	<b>Ed Domingue</b>

**ELECTRONIC MEDIA:**

Electronic media which members of the public wish to be used during any public comment period should be submitted to the City Clerk's Office at least 24 hours prior to the Council meeting at which it is to be shown.

The electronic media will be subject to a virus scan and must be compatible with the City's existing system. The media must be labeled with the name of the speaker, the comment period during which the media is to be played and contact information for the person presenting the media.

The time necessary to present any electronic media is considered part of the maximum time limit provided to speakers. City staff will queue the electronic information when the public member is called upon to speak. Materials shown to the Council during the meeting are part of the public record and may be retained by the Clerk.

The City of Escondido is not responsible for the content of any material presented, and the presentation and content of electronic media shall be subject to the same responsibilities regarding decorum and presentation as are applicable to live presentations.



# Council Meeting Agenda

**SEPTEMBER 1, 2010**  
**4:00 p.m. Meeting**

**Escondido City Council**  
**Community Development Commission**  
**Mobilehome Rent Review Board**

## **CALL TO ORDER**

**FLAG SALUTE**

**ROLL CALL:**                   Abed, Daniels, Diaz, Waldron, Pfeiler

## **ORAL COMMUNICATIONS**

At this time the public may comment on items not appearing on the agenda. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. (Please refer to the back page of the agenda for instructions.)

## CONSENT CALENDAR

Items on the Consent Calendar are not discussed individually and are approved in a single motion. However, Council members always have the option to have an item considered separately, either on their own request or at the request of staff or a member of the public

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/CDC/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/CDC)**
3. **APPROVAL OF MINUTES: Regular Meeting of July 21, 2010**
  
4. **MASTER AGREEMENTS, ADMINISTERING AGENCY-STATE AGREEMENT FOR FEDERAL-AID PROJECTS AND STATE FUNDED PROJECT AGREEMENT AND DELEGATING AUTHORITY TO THE DIRECTOR OF ENGINEERING SERVICES TO EXECUTE PROGRAM SUPPLEMENT AGREEMENTS** – Request Council authorize the Mayor and City Clerk to execute the Master Agreements, Administering Agency-State Agreement for Federal-Aid Projects, Agreement No. 11-5081R; and State Funded Projects, Agreement No. 00323S; and delegate authority to the Director of Engineering Services to execute all Program Supplement Agreements

Staff Recommendation: Approval (**Engineering Services: Ed Domingue**)

RESOLUTION NO. 2010-133

5. **NOTICE OF COMPLETION FOR THE POLICE AND FIRE HEADQUARTERS (BID PACKAGE 6A & 10A) (ISEC)** Request Council authorize staff to file a Notice of Completion for Isec, Incorporated (Bid Package 6A & 10A), millwork and construction specialties at the Police and Fire Headquarters located at 1163 N. Centre City Parkway

Staff Recommendation: Approval (**City Manager's Office: Joyce Masterson**)

6. **NOTICE OF COMPLETION FOR THE POLICE AND FIRE HEADQUARTERS (BID PACKAGE 7A) (WITHEROW)** Request Council authorize staff to file a Notice of Completion for J.P. Witherow Roofing (Bid Package 7A) for roofing at the Police and Fire Headquarters located at 1163 N. Centre City Parkway

Staff Recommendation: Approval (**City Manager's Office: Joyce Masterson**)

7. **NOTICE OF COMPLETION FOR THE POLICE AND FIRE HEADQUARTERS (BID PACKAGE 15A) (HPS MECHANICAL)** Request Council authorize staff to file a Notice of Completion for HPS Mechanical (Bid Package 15A) for HVAC and plumbing at the Police and Fire Headquarters located at 1163 N. Centre City Parkway

Staff Recommendation: Approval (**City Manager's Office: Joyce Masterson**)

**CONSENT CALENDAR**

8. **LOAN AND SECURITY AGREEMENTS FOR THE PURPOSE OF SECURING LONG TERM AFFORDABILITY COVENANTS AT 1600 WEST NINTH AVENUE (AKA WINDSOR GARDENS SENIOR HOUSING)** – Request Community Development Commission (CDC) authorize the Chair and Secretary execute necessary Loan and Security Agreement with the Escondido Seniors Housing Corporation, in form approved by the City Attorney, for the purpose of securing Affordable Housing Set-aside fund in the amount of up to \$915,000 on behalf of Windsor Gardens, at 1600 West Ninth Avenue (aka Windsor Gardens Senior Housing)

Staff Recommendation: Approval (**Housing Division: Roni Keiser**)

RESOLUTION NO. CDC 2010-09

9. **RESOLUTION OF SUPPORT OF GRANT APPLICATION, BUDGET ADJUSTMENT AND CONSULTANT AGREEMENT FOR BENTON BURN SITE REMEDIATION PROJECT** – Request Council approve a Resolution of Support of Grant Application; authorize the Mayor and City Clerk to execute a Consultant Agreement the Benton Burn Site Remediation project

Staff Recommendation: Approval (**Engineering Services: Ed Domingue**)

- a. RESOLUTION NO. 2010-134
- b. RESOLUTION NO. 2010-135

10. **PURCHASE OF THREE VACANT LOTS ON THE NORTHEAST CORNER OF JUNIPER STREET AND GRAND AVENUE AND BUDGET ADJUSTMENT TO APPROPRIATE REDEVELOPMENT FUNDS FOR THIS PURCHASE** – Request the Community Development Commission **(1)** Authorize the Chair and Secretary to execute a Purchase Agreement with Carl and Katherine Kahn, to purchase 21,000 square feet of commercial property in Downtown, on the northeast corner of Juniper Street and Grand Avenue, in the amount of \$609,000; and **(2)** Authorize an amendment to Fiscal Year 2010/11 Capital Improvement Budget for the Redevelopment Capital Projects fund and appropriate \$609,000 to purchase the land by approving the Budget Adjustment from the Redevelopment Fund Account to make this purchase

Staff Recommendation: Approval (**Engineering Services: Jo Ann Case**)

RESOLUTION NO. CDC 2010-08

11. **CORRECTED AND MODIFIED LEASE AGREEMENT BETWEEN THE CITY AND DR. STANLEY SCHAEFFER FOR USE OF OFFICE SPACE AT 210 SOUTH BROADWAY** – Request Council authorize the Mayor and City Clerk to execute a revised five-year Lease Agreement with Dr. Stanley Schaeffer for property addressed as 210 South Broadway

Staff Recommendation: Approval (**Engineering Services: Jo Ann Case**)

RESOLUTION NO. 2010-139

## CONSENT CALENDAR

12. **STREET VACATION FOR A PORTION OF SPRUCE STREET: SETTING A PUBLIC HEARING** – Request Council authorize setting a public hearing date of October 27, 2010 at 4:00 p.m. to consider approving the street vacation for a portion of Spruce Street

Staff Recommendation: Approval (**Engineering Services: Anne Marc-Aurele**)

RESOLUTION NO. 2010-138

## CONSENT - RESOLUTIONS AND ORDINANCES (COUNCIL/CDC/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/CDC/RRB at a previous City Council/Community Development Commission/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

## PUBLIC HEARINGS

13. **SHORT-FORM RENT REVIEW BOARD HEARING FOR CITY-OWNED SPACES IN THE ESCONDIDO VIEWS MOBILE HOME PARK** – Request the Council/Board consider the short-form rent increase application granting a rent increase in the average amount of \$10.50 per space per month for City-owned spaces in the Escondido Views Mobile Home Park

Staff Recommendation: Approval (**Housing Division: Michelle Henderson**)

RESOLUTION NO. RRB 2010-04

## PUBLIC HEARINGS

14. **SHORT-FORM RENT REVIEW BOARD HEARING FOR CITY-OWNED SPACES IN THE MOUNTAIN SHADOWS MOBILE HOME PARK** – Request the Council/Board consider the short-form rent increase application granting a rent increase in the average amount of \$8.91 per space per month for City-owned spaces in the Mountain Shadows Mobile Home Park

Staff Recommendation: Approval (**Housing Division: Michelle Henderson**)

RESOLUTION NO. RRB 2010-05

15. **AMENDMENT TO FISCAL YEAR 2008-09 ACTION PLAN TO ALLOCATE BALANCE OF CDBG-R (AMERICAN RECOVERY AND REINVESTMENT ACT) FUNDS** – Request Council authorize an amendment to the Fiscal Year 2008-09 Action Plan allocating the remaining CDBG-R (American Recovery & Reinvestment Act) fund balance of \$222,523 to Phase 3 of the Tulip Street Improvement project

Staff Recommendation: Approval (**Neighborhood Services Division: Rich Buquet**)

## CURRENT BUSINESS

16. **CONCEPTUAL DEVELOPMENT PLAN FOR RENOVATION OF THE RITZ THEATER (ORAL PRESENTATION)** – Informational presentation regarding conceptual development plans for renovation of the Ritz Theater located at 307-309 East Grand Avenue, for adaptive reuse to include cabaret dinner theater and artisan lofts

Staff Recommendation: None (**Community Development/Planning: Barbara Redlitz**)

17. **SALE OF CITY-OWNED AND VACATED OLD FIRE STATION #3, LOCATED AT 2165 VILLAGE ROAD** – Request Council authorize the Real Property Manager to enter into escrow and accept an offer from the Deubig Family Trust to purchase the fire station for \$360,000 with no contingencies or escrow costs paid by the City of Escondido

Staff Recommendation: Approval (**Engineering Services: Jo Ann Case**)

RESOLUTION NO. 2010-140

## CURRENT BUSINESS

18. **ORAL REPORT: COUNCIL COMMENTS/REGIONAL ISSUES** – This item provides an opportunity for City Council representatives on regional boards, commissions, and committees, to report back to Council on matters being addressed by those respective boards, commissions, and committees. This item is for reports only, and there will be no discussion or action on the reports. Such discussion or action will be calendared for a future agenda

Staff Recommendation: None **(Mayor and City Councilmembers)**

## BRIEFING (Staff)

## FUTURE AGENDA

19. **FUTURE AGENDA ITEMS** - The purpose of this item is to identify issues presently known to staff or which members of the Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions, brief announcements, or requests for factual information in connection with an item when it is discussed

Staff Recommendation: None **(City Clerk's Office: Marsha Whalen)**

## ORAL COMMUNICATIONS

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## COUNCIL/COMMISSION/ MEMBERS COMMENTS



**CLOSED SESSION: (COUNCIL/CDC/RRB)**

20. **CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION (Government Code §54956.9(a))**  
a. Sanderson v. City of Escondido, Case No. 37-2009-0061527-CU-PO-NC
21. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)**  
a. Property: 475 N. Spruce  
Agency Negotiator: Clay Phillips  
Negotiating parties: City of Escondido  
Under negotiation: Price and terms of payment
22. **CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION** Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9(b): **Two Cases**

**ADJOURNMENT**



# Council Meeting Agenda

SEPTEMBER 1, 2010  
7:00 p.m. Meeting

Escondido City Council  
Community Development Commission

## CALL TO ORDER

### **MOMENT OF REFLECTION:**

*City Council agendas allow an opportunity for a moment of silence and reflection at the beginning of the evening meeting. The City does not participate in the selection of speakers for this portion of the agenda, and does not endorse or sanction any remarks made by individuals during this time. If you wish to be recognized during this portion of the agenda, please notify the City Clerk in advance.*

### **FLAG SALUTE**

**ROLL CALL:** Abed, Daniels, Diaz, Waldron, Pfeiler

## ORAL COMMUNICATIONS

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**CURRENT BUSINESS**

23. **WATER AND WASTEWATER RATE STRUCTURES AND WATER ALLOCATION** - Request Council provide a decision on rate structures and water allocations options in order to move forward in developing the rate study. Options for both structures and water allocations that have been developed at the Utilities Subcommittee meetings will be discussed

Staff Recommendation: Provide a decision on the options available so that the rate study can be finalized (**Utilities Department: Lori Vereker and Sudhir Pardiwala of Raftelis Financial Consultants, Inc.**)

**BRIEFING (Staff)**

**ORAL COMMUNICATIONS**

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**COUNCIL/COMMISSION/ MEMBERS COMMENTS**

**ADJOURNMENT**

UPCOMING MEETING SCHEDULE				
Date	Day	Time	Meeting Type	Location
September 8	NO MEETING		-	-
September 15	NO MEETING	-	-	-
September 22	WEDNESDAY	4pm & 7pm	City Council	Council Chambers
September 29	NO MEETING	-	-	-

## TO ADDRESS THE COUNCIL

The public may address the City Council on any agenda item. Please complete a Speaker's form and give it to the City Clerk. Comments are generally limited to 3 minutes.

If you wish to speak concerning an item *not* on the agenda, you may do so under "Oral Communications." Please complete a Speaker's form as noted above.

Handouts for the City Council should be given to the City Clerk. To address the Council, use the podium in the center of the Chambers, STATE YOUR NAME FOR THE RECORD and speak directly into the microphone.

## AGENDA, STAFF REPORTS AND BACK-UP MATERIALS ARE AVAILABLE:

- Online at <http://www.ci.escondido.ca.us/government/agendas/PublishedMeetings.htm>
- In the City Clerk's Office at City Hall
- In the Library (239 S. Kalmia) during regular business hours and
- Placed in the Council Chambers (See: City Clerk/Minutes Clerk) immediately before and during the Council meeting.

**AVAILABILITY OF SUPPLEMENTAL MATERIALS AFTER AGENDA POSTING:** Any supplemental writings or documents provided to the City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's Office located at 201 N. Broadway during normal business hours, or in the Council Chambers while the meeting is in session.

## LIVE BROADCAST

Council meetings are broadcast live on Cox Cable Channel 19 and can be viewed the following Sunday and Monday evenings at 6:00 p.m. on Cox Cable. The Council meetings are also available live via the Internet by accessing the City's website at [www.escondido.org](http://www.escondido.org), and selecting: City Council/broadcasts of City Council Meetings/live video streaming.

**Please turn off all cellular phones and pagers while the meeting is in session.**

**The City Council is scheduled to meet the first four Wednesdays of the month at 4:00 and 7:00 p.m. (*Verify schedule with City Clerk's Office*) Members of the Council also sit as the Community Development Commission and the Mobilehome Rent Review Board.**

**CITY HALL HOURS OF OPERATION  
Monday-Thursday 7:30 a.m. to 5:30 p.m.**



*If you need special assistance to participate in this meeting, please contact our ADA Coordinator at 839-4641. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.*

*Listening devices are available for the hearing impaired – please see the City Clerk.*

**CITY COUNCIL**

For City Clerk's Use:

**APPROVED**       **DENIED**

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.:** 4  
**Date:** **September 1, 2010**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Edward N. Domingue, Director of Engineering Services  
Robert J. Zaino, Deputy Director of Engineering Services

**SUBJECT:** Master Agreements for Federal-Aid Projects Agreement No. 11-5081R and State Funded Projects Agreement No. 00323S

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2010-133 authorizing the Mayor and City Clerk to execute Master Agreements for Federal-Aid Projects, Agreement No, 11-5081R, and State Funded Projects, Agreement No. 00323S, and delegate authority to the Director of Engineering Services to execute all Program Supplement Agreements.

FISCAL ANALYSIS:

Execution of the Master Agreements allows for preparation of project specific Program Supplement Agreements that provide for the reimbursement of local funds for qualified State and Federal funded projects.

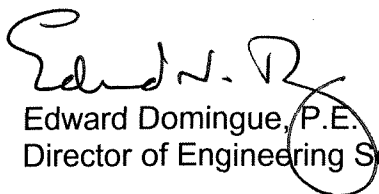
PREVIOUS ACTION:

The existing Master Agreement for Federal-Aid Projects, Agreement No, 11-5081, was approved on 8/19/98, by Resolution No. 98-178 and the existing Master Agreement for State Funded Projects, Agreement No. 000081, was approved on 10/9/02, by Resolution No. 2002-243.

BACKGROUND:

The Master Agreements have been revised to incorporate various changes in regulations and policies. The City must execute both these Agreements before Caltrans will process Program Supplement Agreements for the funding of federal-aid and state funded transportation projects. The City previously delegated authority to the Assistant Director of Public Works/City Engineer to execute all Program Supplement Agreements. This action will enable the appropriate staff member which is now the Director of Engineering Services to execute Program Supplement Agreements.

Respectfully submitted,



Edward Domingue, P.E.  
Director of Engineering Services



Robert J. Zaino, P.E.  
Deputy Director of Engineering Services

RESOLUTION NO. 2010-133

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AUTHORIZING THE MAYOR AND CITY  
CLERK, TO EXECUTE, ON BEHALF OF THE  
CITY, MASTER AGREEMENTS FOR  
FEDERAL-AID AND STATE FUNDED  
PROJECTS

WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and subsequent Transportation Authorization Bills to fund Transportation Programs; and

WHEREAS, the State of California and the City of Escondido have entered into Local Agency-State Master Agreement No. 11-5081 for Federal-Aid Projects on September 23, 1998, and Local Agency-State Master Agreement No. 000081 for State Funded Projects on August 28, 2002; and

WHEREAS, the Master Agreements have been revised to incorporate various changes in regulations and policies; and

WHEREAS, before Federal-Aid or State funds will be made available for a specific Program Project, the City of Escondido and State are required to enter into a supplement agreement relative to prosecution of said project and maintenance of the completed facility; and

WHEREAS, the Director of Engineering Services recommends the execution of Master Agreements with the California Department of Transportation for Federal-Aid Projects, Agreement No. 115081R, and State Funded Projects, Agreement No. 00323S

("Master Agreements"); and that the Director of Engineering Services be delegated the authority to execute Program Supplement Agreements; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve said master agreements;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the City Council accepts the recommendation of the Director of Engineering Services.
3. The Director of Engineering Services is authorized to execute all Program Supplement Agreements to the said Master Agreements.
4. That the Mayor and City Clerk are authorized to execute, on behalf of the City, Master Agreements with the California Department of Transportation for Federal-Aid and State Funded City Projects. Copies of the Master Agreements are attached as Exhibit "1" and Exhibit "2" to this resolution and are incorporated by this reference.



MASTER AGREEMENT  
ADMINISTERING AGENCY-STATE AGREEMENT FOR  
FEDERAL-AID PROJECTS

Resolution No. 2010-133  
EXHIBIT 1  
Page 1 of 26

11 City of Escondido

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District Administering Agency

Agreement No. 11-5081R

This AGREEMENT, is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of Escondido, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE, and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Transportation Authorization Bills to fund transportation programs. These transportation programs include, but are not limited to, the Surface Transportation Program (STP), the Congestion Mitigation and Air Quality Improvement Program (CMAQ), the Transportation Enhancement Program (TE), Highway Safety Improvement Program (HSIP) and the Highway Bridge Program (HBP) (collectively the "PROGRAMS"); and
2. WHEREAS, the Legislature of the State of California has enacted legislation by which certain federal-aid funds may be made available for use on local transportation related projects of public entities qualified to act as recipients of these federal-aid funds in accordance with the intent of federal law; and
3. WHEREAS, before federal-funds will be made available for a specific program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving federal funds for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

Resolution No. 2010-133  
EXHIBIT 1  
Page 2 of 26

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project-specific Program Supplement to this AGREEMENT for federal-aid projects, hereinafter referred to as "PROGRAM SUPPLEMENT", has been fully executed by both STATE and ADMINISTERING AGENCY.

2. The term "PROJECT", as used herein, means that authorized transportation related project and related activities financed in part with federal-aid funds as more fully-described in an "Authorization/ Agreement Summary" or "Amendment/Modification Summary", herein referred to as "E-76" or "E-76 (AMOD)" document authorized by STATE or the Federal Highway Administration (FHWA).

3. The E-76/E-76(AMOD) shall designate the party responsible for implementing PROJECT, type of work and location of PROJECT.

4. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive federal-aid funds from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these Federal Funds that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.

5. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future authorizations/obligations and invoice payments for any on-going or future federal-aid project performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.

6. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of Federal Funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.

7. Federal, State and matching funds will not participate in PROJECT work performed in advance of the approval of the E-76 or E-76 (AMOD), unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT. ADMINISTERING AGENCY agrees that it will only proceed with the work authorized for that specific phase(s) on the project-specific E-76 or E-76 (AMOD). ADMINISTERING AGENCY further agrees to not proceed with future phases of PROJECT prior to receiving an E-76 (AMOD) from STATE for that phase(s) unless no Further Federal funds are needed or for those future phase(s).

8. That PROJECT or portions thereof, must be included in a federally approved Federal Statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submitting the "Request for Authorization".

9. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

10. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with LOCAL ASSISTANCE PROCEDURES that describes minimum statewide design standards for local agency streets and roads. LOCAL ASSISTANCE PROCEDURES for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current LOCAL ASSISTANCE PROCEDURES.

11. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and where appropriate, an executed cooperative agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its' contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.

12. When PROJECT is not on the State Highway System but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

13. If PROJECT is using STATE funds, the Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

14. ADMINISTERING AGENCY will advertise, award and administer PROJECT in accordance with the current LOCAL ASSISTANCE PROCEDURES unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT.

15. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a full-time employee to be in responsible charge of each PROJECT.

16. ADMINISTERING AGENCY shall submit PROJECT-specific contract award documents to STATE's District Local Assistance Engineer within sixty (60) days after contract award. A copy of the award documents shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY to: Department of Transportation, Division of Accounting Local Programs Accounting Branch, MS #33, PO Box 942874, Sacramento, California 94274-0001.

17. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within one hundred eighty(180) days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LOCAL ASSISTANCE PROCEDURES.

18. ADMINISTERING AGENCY shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

19. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of PROJECT-related work shall incorporate Exhibits A and B (with third party's name replacing ADMINISTERING AGENCY) as essential parts of such agreement to be enforced by that third party as verified by ADMINISTERING AGENCY.

ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a federal-aid PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.

2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for a PROJECT, including, but not limited to, being clear as certified or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of relocation costs and damages to remainder real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

3. Subject to STATE approval and such supervision as is required by LOCAL ASSISTANCE PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from Federal Funds for expenditures incurred in purchasing only the necessary rights of way needed for the PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.

4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with all applicable State and Federal laws and regulations, in accordance with State procedures as published in State's current LOCAL ASSISTANCE PROCEDURES and STATE's Right-of-Way Manual, subject to STATE oversight to ensure that the completed work is acceptable under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

5. Whether or not federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in 49 CFR, Part 24. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least ninety (90) days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of PROJECT- displaced persons as provided in 49 CFR,

6. ADMINISTERING AGENCY shall, along with recording the deed or instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, shall also record an Agreement Declaring Restrictive Covenants (ADRC) as a separate document incorporating the assurances included within Exhibits A and B and Appendices A, B, C and D of the AGREEMENT, as appropriate.

ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon ADMINISTERING AGENCY's acceptance of the completed federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and FHWA and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE and FHWA. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE and FHWA. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.

3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

#### ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission (CTC).
2. STATE'S financial commitment of Federal Funds will occur only upon the execution of this AGREEMENT, the authorization of the project-specific E-76 or E-76 (AMOD), the execution of each project-specific PROGRAM SUPPLEMENT, and STATE's approved finance letter.
3. ADMINISTERING AGENCY may submit signed duplicate invoices in arrears for reimbursement of participating PROJECT costs on a monthly or quarterly progress basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.
4. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six (6) month period
5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.
6. Invoices must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.
8. An Indirect Cost Rate Proposal and Central Service Cost Allocation Plan and related documentation are to be provided to STATE (Caltrans Audits & Investigations) annually for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect cost incurred within each fiscal year being claimed for federal reimbursement.
9. Once PROJECT has been awarded, STATE reserves the right to de-obligate any excess Federal Funds from the construction phase of PROJECT if the contract award amount is less than the obligated amount, as shown on the PROJECT E-76 or E-76 (AMOD).
10. STATE will withhold the greater of either two (2) percent of the total of all Federal Funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.



11. The estimated total cost of PROJECT, the amount of Federal Funds obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES hereto with a finance letter, a detailed estimate, if required, and approved E-76 (AMOD). Federal-aid funding may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.

12. When additional federal-aid funds are not available, ADMINISTERING AGENCY agrees that the payment of Federal Funds will be limited to the amounts authorized on the PROJECT specific E-76 / E-76 (AMOD) and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

13. ADMINISTERING AGENCY shall use its own non-Federal Funds to finance the local share of eligible costs and all expenditures or contract items ruled ineligible for financing with Federal Funds. STATE shall make the determination of ADMINISTERING AGENCY's cost eligibility for federal fund financing of PROJECT costs.

14. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

15. Federal and state funds allocated from the State Transportation Improvement Program (STIP) are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.

16. Federal Funds encumbered for PROJECT are available for liquidation for a period of seven (7) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. State funds encumbered for PROJECT are available for liquidation only for five (5) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. Federal or state funds not liquidated within these periods will be reverted unless an Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance (per Government Code section 16304). The exact date of fund reversion will be reflected in the STATE signed finance letter for PROJECT.

17. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

18. ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

19. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items and (b) those parties shall comply with federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving PROJECT funds as a contractor or sub-contractor under this AGREEMENT shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

20. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under OMB Circular A-87, 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by ADMINISTERING AGENCY to STATE. Should ADMINISTERING AGENCY fail to reimburse moneys due STATE within thirty 30 days of demand, or within such other period as may be agreed in writing between the PARTIES hereto, STATE is authorized to intercept and withhold future payments due ADMINISTERING AGENCY from STATE or any third-party source, including but not limited to, the State Treasurer, the State Controller and the CTC.

21. Upon written demand by STATE, any overpayment to ADMINISTERING AGENCY of amounts invoiced to STATE shall be returned to STATE.

22. Should ADMINISTERING AGENCY fail to refund any moneys due STATE as provided hereunder or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty 30 days of demand, or within such other period as may be agreed to in writing between the PARTIES, STATE, acting through the State Controller, the State Treasurer, or any other public entity or agency, may withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may withhold approval of future ADMINISTERING AGENCY federal-aid projects.

23. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 22, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

24. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover State funds improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

ARTICLE V  
AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records when determined to be necessary or appropriate and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of ARTICLE V.
2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.
3. For the purpose of determining compliance with Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable, and other matters connected with the performance of ADMINISTERING AGENCY's contracts with third parties, ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to ADMINISTERING AGENCY under any PROGRAM SUPPLEMENT. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions and ADMINISTERING AGENCY shall furnish copies thereof if requested.
4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of OMB Circular A-133 if it receives a total of \$500,000 or more in Federal Funds in a single fiscal year. The Federal Funds received under a PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205, Highway Planning and Research.
5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with OMB Circular A-133.
6. ADMINISTERING AGENCY shall not award a construction contract over \$10,000 or other contracts over \$25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f) on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain all of the provisions of ARTICLE IV, FISCAL PROVISIONS, and this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS, and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner as required of all other PROJECT expenditures.

9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with LOCAL ASSISTANCE PROCEDURES.

ARTICLE VI -FEDERAL LOBBYING ACTIVITIES CERTIFICATION

1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer's knowledge and belief, that:

A. No federal or state appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or federal contract, including this AGREEMENT, the making of any STATE or federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or federal contract, grant, loan, or cooperative contract.

B. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this AGREEMENT, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT and each PROGRAM SUPPLEMENT was or will be made or entered into. Submission of this certification is a prerequisite for making or entering into this AGREEMENT imposed by Section 1352, Title 31, United States Code. Any party who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADMINISTERING AGENCY also agrees by signing this AGREEMENT that the language of this certification will be included in all lower tier sub-agreements which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

## ARTICLE VII - MISCELLANEOUS PROVISIONS

1. ADMINISTERING AGENCY agrees to use all State funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and the relevant Federal Regulations.
2. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE or the federal government.
4. Each project-specific PROGRAM SUPPLEMENT shall separately establish the terms and funding limits for each described PROJECT funded under the AGREEMENT. No federal or state funds are obligated against this AGREEMENT.
5. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT. ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.
6. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in STATE's discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
7. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.
8. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE, FHWA or FTA that may have an impact upon the outcome of this AGREEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of this AGREEMENT.
9. ADMINISTERING AGENCY hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT under this

10. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Officer who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.

12. Neither the pending of a dispute nor its consideration by the Contract Officer will excuse ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT.

13. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

14. Neither STATE nor any officer or employee thereof shall be responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. STATE reserves the right to terminate funding for any PROJECT upon written notice to ADMINISTERING AGENCY in the event that ADMINISTERING AGENCY fails to proceed with PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT, the bonding requirements if applicable, or otherwise violates the conditions of this AGREEMENT and/or PROGRAM SUPPLEMENT, or the funding allocation such that substantial performance is significantly endangered.

16. No termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if not reasonably susceptible of cure within said thirty (30) day period, ADMINISTERING AGENCY proceeds thereafter to complete the cure in a manner and time line acceptable to STATE. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

17. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT, the terms stated in that PROGRAM SUPPLEMENT shall prevail over those in this AGREEMENT.

18. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

19. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

City of Escondido

By \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_

Chief, Office of Project Implementation  
Division of Local Assistance

City of Escondido  
Representative Name & Title  
(Authorized Governing Body Representative)

Date \_\_\_\_\_

Date \_\_\_\_\_



## FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

EXHIBIT B

NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation. ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of STATE assisted contracts. ADMINISTERING AGENCY'S DBE Race-Neutral Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved DBE Race-Neutral Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31USC 3801 es seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO EXHIBIT B

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

(1) Compliance with Regulations: ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B TO EXHIBIT B

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) \*

(2) that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.\*

\* Reverter clause and related language to be used only when it is determined that such a clause is



necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

#### APPENDIX C TO EXHIBIT B

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX D TO EXHIBIT B

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

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\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.



# CITY COUNCIL

For City Clerk's Use:

APPROVED  DENIED

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

Agenda Item No.: 5  
Date: September 1, 2010

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Joyce Masterson, Assistant to the City Manager/Project Manager  
**SUBJECT:** POLICE AND FIRE HEADQUARTERS NOTICE OF COMPLETION – ISEC, INC.

RECOMMENDATION:

It is requested that Council approve and accept these improvements and authorize staff to file a Notice of Completion for Isec, Inc. (Bid Package 6A and 10A – Millwork and Construction Specialities) for the Police and Fire Headquarters.

FISCAL ANALYSIS:

The contractor's original bid was \$2,100,000. Additional expenditures in the amount of \$212,468.02 were required, bringing the total cost of the project to \$2,312,468.02. Funding for the project was derived from Prop P bond funds and Public Facility Expansion Account (229-150179).

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Infrastructure & Public Facilities element of the 2009-10 Council Action Plan.

PREVIOUS ACTION:

On March 5, 2008, Council accepted the bid of ISEC, Inc. in the amount of \$2,100,000 for the construction of Phase IV Combined Bid Package 6A (Millwork) and 10A (Construction Specialities) for the Police and Fire Facility. On May 5, 2010, Council approved a change order in the amount of \$18,502.96. On August 18, 2010, Council approved a change order in the amount of \$47,178.63.

BACKGROUND:

This project consisted of the millwork and construction specialties for the Police and Fire Headquarters at 1163 N. Centre City Parkway.

Respectfully submitted,

Joyce Masterson  
Project Manager/Assistant to the City Manager

# CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.:** 6

**Date:** **September 1, 2010**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Joyce Masterson, Assistant to the City Manager/Project Manager

**SUBJECT:** POLICE AND FIRE HEADQUARTERS NOTICE OF COMPLETION – J.P. WITHEROW

RECOMMENDATION:

It is requested that Council approve and accept these improvements and authorize staff file a Notice of Completion for J. P. Witherow Roofing (Bid Package 7A Roofing) for the Police and Fire Headquarters at 1163 N. Centre City Parkway.

FISCAL ANALYSIS:

The contractor's original bid was \$887,100. Additional expenditures in the amount of \$376,633.30 were required, bringing the total cost of the project to \$1,263,733.30. Funding for the project was derived from Prop P bond funds.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Infrastructure and Public Facilities element of the 2009-2010 Council Action Plan.

PREVIOUS ACTION:

On August 13, 2008, Council accepted the bid of J.P. Witherow Roofing in the amount of \$887,100 for the construction of Fire Phase IV Bid Package 7A (Roofing) of the Police and Fire Facility. On March 18, 2009, Council approved a construction change order with J.P. Witherow Roofing in the amount of \$117,796 for the installation of lightweight insulating concrete on the roof which had been deducted from another contractor's scope of work. Council also approved a change order in the amount of \$117,738.04 on September 2, 2009, which was needed due to design errors and omissions and additional contract time due to a revised completion date. On February 24, 2010, Council approved construction change orders in the amount of \$95,064.35. On August 18, 2010, Council approved construction change orders in the amount of \$42,643.91.

J.P. Witherow Notice of Completion  
September 1, 2010  
Page 2

BACKGROUND:

This project consisted of the roofing for the Police and Fire Headquarters at 1163 N. Centre City Parkway.

Respectfully submitted,

A handwritten signature in cursive script that reads "Joyce Masterson".

Joyce Masterson  
Assistant to the City Manager

# CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.:** 7  
**Date:** September 1, 2010

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Joyce Masterson, Assistant to the City Manager/Project Manager  
**SUBJECT:** POLICE AND FIRE HEADQUARTERS NOTICE OF COMPLETION – HPS MECHANICAL

RECOMMENDATION:

It is requested that the City Council approve and accept these improvements and authorize staff to file a Notice of Completion for HPS Mechanical (Bid Package 15A – HVAC) for the Police and Fire Headquarters.

FISCAL ANALYSIS:

The contractor's original bid was 5,145,186. Additional expenditures and credits were required which brought the total cost of the project to \$6,493,458.93. Funding for the project was derived from Prop P bond funds.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Infrastructure and Public Facilities element of the 2009-2010 Council Action Plan.

PREVIOUS ACTION:

On March 12, 2008, Council accepted the bid of HPS Mechanical in the amount of \$5,145,186 for the construction of Phase IV Bid Package 15A (HVAC and Plumbing) of the Police and Fire Headquarters. On August 19, 2009, the Council approved a construction change order with HPS Mechanical in the amount of \$596,953.26 for major modifications to the HVAC on the third floor related to the server room. On November 18, 2009, the Council approved a construction change order in the amount of \$165,198.40 for additional plumbing, heating and ventilation work. On March 24, 2010, Council approved a construction change order in the amount of \$55,044.38. On May 5, 2010, Council approved construction change orders in the amount of \$5,942.64. On August 18, 2010, Council approved construction change orders in the amount of \$17,100.98.

BACKGROUND:

This project consisted of the plumbing, heating, ventilation and air conditioning for the Police and Fire Headquarters at 1163 N. Centre City Parkway.

Notice of Completion – HPS Mechanical  
September 1, 2010  
Page 2

Respectfully submitted,

A handwritten signature in cursive script that reads "Joyce Masterson".

Joyce Masterson  
Assistant to the City Manager

/jm2



# COMMUNITY DEVELOPMENT COMMISSION

For City Clerk's Use:

APPROVED  DENIED

Reso No. CDC \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. CDC \_\_\_\_\_

Agenda Item No.: 8  
Date: September 1, 2010

**TO:** Honorable Chair Pfeiler and Members of the Commission  
**FROM:** Roni Keiser, Housing Division Manager  
**SUBJECT:** Authorization for the CDC Chair and Secretary to Execute the Necessary Loan and Security Agreements between the CDC and Escondido Seniors Housing Corporation a Non-profit Corporation

RECOMMENDATION:

Approval to authorize the CDC Chair and Secretary to execute the necessary loan and security agreements between the CDC and Escondido Seniors Housing Corporation, for the purpose of securing Affordable Housing Set-aside funds in the amount of up to \$915,000 on behalf of Windsor Gardens, a senior affordable housing development, located at 1600 W. Ninth Avenue and adoption of Resolution CDC 2010-09.

FISCAL ANALYSIS:

Affordable Housing Set-aside funds in the amount of up to \$915,000 were allocated by action of the CDC on June 16, 2010, with approval of the FY 2010-2011 Housing Set-aside Budget. There will be no impact on the General Fund.

BACKGROUND:

Windsor Gardens is a City-owned property leased to Escondido Seniors Housing Corporation, a non-profit corporation established by the City, who successfully improved the site with 132 units of rental housing in 1977 using private financing backed by a HUD 221(d)(3) mortgage guaranty. The CDC financing provides the Escondido Seniors Housing Corporation the ability to address maintenance, modernization and energy efficiency issues and secures project affordability for 55 years.

CONCLUSION:

The staff recommendation is for adoption of CDC Resolution 2010-09 authorizing the CDC Chair and Secretary to execute the necessary loan and security agreements between the CDC and Escondido Seniors Housing Corporation for a loan in an amount



Escondido Seniors Housing Corporation Agreements  
September 1, 2010  
Page 2

not to exceed \$915,000, on behalf of the CDC, for the purposes of affordable senior housing. This request for authorization for the Chair and Secretary to execute the agreements is necessary as this request for authorization was omitted from staff's original request for the allocation of funds to the project. The allocation of funds was included in the FY 2010-2011 Housing Set-aside program budget.

Respectfully submitted,

A handwritten signature in black ink that reads "Roni Keiser". The signature is written in a cursive, flowing style.

Roni Keiser  
Housing Division Manager

RESOLUTION NO. CDC 2010-09

A RESOLUTION OF THE COMMUNITY DEVELOPMENT COMMISSION AUTHORIZING THE CHAIR AND SECRETARY TO EXECUTE LOAN AND SECURITY AGREEMENTS BETWEEN THE CDC AND ESCONDIDO SENIORS HOUSING CORPORATION FOR FINANCING REPAYMENT OF HUD 221 (d) (3) MORTGAGE GUARANTEE FOR WINDSOR GARDENS SENIOR HOUSING PROJECT

WHEREAS on June 16, 2010, the Community Development Commission of the City of Escondido ("CDC") authorized an allocation of affordable housing set-aside funds in the amount of up to \$915,000 to Windsor Gardens apartments, as part of the FY 2010-2011 budget allocation process; and

WHEREAS, Windsor Gardens is located on City-owned property leased to Escondido Seniors Housing Corporation, a non-profit corporation, established by the City; and

WHEREAS, Escondido Seniors Housing Corporation obtained private financing backed by a HUD 221 (d) (3) mortgage guaranty in 1977, and improved the site with 132 senior rental units, and

WHEREAS, Escondido Seniors Housing Corporation desires to repay the privately held mortgage and terminate, with HUD's authorization, the HUD 221(d)(3) mortgage guaranty, and

WHEREAS, the CDC by allocation of funding to Escondido Seniors Housing Corporation acknowledges the need for affordable housing set-aside funding to Windsor

Gardens for the purpose of addressing maintenance, modernization and energy-efficiency issues and securing project affordability for seniors for 55 years.

NOW, THEREFORE, BE IT RESOLVED by the Community Development Commission of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the amount designated for the activity in the FY 2010-2011 Housing Set-aside program budget will allow Escondido Seniors Housing Corporation the ability to retire the existing privately held mortgage, release HUD covenants, make necessary improvements to Windsor Gardens, and secure affordability covenants for a period of 55 years.
3. That Loan and Security Agreements are necessary to secure the loan between Escondido Seniors Housing Corporation and the CDC, subject to California Redevelopment Law.
4. That the CDC Chair and Secretary are hereby authorized to execute, on behalf of the CDC, in form approved by the City Attorney, the necessary loan and security Agreements between the CDC and Escondido Seniors Housing Corporation, for the purpose of providing affordable senior housing at Windsor Gardens.



ITEM NO.: 9

AGENDA: 9-1-10

- There is no material for this agenda item.

**THE FOLLOWING ITEM(S) WILL BE DISTRIBUTED WHEN AVAILABLE:**

- Staff Report
- Resolution No.: R2010-134 & R2010-135
- Ordinance No.: \_\_\_\_\_
- Exhibits/Attachments: \_\_\_\_\_

**DUE TO THE SIZE OF THIS AGENDA ITEM:**

- COUNCIL MEMBERS:** A copy is in the Council Reading File
- Staff and others:** A copy is available in the City Clerks Office for viewing

## CITY COUNCIL

For City Clerk's Use:

APPROVED  DENIED

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

Agenda Item No.: 10

Date: **September 1, 2010**

**TO:** Honorable Chair Pfeiler and Members of the Commission

**FROM:** Edward N. Domingue, Director of Engineering Services  
Jo Ann Case, Economic Development & Real Property Manager

**SUBJECT:** Purchase of three vacant lots located on Juniper Street and E. Grand Avenue, Escondido (APN 229-432-24, 25, 26) (the "Property") and budget adjustment to appropriate redevelopment funds for the purchase

RECOMMENDATION:

- a. Adopt Resolution No. CDC 2010-08 authorizing the Commission Chair and Secretary to execute an Agreement for Acquisition of Real Property from Carl and Katherine Kahn (collectively, "Seller") for \$609,000.
- b. Authorize Staff to amend the Fiscal Year 2010/11 Capital Improvement Budget for the Redevelopment Capital Projects Fund and appropriate \$609,000 to purchase this land, plus an amount of \$1300 for estimated escrow costs. The funding source for this capital project will be redevelopment funds.

FISCAL ANALYSIS:

There will be no effect on the General Fund. Redevelopment funds will be used to pay all costs related to the property purchase.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Council's Action Plan regarding the desire for increased efforts to find additional Downtown parking by identifying possible sites for sale. Also, it meets the objective to continue to identify and purchase key properties that provide potential for the City to leverage or partner with private development.

PREVIOUS ACTION:

None.

BACKGROUND

The property owner contacted the City and informed us that the Property was available for sale. The asking price was \$675,000. The City Council expressed interest in pursuing a possible purchase of the Property in a closed session meeting on June 9, 2010.

Real Property performed a study of comparable property sales for properties sold between 2007 and 2010. Another source for the market study was an appraisal done by Anderson & Brabant in 2008 for the City that that included another parking lot property. There were very few comparables due to the inactivity in the real estate market during the past three years. The subject Property was sold for \$44 per square foot in 2007. After several counter offers, the offered and accepted purchase price agreed upon by the City and Seller is \$609,000. This equates to \$29 per square foot for approximately 21,000 square feet of land.

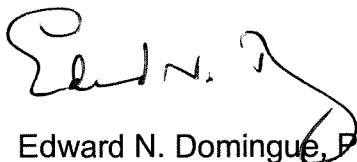
The corner lot was once an ARCO gas station and contamination exists on the site from leaking gas tanks which were removed in 1980. The above ground structures were then demolished and the site has remained vacant. The County Department of Environmental Health (DEH) placed the Property on the County's hazardous sites list (SAM) and is currently working with an environmental consultant hired by British Petroleum (ARCO/BP America, Inc.). BP has assumed the role of the responsible party for the contamination.

There are four ground water monitoring wells on-site and five off-site in the vicinity of the Property. Readings on contaminant levels are taken quarterly and reported to DEH. The monitoring is being done to evaluate the extent of the residual contamination on-site and to determine the extent of the plume. At this time, DEH has an open Leaking Underground Storage Tank (LUST) case for this Property. The contaminants do not pose any health and safety risk because there are no habitable structures on the Property, therefore no remediation has taken place, only monitoring. DEH will not issue a "Letter of No Further Action" until more testing is done and core samples are taken.

The proposed use for the Property is to develop a surface parking lot that can accommodate approximately 34-36 parking spaces (Attachment "A"). The Property is strategically located for this use and for a more profitable use in the future. Previously, a developer had proposed a mixed-use three story project with ground floor retail and residential condos above. At that time, the developer commissioned SCS Engineers to perform a Phase 1 Environmental Site Assessment in 2006. Because of the economic downturn, the project was never built, however this demonstrates the desirability of the site for such a project in the future.

Should such a development become a reality in the future, the Polanco Act would require BP America, Inc. to remediate the site at their sole expense. Alternatively, there are various construction methods that can be used to achieve acceptable environmental safety levels for a future project. Therefore, Real Property recommends that the City purchase the property for \$609,000.

Respectfully submitted,

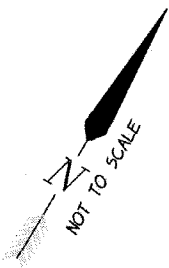
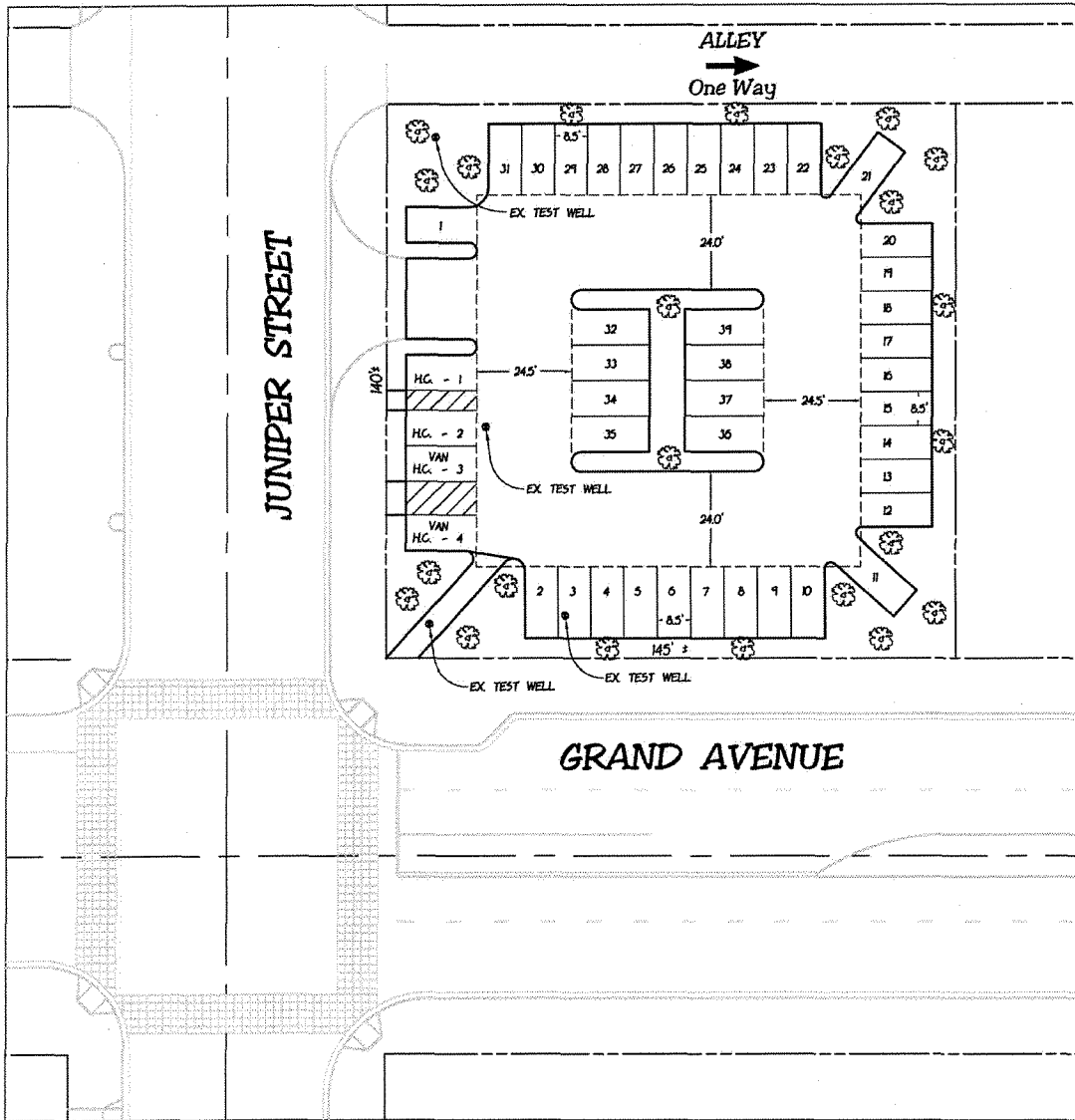


Edward N. Domingue, P.E.  
Director of Engineering Services



Jo Ann Case  
Economic Development & Real Property Manager

Purchase of Juniper & Grand Property  
Staff Report  
Attachment "A"







10.  
RESOLUTION NO. CDC 2010-08

A RESOLUTION OF THE COMMUNITY DEVELOPMENT COMMISSION APPROVING AN AGREEMENT FOR ACQUISITION OF REAL PROPERTY TO PURCHASE THREE VACANT LOTS LOCATED AT JUNIPER STREET AND EAST GRAND AVENUE, AND TO AUTHORIZE THE CHAIR AND SECRETARY TO EXECUTE ALL DOCUMENTS NECESSARY TO COMPLETE THE ACQUISITION AND ACCEPT THE GRANT DEED

(APN 229-432-24, 25, 26)

WHEREAS, California Health and Safety Code Section 33391 allows for the purchase of any real property for the purposes of redevelopment; and

WHEREAS, the Community Development Commission ("CDC") of the City of Escondido, California, has Redevelopment Plan objectives to eliminate blight and to improve the economic climate within the project area; and

WHEREAS, the owners of the three vacant lots located at Juniper Street and East Grand Avenue (the "Property") have agreed to sell the Property for an agreed-upon purchase price of \$609,000 that was determined to be a just price as demonstrated on Exhibit "B" attached hereto and incorporated by this reference; and

WHEREAS, the Property is located inside of the redevelopment project area as delineated in the Redevelopment Plan adopted in 1984; and

WHEREAS, the use of redevelopment funds for acquisition of this Property will provide significant benefit to the redevelopment project area by transforming a vacant,

blighted property into a public parking lot as an interim use, with future plans to develop the Property into a commercial or mixed-use development; and

WHEREAS, the CDC desires at this time and deems it to be in the best public interest to approve an allocation of Redevelopment funds, by processing a budget adjustment attached hereto as Exhibit "C," and incorporated by this reference, in an amount not to exceed \$609,000 for acquisition of the Property and approximately \$1,300 for associated escrow costs;

NOW, THEREFORE, BE IT RESOLVED by the Community Development Commission of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the use of redevelopment funds for acquisition of this Property will provide significant benefit to the redevelopment project area bringing additional public parking for Downtown Escondido businesses and customers and to improve a blighted property.
3. That an allocation of Redevelopment funds in an amount not to exceed \$609,000 for acquisition of the Property and \$1,300 for estimated escrow costs, is hereby approved.
4. That the Chair and Secretary are authorized to execute on behalf of the Community Development Commission, an Agreement for Acquisition of Real Property with Carl and Katherine Kahn, in substantially the form attached to this Resolution as

Exhibit "A," incorporated by this reference, and subject to final approval as to form by the City Attorney.

**PROJECT:** Juniper & Grand Three Vacant Lots  
**A.P.N.:** 229-432-24, 25, 26  
**ADDRESS:** 304, 314 & 316 E. Grand Avenue  
112-118 N. Juniper Street  
**OWNER:** CARL KAHN & KATHERINE  
KAHN

**AGREEMENT FOR ACQUISITION OF REAL PROPERTY**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and between the COMMUNITY DEVELOPMENT COMMISSION (CDC) of the City of Escondido, California a municipal corporation and (hereinafter called "Buyer"), and the undersigned owner Carl Kahn and Katherine Kahn (hereinafter called "Seller"), for the acquisition, by Buyer, of certain real property as hereinafter set forth.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **AGREEMENT TO SELL AND PURCHASE.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement, all that certain real property (hereinafter called "Property") situated in the City of Escondido, County of San Diego, State of California, and legally described on Exhibit "A" attached hereto and by reference made a part hereof.
  
2. **PURCHASE PRICE.** The total purchase price, payable in cash through escrow, shall be Six Hundred and Nine Thousand Dollars (\$609,000.00) ("Purchase Price"). Seller affirms the property is currently vacant, and that there are no persons at the property who are subject to California statutory requirements for relocation assistance. Therefore, Buyer waives any right(s) Buyer may be entitled to under the State of California Relocation Assistance Law or the Federal Uniform Relocation Assistance Act.
  
3. **CONVEYANCE OF TITLE.** Seller agrees to convey by Grant Deed to Buyer marketable fee title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, covenants, conditions, restrictions, and taxes, EXCEPT:
  - a. Taxes as per Section 4986 of the Revenue and Taxation Code.
  - b. Public and quasi-public utility, alley and street easements and rights-of-way record.
  
4. **ESCROW.** Buyer agrees to open an escrow in accordance with this Agreement at Chicago Title Company, with Lorraine Martin V.P. Escrow Manager, hereinafter called "Escrow Agent."

This Agreement constitutes the joint escrow instructions of Buyer and Seller. The Escrow Agent, to whom these instructions are delivered, is hereby empowered to act under this Agreement.

Seller will execute and deposit with Escrow Agent, a deed, to Buyer, similar to Exhibit "A" of this Agreement. As soon as the Escrow Agent has received the Seller's deed, but not earlier than thirty days prior to the scheduled escrow closing date, Buyer agrees to deposit, with the Escrow Agent, the Purchase Price for the Property. Seller and Buyer both agree to deposit, with Escrow Agent, any additional instruments as are necessary.

Insurance policies for fire or casualty are not to be transferred, and Seller shall cancel his/her own policies after close of escrow.

All funds received in this escrow shall be deposited with other escrow funds in a general escrow account(s) (may be transferred to any other such trust escrow account or accounts) and all disbursements shall be made by check of said Escrow Agent.

Taxes for the fiscal year in which this escrow closes shall be cleared and paid by Seller in the manner required by Section 4986 of the Revenue and Taxation Code, if unpaid at the close of escrow. This provision will apply to escrows closing between July 1 and October 20.

**ESCROW AGENT IS AUTHORIZED TO:**

- a. Pay and charge Seller for any unpaid and/or delinquent taxes and any penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds against the property;
- b. Pay and charge Seller for any amount necessary to place title in the condition necessary to satisfy paragraph 3 of this Agreement;
- c. Pay and charge Buyer for any usual escrow fees, charges, and costs payable under paragraph 6 of this Agreement.
- d. Disburse funds and deliver deed when conditions of this escrow have been fulfilled by Buyer and Seller.

If this escrow is not in condition (except for deposit of money by Buyer, which shall be made upon demand of Escrow Agent) to close within sixty (60) days from date of these instructions, any party who then shall have fully complied with these instructions, may, in writing, demand the return of his money or Property; but if none have complied, no demand for return thereof shall be recognized until five days after Escrow Agent shall have mailed copies of such escrow instructions, and if any objections are raised within said five (5) day period, Escrow Agent is authorized to hold all papers or documents until instructed by a court of competent jurisdiction or mutual instructions. If no demands are made, proceed with closing this escrow as soon as possible.

All time limits within which any matter herein specified is to be performed may be extended by mutual agreement of the parties hereto. Any amendment of, or supplement to, any instructions must be in writing.

Responsibility of the Escrow Agent under this Agreement is expressly limited to paragraphs 1-6 inclusive and to its liability under any policy of title insurance issued in regard to this transaction.

5. TITLE INSURANCE POLICY. Escrow Agent, following recording of deed to Buyer, shall provide Buyer with a ALTA Policy of Title Insurance in the amount of \$609,000 showing title to Property vested in Buyer subject only to the exceptions set forth in paragraph 3 and the printed exceptions and stipulations in said policy.
6. ESCROW FEES, CHARGES AND COSTS. Buyer shall pay: escrow fees incurred in this transaction; Buyer's title insurance premium charge; and documentary stamp tax, if required. Said escrow charges shall not include: reconveyance fees, trustees' fees; forwarding fees; or prepayment charges for any full or partial reconveyance or full or partial release of any mortgage or deed of trust. Pursuant to California Code of Civil Procedure Section 1265.240, no prepayment penalty is required to be paid where property is required for a public use.
7. PERMISSION TO ENTER ON PREMISES. It is mutually understood and agreed by and between the parties hereto that notwithstanding other provisions of this contract the right of possession and use of the subject property by the Buyer, including the right to remove and dispose of improvements shall commence upon execution of this Agreement by the Seller, so that the amount shown in paragraph 2 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.
8. LEASES. Seller warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the Seller further agrees to hold the Buyer harmless and reimburse the Buyer for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant or grantor for a period exceeding one month.
9. MAINTENANCE. During escrow, Seller will maintain the property in good condition and repair.
10. NOTICES. Any notice, which either party may desire to give to the other party, must be in writing and may be given by personal delivery or by mailing the same by registered or certified mail, return receipt requested, to the party to whom the notice is directed at the address of such party set forth at the end of this Agreement, or such other address as the parties may hereinafter designate by giving notice in the manner provided for herein. Any notice given by mail shall be deemed given forty-eight (48) hours after such notice is deposited in the United States mail, addressed as provided, with postage fully prepaid.
11. COST OF SUIT. In the event of any litigation, arbitration, any quasi-judicial, or administrative proceeding between the parties herein to: (1) enforce any provision of this Agreement; (2) enforce any remedy available under default within this Agreement, or; (3) seek a declaration of the rights of either party on each party's respective interests in the

Property, the prevailing party shall be entitled to recover from the other such attorney's fees, and costs as may be reasonably incurred.

12. RIGHT OF ENTRY. Seller hereby grants to Buyer or Buyer's authorized agents permission to enter upon Seller's remaining property to construct any necessary slopes, grades, drainage structures, utility service connections or relocations, and/or driveway conformances.
13. COUNTERPARTS. This Agreement may be executed in counterparts, each of which so executed shall irrespective of the date of its execution and delivery be deemed an original, and all such counterparts together shall constitute one and the same instrument.
14. The terms, conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns, and successors of the parties hereto.

This Agreement contains the entire agreement between the parties, and neither party relies upon any warranty or representation not contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year set forth below.

SELLER:  
CARL KAHN & KATHERINE KAHN

MAILING ADDRESS OF SELLER:  
Carl & Katherine Kahn  
16411 Fox Cross Drive  
Granger, IN 46530

Dated : \_\_\_\_\_, 2010 BY: \_\_\_\_\_

Dated : \_\_\_\_\_, 2010 BY: \_\_\_\_\_

BUYER: COMMUNITY DEVELOPMENT COMMISSION of the CITY OF ESCONDIDO, a municipal corporation

MAILING ADDRESS OF BUYER:  
City of Escondido  
Attn: Real Property  
201 North Broadway  
Escondido, CA 92025

Dated : \_\_\_\_\_, 2010 BY: \_\_\_\_\_  
BY: Lori Holt Pfeiler, Mayor

Dated : \_\_\_\_\_, 2010 BY: \_\_\_\_\_  
BY: Marsha Whalen, City Clerk

Authorizing Resolution No. CDC R2010-08

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY  
JEFFREY R. EPP, City Attorney

By: \_\_\_\_\_



RECORDING REQUESTED BY  
the CITY OF ESCONDIDO  
When recorded mail to:  
City Clerk  
City of Escondido  
201 N. Broadway  
Escondido, CA 92025

APN 229-432-24, 25, 26

No recording fee required; this document exempt from fee  
pursuant to Section 27383 of the California Government Code

ESCONDIDO DOC NO. M-15-10

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**COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF ESCONDIDO  
GRANT DEED**

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This deed exempt from tax - Section 11922 of the California Revenue and Taxation Code

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FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED

**CARL KAHN & KATHERINE KAHN, GRANTORS**

hereby grants, conveys and dedicates to

**COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF  
ESCONDIDO, a municipal corporation, GRANTEE**

the real property in the City of Escondido, County of San Diego, State of California, described on  
the attached Exhibit "1".

Dated: \_\_\_\_\_

GRANTORS

\_\_\_\_\_  
Carl Kahn

\_\_\_\_\_  
Katherine Kahn

## EXHIBIT "1"

PARCEL 1: APN 229-432-25

LOTS 1 & 2 IN BLOCK 65 OF ESCONDIDO, IN THE CITY OF SAN DIEGO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 336, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 10, 1886.

PARCEL 1: APN 229-432-24 & 26

LOTS 3, 4, & 5 AND THE WESTERLY 18 FEET OF LOT 6, IN BLOCK 65 OF ESCONDIDO, IN THE CITY OF SAN DIEGO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 336, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 10, 1886.

END OF LEGAL DESCRIPTION



CITY OF ESCONDIDO DOC. NO. M-15-10

TITLE OR TYPE OF DOCUMENT: GRANT DEED

GRANTOR: Carl Kahn & Katherine Kahn

GRANTOR'S ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

On \_\_\_\_\_ (date) before me, \_\_\_\_\_,  
a Notary Public, personally appeared

\_\_\_\_\_, (name(s) of  
signers)

\_\_\_ personally known to me - OR - \_\_\_ 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 acknowledge 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.

Witness my hand and official seal.

\_\_\_\_\_  
Signature of Notary

CITY ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed by the attached deed or grant, dated as shown hereon and from the persons named (Grantor) to the Community Development Commission of the City of Escondido, a municipal corporation, is hereby accepted pursuant to Ordinance Number 97-14 of the City Council of the City of Escondido, dated July 2, 1997, and the Grantee consents to recordation thereof by said Grantees duly authorized officer.

\_\_\_\_\_  
Real Property Manager or Agent

City of Escondido

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**SUMMARY OF THE BASIS FOR THE AMOUNT  
ESTABLISHED AS JUST COMPENSATION**

(Accompanying offer made pursuant to Government Code § 7267.2)

The following is a summary of the basis for the amount that the Community Development Commission of the City of Escondido (CDC) established as just compensation, which amount was derived from an appraisal as approved by the CDC. The appraisal was made in accordance with accepted valuation principles and procedures. The Sales Comparison Approach was used to value the identified larger parcel and the property rights to be acquired.

**BASIC PROPERTY DATA**

<b>Owner:</b>	Carl Kahn & Katherine Kahn 16411 Fox Cross Drive, Granger, IN 46530
<b>Subject Property Address:</b>	304, 314 & 316 E. Grand Avenue & 112-118 Juniper Street, Escondido, CA 92025
<b>Assessor Parcel Number:</b>	3 lots: 229-432-24, 25, 26
<b>Size of Parcel:</b>	apprx. 21,000 square feet (.48 acre)
<b>Present Use:</b>	Vacant Land
<b>Highest and Best Use:</b>	Mixed-use retail ground floor & office and/or residential above
<b>Larger Parcel Interest Valued:</b>	Fee simple.
<b>Date of Valuation:</b>	Sales Comparables taken from 2007-2010

City of Escondido

**Applicable Zoning:**

Downtown Specific Planning Area (S-P): The subject property is within the Park View District of Escondido's Downtown Redevelopment Area. The planning area covers approximately 460 acres, extending from Interstate 15 and West Valley Pkwy. to Palomar Hospital on the East. A map of the area can be found in the Interim Downtown Specific Plan. Allowed uses in the Historic Downtown Retail Core Area District include general retail, eating and drinking establishments, home furnishings, specialty food, financial institutions, travel agencies, barbers/beauty shops, certain specialty services, galleries, museums, art studios, theaters and residential above the ground floor.

**Improvements:**

The subject property has no structures. The vacant lots do have some decomposed gravel on them and monitoring wells for polluted ground water.

**Interest to be Acquired:**

Fee.

**Property to be Acquired:**

The fee acquisition is made up of three lots with a combined area of 0.48 acres, and is rectangular in shape. Parcel maps, confirmed a total frontage of 150 feet and a depth of 140 feet which would equal 21,000 square feet.

**BASIS OF SALES COMPARISON**

**Sales Comparison Approach:**

Reconciled "As Is" Fee Simple Value. See attached summary of land sales.

**Reproduction/Replacement Cost Analysis:**

Not applicable.

**Income Analysis:**

Not applicable, intended use for a public parking lot.

**SUMMARY OF VALUE CONCLUSIONS**

Value of the 3 lots:

City of Escondido

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Land & Improvements	\$609,000	
Other	\$0	
Total		\$609,000

City of Escondido

**COMPARABLES STUDY SOURCES:** Very few comparable sales have been transacted since 2008, therefore comparables were taken from various sources including:

- 1. July 2008 Appraisal by Anderson & Brabant for parking lot at 115 W. Second Avenue
- 2. Similar properties for sale as listed on the Escondido PropertyFinder in May 2010

**PREPARED BY:**

- 1. Anderson & Brabant, Inc.  
353 W. Ninth Avenue  
Escondido, CA 92025  
760-741-4146

- 3. Escondido PropertyFinder Listings  
[www.escondido.org/econdev](http://www.escondido.org/econdev)

**NAME:**

- 1. David C. Ottley, MAI & Gilbert F. Kunkel, MAI  
CA Certified General Appraisers
- 4. Jo Ann Case, Economic Development & Real Property Manager

**DATE:**

- 1. July 11, 2008
- 2. May 18, 2010

**DEFINITION OF FAIR MARKET VALUE**

*Fair Market Value* is defined, by California law, as the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

**DEFINITION OF HIGHEST AND BEST USE**

*Highest and best use* is defined as the reasonably probable and legal use of land that is legally permissible, physically possible, and financially feasible resulting in the highest value. Highest



City of Escondido

and best use analysis is used in the appraisal process to identify comparable properties and, where applicable, to determine whether the existing improvements should be retained, renovated, or demolished, if applicable.

**SUMMARY OF LAND SALES**

Datum No.	Location	APN	Date	Land Size/ Bldg Size in sq feet	Use at Time of Sale	Price Total Price/sq ft Price for Land
1	115 W Second	233-072-06	07-08	14,000 / 0	Parking Lot	\$462,000/\$33
2	304-316 E Grand Ave Subject Property Most Recent Previous Sale	229-432-24, 25 & 26	12-07	21,000/0	Vacant Land	\$884,000/\$44
3	120 Woodward	229-291-21 & 23	07-09	15,564/2,897	Small Office Bldg	\$763,000/\$49
4	222 W Mission	229-170-76	06-09	68,389/0	Vacant Land	\$1.9 mil/\$28
5	2690 S Escondido Bl Most Recent Sale & Current For sale Price	238-152-16	10-07	21,257/0	Vacant Land	\$460,000/\$22 <u>Current asking \$</u> \$479,000/\$24
6	304-316 E Grand Ave (Subject Property Based on Asking Price)	229-432-24, 25 & 26	05-10	21,000/0	Vacant Land	Asking: \$675,000/\$32
	<b>Agreed Upon Sale Price</b>					<b>\$609,000/\$29</b>



**CITY COUNCIL**

For City Clerk's Use:

**APPROVED**       **DENIED**

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.:**   //  

**Date:** **September 1, 2010**

**TO:**           Honorable Mayor and Members of the City Council

**FROM:**       Edward N. Domingue, Director of Engineering Services  
              Jo Ann Case, Economic Development & Real Property Manager

**SUBJECT:**   Lease Agreement Between the City of Escondido and Dr. Stanley Schaeffer

**RECOMMENDATION:**

It is requested that Council adopt Resolution No. 2010-139 approving a five-year lease agreement for a dental office located at 210 S. Broadway, in the City of Escondido.

**FISCAL ANALYSIS:**

The proposed lease rate is based on a gradually increasing rent over a period of three years, in order to take it to a market rate. A market rate rent study determined the rent should be \$1.35 per square foot without taxes, insurance, utilities and maintenance. The proposed lease recommends these terms: the lessee would pay 70% (\$.945 per square foot) in year-one, 85% (\$1.15 per square foot) in year-two and 100% (\$1.35 per square foot) in year-three. For years four and five, a 3% annual increase is proposed because \$1.35 is a current rate, at the bottom end of the market, for comparable office properties in the vicinity of Downtown.

**PREVIOUS ACTION:**

The City Council had approved a new lease agreement with Dr. Schaeffer on June 16, 2010, by adopting Resolution 2010-105. The lease rates shown in that lease agreement were incorrect and did not reflect the rates stated in the fiscal analysis shown on the staff report. The staff report's fiscal analysis rates were correct. Therefore, the lease presented with this Resolution 2010-139 has the corrected lease rates. This is a clean-up item.

**BACKGROUND:**

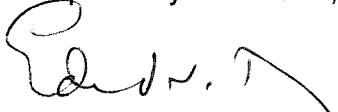
The City purchased properties adjacent to the Escondido Main Library for future library expansion. The buildings on these properties had several tenants with pre-existing leases that were negotiated with the former property owners. Dr. Schaeffer's lease was one of them. He shares the building with another tenant.

Lease of City Property to Dr. Schaeffer  
September 1, 2010  
Page 2

In addition to the rate correction in section 7 A. & B., Dr. Schaeffer requested a clarification in the lease. This request concerned who the responsible parties would be should accidental major damage occur to the building's exterior. The City Attorney's office has reviewed his request for this clarification, and they feel it can be accommodated without any financial impact or liability to the City. This lease, which would be adopted by Resolution 2010-139, shows the modifications to sections 4.1 & 13.2.

Therefore, Real Property asks that Council approve the corrected and modified lease.

Respectfully submitted,



Edward N. Domingue, P.E.  
Director of Engineering Services



Jo Ann Case  
Economic Development &  
Real Property Manager

RESOLUTION NO. 2010-139

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A CORRECTED AND MODIFIED LEASE AGREEMENT FOR OFFICE SPACE AT 210 SOUTH BROADWAY IN THE CITY OF ESCONDIDO

(Dr. Stanley Schaeffer)

WHEREAS, certain real property located at 210 South Broadway has been leased to Dr. Stanley Schaeffer for a dental office; and

WHEREAS, Dr. Stanley Schaeffer wishes to continue leasing the office space for his dental office; and

WHEREAS, it is in the City's best interest to implement a graduated monthly rental rate over the five-year term of the new lease; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the Lease Agreement ("Agreement") with Dr. Stanley Schaeffer.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. The Mayor and City Clerk are authorized to execute, on behalf of the City, an Agreement with Dr. Stanley Schaeffer, in substantially the form attached to this

resolution as Exhibit "A," and incorporated by this reference, and subject to final approval as to form by the City Attorney.

**CITY OF ESCONDIDO  
LEASE AGREEMENT**

PREMISES:

210 South Broadway  
Escondido, CA 92025  
APN 233-091-02

LESSEE:

Stanley Schaeffer

TERM: Five (5) Years  
July 1, 2010 – June 30, 2015

**CITY OF ESCONDIDO**  
**LEASE AGREEMENT INDEX**

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Attachment Premises  
 “A”





CITY OF ESCONDIDO  
LEASE AGREEMENT

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Between: CITY OF ESCONDIDO  
a municipal corporation  
201 N. Broadway  
Escondido, California 92025  
("CITY")

And: Stanley Schaeffer  
210 South Broadway  
Escondido, CA 92025  
("LESSEE")

WITNESS THAT WHEREAS:

A. CITY desires to rent to LESSEE and LESSEE desires to rent from CITY certain public property located at 210 South Broadway, for the purpose of operating a dental practice. The Property is described in Attachment A, which is incorporated by this reference.

NOW THEREFORE, it is mutually agreed by and between CITY and LESSEE as follows:

1. DEFINITION OF TERMS. The following words in this Lease Agreement shall have the significance attached to them in this Clause unless otherwise apparent from their context.
  - a. "Lease" means this Lease Agreement.
  - b. "Premises" means the real property and all improvements thereon, described in Attachment A.
  - c. "Lease Administrator" means the City of Escondido–Real Property Agent, or upon written notice to LESSEE, such other person as shall be designated from time to time by CITY.

d. "LESSEE" means Stanley Schaeffer, and may also include his assigns or successors-in-interest subject to the terms and limitations set forth in Paragraph 16.

2. ADMINISTRATION. This Lease shall be administered on behalf of CITY by the Lease Administrator, whose address is:

City of Escondido  
Engineering – Real Property  
201 North Broadway  
Escondido, CA 92025

and on behalf of LESSEE by Stanley Schaeffer, whose address is:

210 South Broadway  
Escondido, CA 92025

3. TERM. The term of this Lease shall be five (5) years, commencing on July 1, 2010.

4. TERMINATION OF LEASE.

4.1 Each party shall have the right to terminate this Lease without cause for any reason by giving one-hundred and twenty (120) days prior written notice to the other party. Each party shall also have the right to terminate this Lease with thirty (30) days advance written notice to the other party pursuant to Section 13.2 herein.

4.2 CITY shall have the right to terminate this Lease by giving seven (7) days prior written notice to LESSEE for any of the following events:

4.2.1 LESSEE'S failure to comply with the following clauses in this Lease:

Alterations, Paragraph 14

Use, Paragraph 15

Occupancy and Assignment, Paragraph 16

Conduct, Paragraph 17

Insurance, Paragraph 22

Americans with Disabilities Act (ADA), Paragraph 30

4.2.2 If the CITY discovers at any time during the lease term that the LESSEE or any other party has used, is using, or will use the Premises in an

unlawful manner or for an unlawful purpose, or in any manner that is inconsistent with any provision of this Lease.

5. OPTIONS TO RENEW. Not applicable to this Lease.

6. VACATION OF PREMISES.

6.1 Upon termination of this Lease for any reason, LESSEE shall peaceably vacate and deliver the Premises to CITY in the same condition as LESSEE found them upon his acceptance of the Premises hereunder, excepting ordinary wear and tear and conditions caused by acts of God.

6.2 Upon such termination, LESSEE shall immediately:

6.2.1 Arrange and pay for the disconnection of all utilities and services ordered by LESSEE;

6.2.2 Provide a written statement to the Lease Administrator of LESSEE'S new address for purpose of refunding monies, if any, due LESSEE under this Lease; and

6.2.3 Deliver any keys for the Premises to the Lease Administrator or send said keys by certified mail to the address stated in Paragraph 2 above.

7. RENT. In consideration of the possession and use of the Premises, LESSEE shall deliver and pay rent to CITY during the term of this Lease as follows:

A. \$1,595 per month from July 1, 2010 through June 30, 2011;

B. \$1,937 per month beginning July 1, 2011 through June 30, 2012;

C. \$2,252 per month beginning July 1, 2012 through June 30, 2013;

D. \$2,319.56 per month beginning July 1, 2013 through June 30, 2014;

E. \$2,389.15 per month beginning July 1, 2014 through June 30, 2015.

All rental payments shall be due on or prior to the 5<sup>th</sup> day of each month.

8. LATE PAYMENT. Rental payments received after the 15<sup>th</sup> day of any month will be charged an additional 20% late payment fee.

9. COST OF LIVING ADJUSTMENT. Not applicable to this Lease.
10. SECURITY DEPOSIT. No security deposit shall be required under this Agreement.
11. UTILITIES PAYMENTS. LESSEE agrees to provide and pay for all utilities and services necessary for the occupancy and use of the Premises, including, but not limited to: gas, water, electricity, trash pickup, janitorial costs, any and all landscaping costs, sewage charges or septic service, telephone, television and internet.
12. TAXES, ASSESSMENTS, AND FEES.
- 12.1 The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in LESSEE, LESSEE shall pay all personal property taxes levied on such interest. LESSEE shall be responsible for the payment of, and shall pay before delinquent, all taxes, assessments, and fees assessed or levied upon LESSEE, on said Premises or any interest therein, on any buildings, structures, machines, appliances, or other improvements of any nature whatsoever, or on any interest therein.
- 12.2 LESSEE further agrees not to allow such taxes, assessments, or fees to become a lien against said Premises or any improvement thereon. Nothing herein contained shall be deemed to prevent or prohibit LESSEE from contesting the validity of amount of any such tax, assessment, or fee in any manner authorized by law.
13. ACCEPTANCE AND MAINTENANCE.
- 13.1 LESSEE hereby acknowledges that LESSEE has inspected the Premises, that LESSEE accepts said Premises "as is" and "where is."
- 13.2 LESSEE agrees to take good care of the Premises and all improvements, alterations, fixtures, and appurtenances thereon. LESSEE agrees and understands that CITY will not be responsible for any repairs, whatsoever, associated with the Premises. In the event of damage that renders the Premises uninhabitable or otherwise unfit for the use described in Section 15 herein, as reasonably determined by either party, LESSEE will have the option of repairing said damage at LESSEE's sole cost and expense. In the event LESSEE refuses to repair the Premises as needed, CITY and LESSEE shall have the right to cancel this Lease upon thirty (30) days written notice to the other party.

14. ALTERATIONS.

- 14.1 LESSEE shall not paint, alter, cut, add to, or otherwise change the appearance, structure, or condition of the Premises without the prior written consent of the Lease Administrator and only after obtaining applicable permits.
- 14.2 Any improvements made with the consent of the Lease Administrator shall become a fixture to the realty and shall remain on and be surrendered with the Premises upon termination of this Lease.
- 14.3 Noncompliance by LESSEE with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

15. USE. LESSEE agrees to use the Premises as follows:

- 15.1 As office space to be used for operating a dental practice , in accordance with the provisions and requirements contained in any permits required by the City of Escondido Planning Division. The office space is for LESSEE and LESSEE'S staff and patients. LESSEE shall not use, nor permit said Premises, nor any part thereof, to be used for any purpose or purposes other than the purpose or purposes herein described, without the prior express written consent of CITY.
- 15.2 LESSEE shall not use, nor permit the use of, the Premises other than as described in Paragraph 15.1 above. In any case where LESSEE is, or should reasonably be, in doubt as to the propriety of any particular use, LESSEE may request, and will not be in breach or default if LESSEE abides by, the written determination of the Lease Administrator that such use is or is not permitted.
- 15.3 Noncompliance by LESSEE with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

16. OCCUPANCY, ASSIGNMENT AND SUBLETTING. The Premises shall only be occupied by LESSEE except with prior express written consent of the Lease Administrator. LESSEE may not assign this Lease or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person except employees, agents and guests of LESSEE, to use or occupy the Premises or any part thereof, without the prior express written consent of the Lease Administrator in each instance. A consent to assignment, subletting, occupation, or use by any other person shall

not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the prior express written consent of the Lease Administrator. The Lease Administrator's approval shall not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community. LESSEE'S noncompliance with this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

17. CONDUCT.

17.1 LESSEE and guests of LESSEE shall at all times conduct themselves in a quiet and dignified manner so as to cause no annoyance or inconvenience to neighbors of LESSEE.

17.2 LESSEE shall not violate, or permit the violation of, any CITY or County ordinance, or state or federal law, in or about the Premises.

17.3 Noncompliance by LESSEE with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

18. PETS. No pets or livestock of any kind may be kept on the Premises without the prior written consent of the Lease Administrator.

19. NOTICES. Any notice required or permitted to be given by this Lease must either be personally served on the other party or served by certified mail, return receipt requested, to the addressee. Notices served by mail shall be sent to the address listed above in Paragraph 2. A change of either party's address must also be immediately served in the manner described above.

20. RIGHT OF INSPECTION. CITY reserves the right for its agents or employees to enter upon and inspect the Premises at any reasonable time to ascertain if LESSEE is complying with the provisions of this Lease.

21. RIGHT TO SHOW PREMISES. CITY reserves the right, during the last sixty (60) days of this Lease, or any extension thereof, to conduct an "open house" of the Premises in order to facilitate re-renting or selling the Premises. Said "open house" shall not exceed four hours

total duration (maximum of two separate days), and when possible, to be scheduled from 3 p.m. to 5 p.m., Monday through Friday.

22. INSURANCE.

22.1 LESSEE must have insurance in the following amounts at all times during this Agreement:

22.1.1 General liability insurance with at least \$1 Million combined single-limit coverage per occurrence for bodily injury and property damage; and

22.1.2 Automobile liability insurance of \$1 Million combined single-limit per accident for bodily injury and property damage; and

22.1.3 Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship

22.2 Each insurance policy required above must be acceptable to the City Attorney:

22.2.1 Each policy must name the CITY specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy.

22.2.2 Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.

22.2.3 All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.

22.3 LESSEE agrees to deposit with CITY, on or before the effective date of this Lease, one Certificate of Insurance for each of the policy or policies necessary to satisfy the insurance provisions of this Lease and to keep such insurance in effect during the entire term of this Lease. Said Certificate of Insurance shall be reviewed by, and acceptable to, the City Attorney, prior to commencement of the Lease Term. LESSEE will also deposit with the CITY within sixty (60) days of the Effective

Date of this Lease, an Additional Insured Endorsement naming CITY specifically and separately as a “additional insured”, with the exception of the worker’s compensation policy. The appropriate endorsements described in Paragraph 22.2 above shall follow within sixty (60) days. Noncompliance by LESSEE with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

- 22.4 CITY shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the Lease Administrator, the insurance provisions in this Lease do not provide adequate protection for CITY and for members of the public using the Premises, CITY may require LESSEE to obtain insurance sufficient in coverage, form and amount to provide adequate protection from and against the kind and extent of risks which exist or are foreseeable at the time a change in insurance is required. CITY’S requirements shall be reasonable, but shall be designed to assure adequate protection of the CITY’S interests. The Lease Administrator shall notify LESSEE in writing of changes in the insurance requirements and, if LESSEE does not deposit with CITY within sixty (60) days of receipt of such notice a new Certificate of Insurance for each policy or policies of insurance incorporating such changes, this Lease shall be deemed in default without further notice to LESSEE and may be forthwith terminated by the Lease Administrator, pursuant to Paragraph 4.2 above.
- 22.5 The procuring of such required policy or policies of insurance shall not be construed to limit LESSEE’S liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, LESSEE shall be obligated for the full and total amount of any damage, injury or loss attributable to any act or omission of it or its agents, customers or guests in connection with this Lease or with use or occupancy of the Premises.
- 22.6 Noncompliance by LESSEE with any provision of this Paragraph 22 shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.
23. INDEMNIFICATION. LESSEE shall defend, indemnify, and hold harmless CITY, its officers, agents, and employees from and against any and all claims, demands, and liabilities for loss of any kind or nature which CITY, its officers, agents, or employees may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected



with this Agreement or with the occupancy and use of the Premises by LESSEE, its invitees, visitors, or any other persons whatsoever. LESSEE further agrees to pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorney's fees incurred by CITY on account of any such claims, demands, or liabilities. However, the provisions of this Agreement shall not be construed to indemnify CITY for claims or acts arising from CITY'S sole negligence.

24. ATTORNEY'S FEES, COSTS AND EXPENSES. In the event litigation or other proceedings are required to enforce or interpret any provision of this Lease, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.
25. NONDISCRIMINATION. LESSEE herein covenants that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of physical or mental disabilities, race, color, creed, religion, sex, marital status, national origin or ancestry in the use, occupancy, tenure or enjoyment of the leased Premises. LESSEE shall not establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, or use of occupancy by customers, tenants or vendees in the leased Premises.
26. SUPERSEDURE. This Lease, upon becoming effective, shall supersede any leases or rental agreements heretofore made or issued for the Premises between the CITY and LESSEE.
27. HAZARDOUS AND/OR CONTAMINATED SOIL AND MATERIAL. LESSEE will not place or permit to be placed materials and/or contaminated soils on the Premises which under federal, state, or local law, statute, ordinance, or regulations require special handling in collection, storage, treatment, and/or disposal. LESSEE also hereby covenants and agrees that, if at any time it is determined there are materials and/or contaminated soils located on the Premises which under any environmental requirement require special handling in collection, storage, treatment, or disposal, LESSEE shall notify CITY. Within thirty (30) days after written notice to CITY or from CITY, LESSEE shall commence to take and thereafter diligently complete, at LESSEE'S sole expense, such actions as may be necessary to comply with environmental requirements.

28. LAW TO GOVERN; VENUE. This Lease shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Diego, North County Branch. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Southern District of California, in San Diego.
29. SPECIAL PROVISIONS. LESSEE hereby acknowledges that LESSEE waives all rights to any form of relocation assistance provided for by local, state, or federal law to which LESSEE may be entitled by reason of this Lease.
30. AMERICANS WITH DISABILITIES ACT (ADA). It is the duty of the LESSEE while operating under this Lease to comply with all local, state, and federal laws, including, but not limited to, the Americans with Disabilities Act and to indemnify CITY from any violation of any such laws. Failure to comply with a provision of local, state, or federal law is grounds for the Lease Administrator's immediate termination of this Lease.

IN WITNESS WHEREOF, the parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

CITY OF ESCONDIDO

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

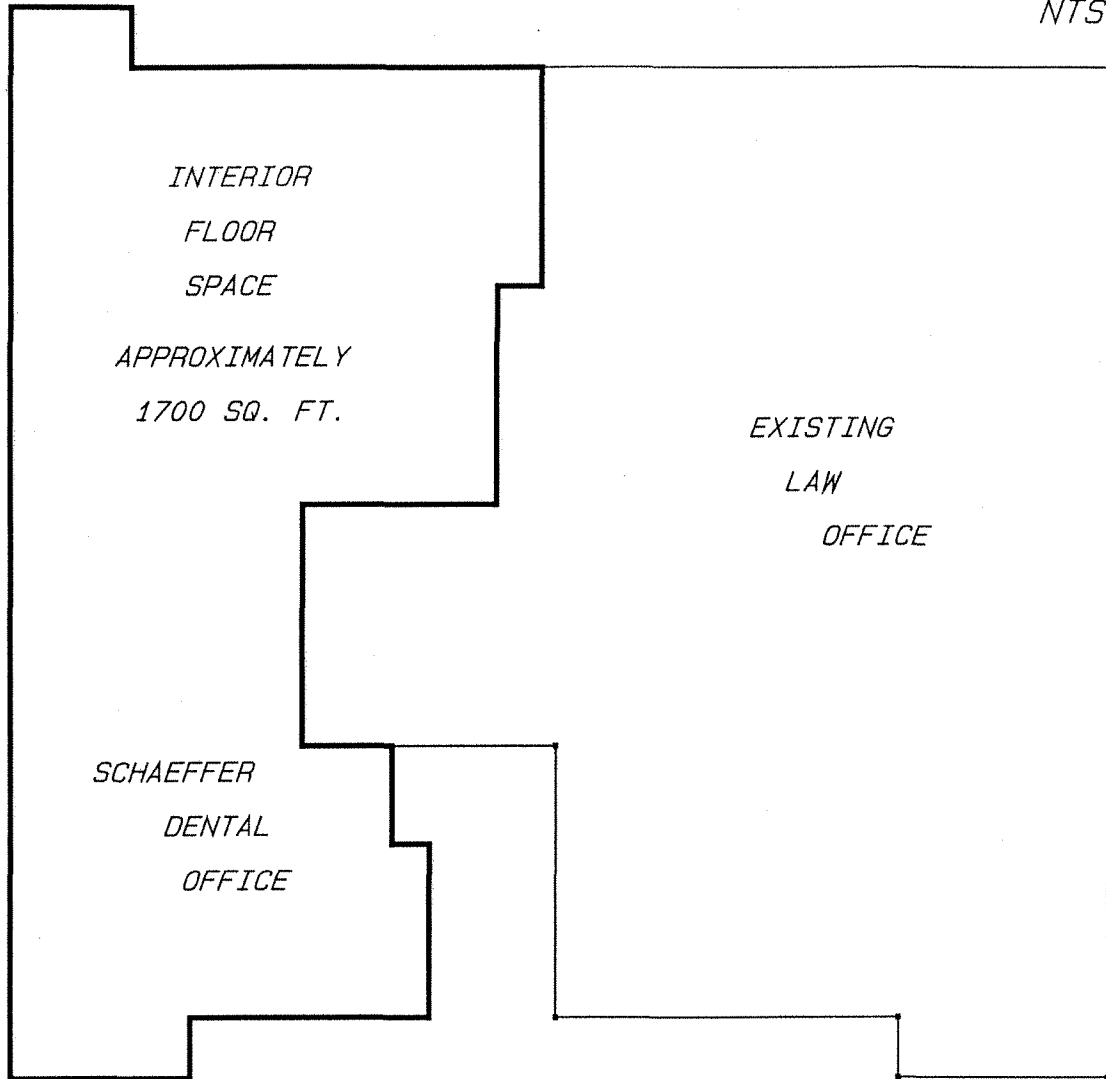
LESSEE

By: \_\_\_\_\_  
Stanley Schaeffer

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY  
Jeffrey R. Epp, City Attorney

By: \_\_\_\_\_

ATTACHMENT 'A'



BROADWAY

Prepared by:

**CITY OF ESCONDIDO  
ENGINEERING SERVICES**

**ENGINEERING SERVICES**

201 North Broadway, CA 92025 (760) 839-4651

SCHAEFFER LEASE SPACE  
210 SOUTH BROADWAY



Date: 6-03-2010

SHEET: 1 OF 1

**CITY COUNCIL**

For City Clerk's Use:

**APPROVED**       **DENIED**

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.:** 12

**Date:** **September 1, 2010**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Edward N. Domingue, Director of Engineering Services  
Anne Marc-Aurele, Real Property Agent

**SUBJECT:** Street Vacation: Portion of Spruce Street adjacent to APN 233-111-16

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2010-138 authorizing the vacation of a portion of Spruce Street and set a date to conduct a public hearing.

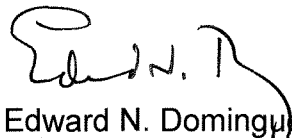
PREVIOUS ACTION:

None

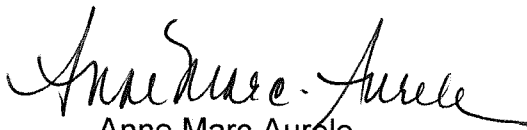
BACKGROUND:

The owner of the subject property located at 422 S. Spruce Street (APN 233-111-16) wishes to process a vacation of right-of-way for a portion of Spruce Street along the frontage. The portion vacated will be a 12-foot strip along the southwesterly boundary. This is excess right of way. The remaining half-width of Spruce Street will be 28 feet. This conforms to City Standards for a residential street.

Respectfully submitted,



Edward N. Domingue, P.E.  
Director of Engineering Services



Anne Marc-Aurele  
Real Property Agent

RESOLUTION NO 2010-138

12.

A RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, TO VACATE AND ABANDON A PORTION OF A PUBLIC STREET, SPECIFICALLY DESCRIBED HEREIN, LOCATED IN THE CITY OF ESCONDIDO, AND SETTING A PUBLIC HEARING TO RECEIVE PROTESTS

(Portion of Spruce Street Adjacent to APN 233-111-16)

(September 1, 2010)

WHEREAS, the City Council of the City of Escondido, California, having received the recommendations of the Director of Public Works and staff, and being fully advised in the premises, finds that it is in the public interest and convenience to order a portion of the hereinafter described street to be vacated;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That it is the intention of the City Council to order that a portion of the public street known Spruce Street be vacated, abandoned and closed to public use. The portion of the public street proposed to be vacated is legally described in Exhibit "A" and depicted on Exhibit "B," both of which are attached to this resolution and are incorporated by this reference.
3. That this street vacation shall be conducted pursuant to the provisions of the Public Streets, Highways and Service Easements Vacation Law, which act is now

incorporated in Part 3, Division 9, commencing at Section 8300, of the Streets and Highways Code of the State of California.

4. That notice is hereby given that the City Council will hear protests made by any person interested in or objecting to the said proposed street vacation at 4:00 p.m. on Wednesday, October 27, 2010, at the City Council Chambers, 201 North Broadway, Escondido, California. Such protests must be in writing and may be filed at any time prior to the hours set for hearing objections to the proposed vacation, and shall state the name or names of persons objecting and the objection in general terms.

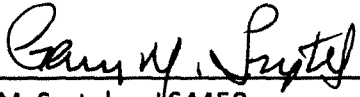
5. That the City Clerk shall cause a copy of this resolution to be published at least once prior to the scheduled hearing on the Street vacation in a newspaper of general circulation, printed and published in the City of Escondido. Sections 4 and 5 of this resolution need not be published.

6. That the Superintendent of Streets of the City of Escondido shall post notices of said proposed street vacation.

# EXHIBIT "A"

## VACATION OF PUBLIC RIGHT-OF-WAY

That portion of the Northeasterly 12 feet of Spruce Street (80 feet wide) in the City of Escondido, County of San Diego, as shown on Map No. 336, filed in the Office of the County Recorder of said San Diego County July 10, 1886 lying Southeasterly of the Southwesterly prolongation of the Southeasterly line of the Northwesterly 2 feet of Lot 1 in Block 108 of Escondido according to said Map No. 336, and lying Northwesterly of a line which is at a right angle from the Northeasterly line of said Spruce Street and which extends Southwesterly from the most Westerly corner of the Southeasterly 70.00 feet of said Lot 1.

  
\_\_\_\_\_  
Gary M. Szytel LS4458

7/6/2010  
Date







## RENT REVIEW BOARD

For City Clerk's Use:

**APPROVED**       **DENIED**

Reso No. RRB \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. RRB \_\_\_\_\_

**Agenda Item No.:** 13  
**Date:** **September 1, 2010**

**TO:** Honorable Chairman and Members of the Rent Review Board

**FROM:** Roni Keiser, Housing Division Manager

**SUBJECT:** Short-Form Rent Increase Application for Five City-owned Escondido Views Mobile Home Park Rental Spaces

### **STAFF RECOMMENDATION:**

- Consider the short-form rent increase application submitted for the City-owned spaces in Escondido Views Mobile Home Park.
- If approved, adopt Rent Review Board Resolution No. 2010-04, granting an increase of seventy-five percent (75%) of the change in the Consumer Price Index, or 2.837% (an average of \$10.50) for the period of December 31, 2007 to December 31, 2009. The application meets the eligibility criteria for submittal of a short-form rent increase application.

### **INTRODUCTION:**

The City of Escondido Community Development Commission ("CDC"), the owner of rental spaces in the Escondido Views Mobile Home Park ("Park"), has filed a short-form rental increase application for five of the eight rental spaces it owns in the Park. The remaining spaces are vacant and not subject to this rent increase.

The Board is asked to accept the staff report, hear public testimony, and make a determination concerning the request in accordance with the Escondido Rent Protection Ordinance and the short-form procedures as outlined in the Rent Review Board Guidelines. The application and the staff report have been made available to the Board for review and consideration prior to the hearing.

### **OWNERSHIP BACKGROUND:**

In 1991, at the urging of residents who wished to purchase their mobilehome park, the CDC purchased the Park, at 2400 W. Valley Parkway. The Park was purchased with the intent to immediately transfer all spaces to individual resident ownership.

By late 1991, the conversion to an air space condominium structure was completed, the Homeowner's Association ("HOA") had been formed, and sales of lots to residents began. Although many residents had committed to purchasing their lot, the number of sales was less than expected. Even considerable State and City low-income housing loan assistance did not increase sales significantly. Declining economic conditions and property values also hurt lot sales. The Housing Division continues in its responsibility for the management and sale of the remaining City-owned lots on behalf of the CDC.

### **THE RENT INCREASE APPLICATION**

The Escondido Views Mobile Home Park is located at 2400 W. Valley Parkway. The Park contains 152 spaces and eight of those spaces are City-owned. Five spaces are subject to the rent increase, and the average monthly space rent for the five occupied spaces is \$370.28. The three remaining spaces are vacant.

Unlike most other applications heard by the Board, the CDC makes this application as owner of specific spaces, rather than as a Park owner. The HOA for the Park is not a party to the application.

The common areas controlled by the HOA include a clubhouse with a kitchen and pool tables, a swimming pool, a spa, and laundry facilities. The Park also has a large children's playground and picnic area. The tenants of the City-owned rental spaces have full access to the community areas of the Park. A portion of the rent collected from the rental spaces goes to pay the HOA fees each month which are currently \$105.00. The Park is a family park, although many seniors live in the Park as well.

In accordance with the short-form policy guidelines, the City is requesting an increase of seventy-five percent (75%) of the change in the San Diego Consumer Price Index (CPI) for the period of December 31, 2007 to December 31, 2009. A seventy-five percent (75%) change in the CPI amounts to 2.837% for the 24-month period of consideration. The average increase requested is approximately \$10.50 per space, per month based on an average base rent of \$370.28.

The previous increase was granted by the Board in December of 2007. Seventy-five percent (75%) of the change in the CPI for the previous application was 1.71%, or an average increase of \$6.22 per space, per month.

### **RESIDENT MEETING AND COMMENTS:**

Individual notices were sent to each affected tenant notifying them of the increase application and the hearing date. In the past, staff scheduled a meeting for the residents

affected by the short-form application to discuss the process and answer questions. Because there were typically no residents in attendance at these meetings, for the fifth time, staff did not schedule a meeting in the Park. Staff sent out the customary letters, the first giving the residents a 30-day notice of the September 1, 2010, hearing, and the second as a 10-day reminder of the upcoming hearing. Staff also encouraged residents with questions or comments to call or write, and staff volunteered to meet in person with anyone in the Park who might be interested. Staff has not received any phone calls or correspondence regarding the rent increase request.

There are no residents in the Park participating in the City of Escondido Rent Subsidy Program.

**HEALTH AND SAFETY CODE INSPECTION:**

Due to the unique structure of the CDC's ownership of the individual spaces, the Code Enforcement Division conducted an inspection for health and safety issues of only the spaces owned by the CDC. The inspection report of the City-owned spaces is attached as Exhibit "A." The CDC, as owner of the spaces, has received a copy of the Code Inspection Report. There were no violations noted on the inspection.

**ADDITIONAL FACTORS AFFECTING THE APPLICATION:**

In conformance with the Rent Review Board Guidelines, the decision of the Board will be finalized by adoption of the Resolution confirming the findings of the Public Hearing. The Notice of Determination will be mailed to the applicant and residents immediately upon adoption of the Resolution. The 90-day notice of any rent increase granted may be sent to the residents upon the adoption of the Resolution.

Respectfully submitted,




Roni Keiser  
Housing Division Manager



**DATE: AUGUST 10, 2010**

**TO: HONORABLE CHAIRMAN AND MEMBERS OF THE RENT CONTROL BOARD**

**FROM: BRIAN GUSTAFSON, CODE ENFORCEMENT MANAGER** 

**SUBJECT: ESCONDIDO VIEWS MOBILEHOME PARK**

The five City owned spaces (managed by City staff) in the Escondido Views Mobilehome Park were inspected on August 10, 2010 as a result of an application for a rent increase having been filed. There were no violations noted during the inspection.

There was no resident meeting held as there was no resident representative for this park and no complaints received.

There were no Code Enforcement cases opened during the past year.

CC: Barbara Redlitz, Director of Community Development  
Michelle Henderson, Rent Control Administration

RESOLUTION NO. RRB 2010-04

A RESOLUTION OF THE ESCONDIDO  
MOBILEHOME RENT REVIEW BOARD  
MAKING FINDINGS AND GRANTING A RENT  
INCREASE FOR ESCONDIDO VIEWS  
MOBILE HOME PARK

WHEREAS, Article V of Chapter 29 of the Escondido Municipal Code is a codification of the Escondido Mobilehome Rent Protection Ordinance ("Ordinance") and provides for mobilehome space rent regulation; and

WHEREAS, the City of Escondido Mobilehome Park Rental Review Board ("Board") is charged with the responsibility of considering applications for rent increases; and

WHEREAS, a short-form rent increase application pursuant to Section 12 of the Rent Review Board Guidelines was filed on July 12, 2010, by the City of Escondido Community Development Commission ("CDC"), the owner of the eight rental spaces in the Escondido Views Mobile Home Park located at 2400 W. Valley Parkway in Escondido. The Application applies to five of the eight City-owned spaces. The remaining spaces are vacant, and not subject to this rent increase; and

WHEREAS, this is the twelfth (12th) rent increase application filed since the Ordinance became effective in 1988. The last rent increase was granted by the Board in Rent Review Board Resolution No. 2007-11 on December 19, 2007, for approximately \$6.22 per space per month; and

WHEREAS, at the time of the current application, the average monthly space rent was \$370.28 for the five spaces affected by the rent increase request. The owner

requested a rent increase in the amount of 75% of the change in the Consumer Price Index ("CPI") for the period December 31, 2007, through December 31, 2009, in accordance with the Rent Review Board short-form policy guidelines. The application estimated this amount to be an average of \$10.50 (2.837%) per space, per month; and

WHEREAS, a notice of the CDC Rent Increase Application was sent to all affected homeowners. All parties were given notice of the time, date and place of the rent hearing before the Board; and

WHEREAS, on August 10, 2010, a Mobilehome Park Rent Control Code Enforcement Inspection Report ("Inspection Report") was completed for the City-owned spaces and is attached as Exhibit "A" and is incorporated by this reference; and

WHEREAS, on September 1, 2010, the Board held its public hearing and after an initial staff presentation, the Board invited testimony from the CDC, residents of the CDC spaces and other residents of the community at large; and

WHEREAS, after all present had been given an opportunity to speak, the hearing was closed. Following an opportunity for discussion among the Board members and clarifying questions to the parties and Staff, the Board voted to grant an average rent increase of \$10.50 per space, per month for the five spaces subject to rent control.

NOW, THEREFORE, BE IT RESOLVED by the Rent Review Board of the City of Escondido, as follows:

1. That the above recitations are true.
2. That the Board has heard and considered all of the reports and testimony presented, and has considered the facts as outlined in the Short-form Guidelines (Guidelines").

3. That following the Guidelines, an increase based on seventy-five percent (75%) of the change in the CPI for San Diego County from December 31, 2007, through December 31, 2009, would amount to 2.837%, which averages \$10.50 per space, per month, for the five spaces that are subject to rent control.

4. That the Board concluded that an increase of 2.837%, an average of \$10.50 per space, per month, is consistent with the Guidelines and is a fair, just, and reasonable increase in light of the information presented by all parties.

5. That the increase may be implemented upon the expiration of the required 90-day notice to the residents, which may be issued upon the adoption of this Resolution.





August 10, 2010

**MOBILEHOME PARK RENT CONTROL**  
**CODE ENFORCEMENT INSPECTION REPORT**

**Park Name:** Escondido Views

**Lot Owner:** City of Escondido  
201 N. Broadway  
Escondido, CA 92025  
(760) 839-4516

**Park Manager:** Roni Keiser                      **Phone:** (760) 839-4356

**Inspection Date:** 08/10/10                      **Inspectors:** S. Moore/A. Bates

The following report is based on the inspection of each individual mobile home lot owned by the City of Escondido conducted under provisions outlined in the California Health & Safety Code, Division 13, Part 2.1; the California Code of Regulations, Title 25; the Escondido Zoning Code, Article XLV; and the Escondido Municipal Code, Section 6-480 Property Maintenance. This inspection report only addresses health and safety issues that are related to areas for which maintenance, repair and operations is the responsibility of the owner of the lots.

**General Violations:**

No violations noted.

## RENT REVIEW BOARD

For City Clerk's Use:

**APPROVED**       **DENIED**

Reso No. RRB \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. RRB \_\_\_\_\_

Agenda Item No.: 14  
Date: **September 1, 2010**

**TO:** Honorable Chairman and Members of the Rent Review Board

**FROM:** Roni Keiser, Housing Division Manager

**SUBJECT:** Short-Form Rent Increase Application for 30 City-owned Rental Spaces in Mountain Shadows Mobile Home Park

### STAFF RECOMMENDATION:

- Consider the short-form rent increase application submitted for the City-owned spaces in Mountain Shadows Mobile Home Park.
- If accepted, adopt Rent Review Board Resolution No. 2010-05, granting an increase of seventy-five percent (75%) of the change in the Consumer Price Index, or 2.837% (an average of \$8.91) for the period of December 31, 2007 to December 31, 2009. The application meets the eligibility criteria for submittal of a short-form rent increase application.

### INTRODUCTION:

The City of Escondido ("City"), the owner of rental spaces in the Mountain Shadows Mobile Home Park ("Park"), has filed a short-form rental increase application for 30 of the 31 rental spaces it owns in the Park. One space is vacant and not subject to this rent increase.

The Board is asked to accept the staff report, hear public testimony, and make a determination concerning the request in accordance with the Escondido Rent Protection Ordinance and the short-form procedures as outlined in the Rent Review Board Guidelines. The application and the staff report have been made available to the Board for review and consideration prior to the hearing.

### OWNERSHIP BACKGROUND:

In 1991, at the urging of residents who wished to purchase their mobilehome park, the City of Escondido purchased the Mountain Shadows Mobile Home Park at 1750 W. Citracado Parkway. The Park was purchased with the intent to immediately transfer it to resident ownership.

By late 1991, the conversion to air space condominium structure was completed, the Homeowner's Association ("HOA") had been formed, and sales of lots to residents began. At that time, although many residents had committed to purchasing their lot, the number of sales was less than expected. Even considerable State and City low-income housing loan assistance did not increase sales significantly. The City currently owns 31 of the lots in the Park, one lot is vacant, and therefore only 30 spaces are subject to rent control.

### **THE RENT INCREASE APPLICATION:**

Mountain Shadows Mobile Home Park is located at 1750 W. Citracado Parkway. The Park contains 209 spaces and 31 of those spaces are City-owned. The average space rent for those spaces subject to rent control is \$313.91.

Unlike other applications heard by the Board, the City makes this application as owner of specific spaces, rather than as a Park owner. The HOA for the Park is responsible for the common areas and is not a party to the application.

In accordance with the short-form policy guidelines, the City is requesting an increase of seventy-five percent (75%) of the change in the San Diego Consumer Price Index (CPI) for the period of December 31, 2007, to December 31, 2009. A seventy-five percent (75%) change in CPI amounts to 2.837% for the 24-month period of consideration. The average increase requested is approximately \$8.91 per space, per month based on an average base rent of \$313.91.

The common areas controlled by the HOA include a clubhouse, a swimming pool and a spa, and laundry facility. The tenants of the City-owned rental spaces have full access to the community areas of the Park. A portion of the rent collected from the rental spaces goes to pay the HOA fees currently set at \$189.00 per month. Although Mountain Shadows is a family Park, many seniors live in the Park as well.

The Park last came before the Board in June of 2008, when the Board approved a short-form rent increase of 1.69%, an average of \$5.20 per space per month. The period of consideration for the previous request was December 31, 2006, to December 31, 2007.

### **RESIDENT MEETING AND COMMENTS:**

Individual notices were sent to each affected resident notifying them of the increase application and the hearing date. Additionally, residents were invited to a meeting held in the Park on August 2, 2010, at 4:00 p.m. One resident attended the meeting with staff.

The resident said he had no issues or concerns about the short-form rent increase application and had not heard any concerns from other residents.

Mountain Shadows currently has three residents participating in the City of Escondido Rent Subsidy Program.

**HEALTH AND SAFETY CODE INSPECTION:**

The inspection report only addresses health and safety issues that are related to areas for which maintenance and repair is the responsibility of the City as owner of the spaces. The City has received a copy of the report, and there are no health and safety code violations noted. The Code Enforcement Inspection Report is attached as Exhibit "A".

**ADDITIONAL FACTORS AFFECTING THE APPLICATION:**

In conformance with the Rent Review Board Guidelines, the decision of the Board will be finalized by adoption of the Resolution confirming the findings of the Public Hearing, and the Notice of Determination will be mailed to the applicant and residents immediately upon adoption of the Resolution. The 90-day notice of any rent increase granted may be sent to the residents upon the adoption of the Resolution.

Respectfully submitted,

A handwritten signature in black ink that reads "Roni Keiser". The signature is written in a cursive style with a large initial "R".

Roni Keiser  
Housing Division Manager



**DATE: AUGUST 10, 2010**

**TO: HONORABLE CHAIRMAN AND MEMBERS OF THE RENT CONTROL BOARD**

**FROM: BRIAN GUSTAFSON, CODE ENFORCEMENT MANAGER**

**SUBJECT: MOUNTAIN SHADOWS RENT CONTROL INSPECTION**

The thirty City owned spaces (managed by City staff) in the Mountain Shadows Mobilehome Park were inspected on August 10, 2010 as a result of an application for a rent increase having been filed. There were no violations noted during the inspection.

The resident meeting occurred on Monday August 2, 2010. The resident representative reported no issues and no concerns that had been brought to his attention.

There were no Code Enforcement cases opened during the past year.

CC: Barbara Redlitz, Director of Community Development  
Michelle Henderson, Rent Control Administration



August 10, 2010

**MOBILEHOME PARK RENT CONTROL**  
**CODE ENFORCEMENT INSPECTION REPORT**

**Park Name:** Mountain Shadows Mobile Home Park

**Lot Owner:** City of Escondido  
201 N. Broadway  
Escondido, CA 92025  
(760) 839-4516

**Park Manager:** Roni Keiser                      **Phone:** (760) 839-4356

**Inspection Date:** 08/10/10                      **Inspectors:** S. Moore/A. Bates

The following report is based on the inspection of each individual mobile home lot owned by the City of Escondido conducted under provisions outlined in the California Health & Safety Code, Division 13, Part 2.1; the California Code of Regulations, Title 25; the Escondido Zoning Code, Article XLV; and the Escondido Municipal Code, Section 6-480 Property Maintenance. This inspection report only addresses health and safety issues that are related to areas for which maintenance, repair and operations is the responsibility of the owner of the lots.

**General Violations:**

No violations noted.

RESOLUTION NO. RRB 2010-05

A RESOLUTION OF THE ESCONDIDO  
MOBILEHOME RENT REVIEW BOARD  
MAKING FINDINGS AND GRANTING A RENT  
INCREASE FOR MOUNTAIN SHADOWS  
MOBILEHOME PARK

WHEREAS, Article V of Chapter 29 of the Escondido Municipal Code is a codification of the Escondido Mobilehome Rent Protection Ordinance ("Ordinance") and provides for mobilehome space rent regulation; and

WHEREAS, the City of Escondido Mobilehome Park Rental Review Board ("Board") is charged with the responsibility of considering applications for rent increases; and

WHEREAS, a Short-form Rent Increase Application ("Application") was filed pursuant to Section 12 of the Rent Review Board Guidelines on July 12, 2010, by the City of Escondido Community Development Commission, the owner of 31 rental spaces in Mountain Shadows Mobile Home Park located at 1750 W. Citracado Parkway in Escondido. Currently, one rental space is vacant, therefore 30 spaces are subject to rent control and a space rent increase; and

WHEREAS, this is the eleventh (11th) Application filed by the Park since the Ordinance became effective in 1988. The last short-form rent increase ("Increase") for 1.69%, or approximately \$5.20 per space, per month was granted by the board at a Rent Review Board Hearing held on September 10, 2008, and formally adopted by Rent Review Board Resolution 2008-07; and

WHEREAS, at the time of the current Application, the average monthly space rent was \$313.91 for the 30 spaces subject to rent control. The City of Escondido, Community Development Commission requested a rent increase in the amount of seventy-five percent (75%) of the change in the Consumer Price Index (CPI) for the period of December 31, 2007, through December 31, 2009, in accordance with the Rent Review Board short-form policy guidelines. The Application estimated this amount to be an average of \$8.91 (2.837%) per space, per month; and

WHEREAS, a notice of the Park's Application was sent to all affected homeowners. All parties were given notice of the time, date and place of the rent hearing before the Board; and

WHEREAS, on August 10, 2010, a Mobilehome Park Rent Review Code Enforcement Inspection Report ("Inspection Report") was completed and the report was based on the inspection of each individual mobile home lot owned by the City of Escondido. There are no Health and Safety Code violations on the City-owned spaces; and

WHEREAS, on September 1, 2010, the Board held its public hearing and after an initial staff presentation, the Board invited testimony from Park ownership, residents of the Park, and other residents of the community at large; and

WHEREAS, after all present had been given an opportunity to speak, the hearing was closed. Following an opportunity for discussion among the Board members and clarifying questions to the parties and Staff, the Board voted to grant an average rent increase of \$8.91 per space, per month for the 30 spaces that are subject to rent control.



NOW, THEREFORE, BE IT RESOLVED by the Rent Review Board of the City of Escondido, as follows:

1. That the above recitations are true.
2. That the Board has heard and considered all of the reports and testimony presented, and has considered the facts as outlined in the Short-form Guidelines ("Guidelines").
3. That following the Guidelines, an increase based on seventy-five percent (75%) of the change in the CPI for San Diego County from December 31, 2007, through December 31, 2009, would amount to 2.837%, which averages \$8.91 per space, per month, for the 30 spaces that are subject to rent control.
4. That the Board concluded that an increase of \$8.91 per space, per month is consistent with the Guidelines and is fair, just, and a reasonable increase in light of the information presented by all parties.
5. That the increase may be implemented upon the expiration of the required 90-day notice to the residents, which may be issued upon the adoption of this Resolution.

# CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.:** 15  
**Date:** **September 1, 2010**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Rich Buquet, Neighborhood Services Manager

**SUBJECT:** Substantial Amendment to FY 2008-2009 One-Year Action Plan to allocate balance of funds received as a result of the American Recovery and Reinvestment Act (ARRA)

**RECOMMENDATION:**

It is requested that Council amend the FY 2008-09 One-Year Action Plan to allocate remaining ARRA funds in the amount of \$222,523 to Phase 3 of the Tulip Street Improvement Project.

**FISCAL ANALYSIS:**

The City of Escondido receives annual formula allocations of CDBG Program funding from the U.S. Department of Housing and Urban Development (HUD). All program and program administration expenses are paid with CDBG funds and do not impact the General Fund, unless Council directs otherwise.

Similarly, \$222,523 in CDBG ARRA funds will be used for all expenses relating to the project and the General Fund will not be impacted.

**CORRELATION TO THE CITY COUNCIL ACTION PLAN:**

This item relates to the Council's Action Plan regarding infrastructure and public facilities.

**PREVIOUS ACTION:**

On May 20, 2009, Council approved an amendment to the FY 2008-09 One-Year Action Plan for CDBG to allocate funds in the amount of \$464,210, which were received as a result of the ARRA, to the Elm to Hickory Street Lighting Project.

On August 18, 2010, the City Council authorized the City Engineer to file a Notice of Completion for the Elm to Hickory Street Lighting Project.

**BACKGROUND:**

In February 2009, the City of Escondido was informed that it would be receiving an allocation of special CDBG funding in the amount of \$464,210 as a result of the American Recovery and Reinvestment Act (ARRA).

Amendment to FY 2008-2009 One-Year Action Plan for CDBG  
September 1, 2010  
Page 2

City Council approved an amendment to the FY 2008-09 Action Plan allocating the \$464,210 in ARRA funds to the Elm to Hickory Street Lighting Project, which was completed in July 2010 at a cost of \$241,687.

If approved, the balance of ARRA funds will be used for Phase 3 of the Tulip Street Improvement Project, which is scheduled to begin construction by the end of this year and spans Tulip Street from 3<sup>rd</sup> Street to 5<sup>th</sup> Street. Phase 2 was completed in in November of last year. The six year, multi-phase Tulip Street Improvement project includes new curbs, gutters, retaining walls, sidewalks, street lights, new street surfaces and new medians along Tulip Street from 9<sup>th</sup> Street to 2<sup>nd</sup> Street and the 800 block of 3<sup>rd</sup> Street between Tulip and Spruce.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Buquet', with a long horizontal flourish extending to the right.

Rich Buquet  
Neighborhood Services Manager  
(760) 839-4579; [rбуquet@escondido.org](mailto:rбуquet@escondido.org)



ITEM NO.: 16

AGENDA: 9-1-10

There is no material for this agenda item.

**THE FOLLOWING ITEM(S) WILL BE DISTRIBUTED WHEN AVAILABLE:**

- ( ) Staff Report
- ( ) Resolution No.: \_\_\_\_\_
- ( ) Ordinance No.: \_\_\_\_\_
- ( ) Exhibits/Attachments: \_\_\_\_\_

**DUE TO THE SIZE OF THIS AGENDA ITEM:**

- ( ) **COUNCIL MEMBERS:** A copy is in the Council Reading File
- ( ) **Staff and others:** A copy is available in the City Clerks Office for viewing



# CITY COUNCIL

For City Clerk's Use:

APPROVED  DENIED

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

Agenda Item No.: 17  
Date: September 1, 2010

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Edward N. Domingue, Director of Engineering Services  
Jo Ann Case, Economic Development & Real Property Manager  
**SUBJECT:** Sale of City-Owned and Vacated Old Fire Station 3 Located at 2165 Village Road, in Escondido (APN 224-610-09)

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2010-140 to authorize Real Property to enter into an agreement and escrow to sell Old Fire Station 3 to the Deubig Family Trust ("Buyer") for \$360,000, with no contingencies or escrow costs paid by the City.

FISCAL ANALYSIS:

The City's asking price for the property was \$350,000. This amount was based on real estate market sales comparables performed by professional brokers. Two offers were received. The Buyer's offer was \$10,000 over the asking price and involved no contingencies. When the transaction closes, the allocation of the sale proceeds will be determined by the City Council.

PREVIOUS ACTION:

In April 2010 the Council directed Real Property to list the Fire Station for sale because there was no need for it. In a closed session meeting on June 9, 2010, two offers were brought to the Council for consideration. City Council directed Real Property to accept the Buyer's offer of \$360,000 and to bring the potential sale to a public session.

BACKGROUND:

The Fire Station was built in 1976 in conjunction with the Escondido Hills Planned Development. The station was intended to serve north Escondido. Old Fire Station 3 was vacated in July 2008 when fire station personnel moved to the new Fire Station 3 located at 1808 N. Nutmeg Street. The new fire station was constructed at that location to improve response times and meet quality of life standards. The old fire station was then leased to a private fire fighting company, Pac-West Fire, LLC, in November 2008. Pac-West Fire vacated the premises in February 2010.

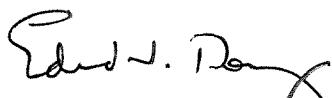
Due to the unique character and improvements associated with the building and property, professional brokers expert in both residential and commercial property sales were asked to conduct

a search for comparable sales should the property become an office or residence and adjustments were made in the sales price to allow for tenant improvement costs. Because the building is unique, any other use would require a substantial amount of tenant improvements. With the real estate sale comparables and the cost of tenant improvements in mind, an asking price of \$350,000 was established. Numerous potential buyers toured the building and Real Property ultimately received two offers. One of the offers was for the asking price but had various contingencies; the other offer was for above the asking price with no contingencies.

The current zoning PD-R (Planned Development Residential - Fire Station) does not allow the property to be used for anything but a fire station. Therefore, a zone change will be required for the property to be used for any other purpose. The zone change will be handled as a separate item with a public hearing process. If the zone change is successful, the sale will be completed and the property deeded to the Buyer. The Buyer intends to use the property as a low intensity small business office.

Real Property asks Council to accept the Buyer's offer contingent on the zone change to PD-C (Planned Development Commercial), to approve the Sale and Purchase Agreement in substantially the form attached to Resolution 2010-140 and to authorize Real Property to open escrow pursuant to the terms of the Sale and Purchase Agreement.

Respectfully submitted,



Edward N. Domingue, P.E.  
Director of Engineering Services



Jo Ann Case  
Economic Development &  
Real Property Manager

RESOLUTION NO. 2010-140

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A SALE AND PURCHASE AGREEMENT FOR THE SALE OF OLD FIRE STATION 3 TO THE DEUBIG FAMILY TRUST

(APN 224-610-09)

WHEREAS, certain City-owned real property, Old Fire Station 3 located at 2165 Village Road, in Escondido (the "Property"), became vacant in February of 2010; and

WHEREAS, the City offered the Property for sale at \$350,000 and received an offer from the Deubig Family Trust ("Buyer") for \$360,000 with no contingencies; and

WHEREAS, the City wishes to to sell the Property for a sales price of \$360,000 and to enter into a Sale and Purchase Agreement ("Agreement") with the Buyer; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the sale of the Property to the Buyer.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. The Mayor and City Clerk are authorized to execute, on behalf of the City, the Agreement with the Buyer, in substantially the form attached to this resolution as Exhibit "1," and incorporated by this reference, and subject to final approval as to form by the City Attorney.

**PROJECT:** Old Fire Station 3  
**A.P.N.:** 224-610-09  
**ADDRESS:** 2165 Village Road  
Escondido, CA 92026  
**OWNER:** City of Escondido

**SALE AND PURCHASE AGREEMENT**

THIS SALE AND PURCHASE AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and between the CITY OF ESCONDIDO, a municipal corporation (hereinafter called "SELLER"), and Deubig Family Trust (hereinafter collectively called "BUYER"), for the acquisition, by BUYER, of certain real property as hereinafter set forth.

**RECITALS**

A. SELLER owns that certain real property located at 2165 East Village Road, Escondido, California 92026 in the City of Escondido ("City"), County of San Diego, consisting of an approximate 3060 square foot building on .34 acres of land (the "Property"). The Property is legally described in Exhibit "A," attached hereto and incorporated by this reference.

B. BUYER desires to purchase the Property and make improvements thereon in order to operate a small business office. Plans for the improvements will be processed as a Precise Plan with a zone change that will allow a neighborhood office use.

C. SELLER desires to sell the Property to BUYER, and BUYER desires to purchase the Property from SELLER, on the terms and conditions set forth below.

**NOW THEREFORE**, it is mutually agreed by and between the parties as follows:

1. **AGREEMENT TO SELL AND PURCHASE.**



SELLER agrees to sell the Property to BUYER and BUYER agrees to purchase the Property from SELLER, upon the terms and for the consideration set forth in this Agreement.

2. PURCHASE PRICE.

SELLER agrees to sell and BUYER agrees to buy the Property for the purchase price of THREE HUNDRED AND SIXTY THOUSAND DOLLARS (\$360,000) ("Purchase Price").

3. CONDITION PRECEDENT.

Both parties agree and understand that the purchase and sale of the Property is contingent upon a successful zone change of the Property from Planned Development Residential to Planned Development Commercial ("Re-zone"). In the event a successful Re-zone cannot be effectuated with reasonable diligence for whatever reason, the escrow proceeding described by Section 4 herein, will be terminated and the BUYER'S deposit refunded.

4. PAYMENT OF PURCHASE PRICE/ESCROW.

The Purchase Price shall be payable by BUYER to SELLER as follows:

A \$5,000.00 deposit shall be deposited with the Escrow Holder by personal check to open the escrow. The balance of the purchase price, \$355,000.00, shall be deposited with the Escrow Holder within sufficient time to close escrow. SELLER shall open a sixty (60) day escrow with an escrow company of SELLER'S choice.

The escrow period may be shortened by mutual consent of the parties, without penalty, if the Re-zone of the Property occurs prior to the anticipated close of escrow date.

All associated escrow closing costs shall be paid by the BUYER.

5. CONVEYANCE OF TITLE. SELLER agrees to convey by Grant Deed to BUYER marketable fee title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, covenants, conditions, restrictions, and taxes, EXCEPT:

Public and quasi-public utility, alley and street easements and rights-of-way record.

6. COST OF SUIT. In the event of any litigation, arbitration, any quasi-judicial, or administrative proceeding between the parties herein to: (i) enforce any provision of this Agreement; (ii) enforce any remedy available under default within this Agreement; or (iii) seek a declaration of the rights of either party on each party's respective interests in the Property, the prevailing party shall be entitled to recover from the other such attorney's fees and costs as may be reasonably incurred.

7. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties, and neither party relies upon any warranty or representation not contained in this Agreement.
  
8. AUTHORITY. Those persons executing this Agreement warrant and represent that they have obtained all necessary approvals to enter into this Agreement and are authorized to execute this Agreement and bind their respective entities to the terms herein.

*(Signatures on next page)*

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year set forth below.

Dated: \_\_\_\_\_

BUYER: Deubig Family Trust

MAILING ADDRESS OF BUYER:

Deubig Family Trust  
c/o James Deubig  
125 East Lincoln Avenue  
Escondido, CA 92026

\_\_\_\_\_  
James E. Deubig, Trustee

Dated: \_\_\_\_\_

CITY OF ESCONDIDO  
a municipal corporation

MAILING ADDRESS OF SELLER:

City of Escondido  
201 North Broadway  
Escondido, CA 92025

BY:

\_\_\_\_\_  
Lori Holt Pfeiler, Mayor

\_\_\_\_\_  
Marsha Whalen, City Clerk

Authorizing Resolution No.  
R2010-140

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY  
JEFFREY R. EPP, City Attorney

By: \_\_\_\_\_

RECORDING REQUESTED BY  
Deubig Family Trust

When recorded mail to:  
Deubig Family Trust  
Attn: James E. Deubig  
125 Lincoln Avenue  
Escondido, CA 92026

APN 224-610-09

ESCONDIDO DOC NO. M-16-10

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**CITY OF ESCONDIDO  
GRANT DEED**

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FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED

**The CITY OF ESCONDIDO, a municipal corporation, GRANTOR**

hereby grants, conveys and dedicates to

**DEUBIG FAMILY TRUST, GRANTEE**

the real property in the City of Escondido, County of San Diego, State of California, described on  
the attached Exhibit "A".

Dated: \_\_\_\_\_

GRANTOR  
City of Escondido, a municipal corporation

BY: \_\_\_\_\_  
Lori Holt Pfeiler, Mayor

BY: \_\_\_\_\_  
Marsha Whalen, City Clerk

## EXHIBIT "A"

### Legal Description

**Assessor Parcel No.: 224-610-09**

**Commonly Addressed as: 2165 Village Road**

That portion of Lot 118, Map No. 7223, filed in the Office of the County Recorder of San Diego County, State of California, on February 2, 1972 as file No. 49040, described as follows:

Beginning at the most northerly corner of Lot 79, Map No. 7223; said point being the True Point of Beginning and also being a point on a non-tangent curve concave easterly and having a radius of 430 feet, a radial line to said point bears North 74°14'30" East; thence northerly along the westerly right-of-way of Village Road, along said curve through a central angle of 2°30'30", an arc distance of 18.83 feet; thence continuing along the westerly right-of-way line of Village Road North 13°15'00" West a distance of 81.00 feet; thence leaving the westerly right-of-way line of Village Road South 49°45'00" West a distance of 150.00 feet; thence South 13°15'00" East a distance of 104.38 feet to a point on the northwesterly boundary of Lot 81, Map No. 7223; thence along the northwesterly boundary of said Lot 81, North 40°49'28" East a distance of 24.99 feet to the northeast corner of said Lot 81; thence along the northwesterly boundaries of Lots Nos. 80 and 79, North 49°45'00" East a distance of 127.75 feet to the True Point of Beginning.

END OF LEGAL DESCRIPTION



CITY OF ESCONDIDO DOC. NO. M-16-10

TITLE OR TYPE OF DOCUMENT: GRANT DEED

GRANTOR: CITY OF ESCONDIDO, a municipal corporation

GRANTOR'S ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

On \_\_\_\_\_ (date) before me, \_\_\_\_\_,  
a Notary Public, personally appeared

\_\_\_\_\_, (name(s) of  
signers)

\_\_\_ personally known to me - OR - \_\_\_ 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 acknowledge 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.

Witness my hand and official seal.

\_\_\_\_\_  
Signature of Notary

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CITY ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed by the attached deed or grant, dated as shown hereon and from the persons named (Grantor) to the City of Escondido, a municipal corporation, is hereby accepted pursuant to Ordinance Number 97-14 of the City Council of the City of Escondido, dated July 2, 1997, and the Grantee consents to recordation thereof by said Grantees duly authorized officer.

\_\_\_\_\_  
Real Property Manager or Agent

**CONSENT OF ESCROW AGENT**

The undersigned Escrow Agent hereby agrees to (i) accept the foregoing Agreement, (ii) be escrow holder under said Agreement, and (iii) be bound by said Agreement in the performance of its duties as escrow holder; provided, however, the undersigned shall have no obligations, liability or responsibility under (a) this Consent or otherwise, unless and until said Agreement, fully signed by the parties, has been delivered to the undersigned, or (b) any amendment to said Agreement unless and until the same is accepted by the undersigned in writing.

Dated: \_\_\_\_\_

**OAK TREES ESCROWS, INC.**

By: \_\_\_\_\_  
Escrow Officer **Bobbi Pearson**





ITEM NO.: 18

AGENDA: 9-1-10

There is no material for this agenda item.

**THE FOLLOWING ITEM(S) WILL BE DISTRIBUTED WHEN AVAILABLE:**

- ( ) Staff Report
- ( ) Resolution No.: \_\_\_\_\_
- ( ) Ordinance No.: \_\_\_\_\_
- ( ) Exhibits/Attachments: \_\_\_\_\_

**DUE TO THE SIZE OF THIS AGENDA ITEM:**

- ( ) **COUNCIL MEMBERS:** A copy is in the Council Reading File
- ( ) **Staff and others:** A copy is available in the City Clerks Office for viewing



AGENDA ITEM NO.: 19

AGENDA DATE: 9-1-10

## **FUTURE CITY COUNCIL AGENDA ITEMS**

**August 26, 2010**

*AGENDA ITEMS AND COUNCIL MEETING DATES ARE SUBJECT TO  
CHANGE. CHECK WITH THE CITY CLERK'S OFFICE AT 839-4617*

**SEPTEMBER 8, 2010 – NO MEETING (Labor day)**

**SEPTEMBER 15, 2010 – NO MEETING (Annual League)  
(also General Plan Workshop scheduled at CCAE)**

**CITY COUNCIL**

For City Clerk's Use:

**APPROVED**       **DENIED**

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.:** 23

**Date:** September 1, 2010

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Lori Vereker, Director of Utilities

**SUBJECT:** Water and Wastewater Rate Structures and Water Allocation

**RECOMMENDATION:**

It is requested that Council provide a decision on options for water and wastewater rate structures and water allocations to carry forward in finalizing the rate study.

**DISCUSSION**

The Utilities subcommittee has met several times in the past three months with the City's rate study contractor and the Rate Study Stakeholder group in order to determine the overall revenue adjustments and revise the rate structures for the water and wastewater utilities to encourage conservation and ensure equitability to its customers. The Utilities subcommittee wanted the full Council to review and discuss, and make a decision on the final rate options so that the rate study can be finalized.

The options for wastewater structure include a flat rate (current structure) or winter water usage for residential wastewater customers. Recommended adjustments to wastewater rates for various industrial/commercial classes will also be presented. In addition, the water tiers have been revised to provide more incentives for conservation. An important issue that needs to be considered is the allocation of local water vs. imported water and how that may affect the recommended water rates for various customer classes.

Respectfully submitted,



Lori Vereker  
Director of Utilities