



# Council Meeting Agenda

**OCTOBER 7, 2015**  
**CITY COUNCIL CHAMBERS**  
**3:30 P.M. Closed Session; 4:30 P.M. Regular Session**  
**201 N. Broadway, Escondido, CA 92025**

MAYOR	<b>Sam Abed</b>
DEPUTY MAYOR	<b>Michael Morasco</b>
COUNCIL MEMBERS	<b>Olga Diaz</b> <b>Ed Gallo</b> <b>John Masson</b>
CITY MANAGER	<b>Clay Phillips</b>
CITY CLERK	<b>Diane Halverson</b>
CITY ATTORNEY	<b>Jeffrey Epp</b>
DIRECTOR OF COMMUNITY DEVELOPMENT	<b>Jay Petrek</b>
DIRECTOR OF PUBLIC WORKS	<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

**October 7, 2015  
3:30 P.M. Meeting**

**Escondido City Council**

## **CALL TO ORDER**

**ROLL CALL:** Diaz, Gallo, Masson, Morasco, Abed

## **ORAL COMMUNICATIONS**

In addition to speaking during particular agenda items, the public may address the Council on any item which is not on the agenda provided the item is within the subject matter jurisdiction of the City Council. 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.) Speakers are limited to only one opportunity to address the Council under Oral Communications.

## **CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)**

**I. CONFERENCE WITH LEGAL COUNSEL-- EXISTING LITIGATION (Government Code 54956.9(d)(1))**

**Case Name:** Stuck in the Rough, LLC v. City of Escondido, et al.  
**Case No:** 37-2013-00074375-CU-WM-NC

**II. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)**

- a. **Property:** A parcel on the north side of West Valley Parkway between City Hall and the CCAE, APN 229-372-20
- City Negotiator:** Graham Mitchell, Assistant City Manager
- Negotiating Parties:** The City of Escondido and Craig Clark
- Under Negotiation:** Price and Terms of Agreement

**ADJOURNMENT**



# Council Meeting Agenda

**October 7, 2015  
4:30 P.M. Meeting**

**Escondido City Council**

## **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:** Diaz, Gallo, Masson, Morasco, Abed

## **ORAL COMMUNICATIONS**

The public may address the Council on any item that is not on the agenda and that is within the subject matter jurisdiction of the legislative body. 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.) NOTE: Depending on the number of requests, comments may be reduced to less than 3 minutes per speaker and limited to a total of 15 minutes. Any remaining speakers will be heard during Oral Communications at the end of the meeting.

## 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/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency )**
3. **[APPROVAL OF MINUTES: Regular Meeting of September 23, 2015](#)**
4. **[AMENDMENT OF ESCONDIDO MUNICIPAL CODE CHAPTER 1A ADMINISTRATIVE REMEDIES -](#)**

Request Council approve an amendment to the Escondido Municipal Code to improve the tools available to enforcement officers and to update the City's administrative citation procedures.

Staff Recommendation: **Approval (City Attorney's Office: Jeffrey Epp)**

ORDINANCE NO. 2015-19 (First Reading and Introduction)

## CONSENT – RESOLUTIONS AND ORDINANCES (COUNCIL/SUCCESSOR AGENCY/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/Successor Agency/RRB at a previous City Council/Successor Agency/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

5. **[AUTHORIZE AN ENERGY SERVICE CONTRACT FOR ENERGY DEMAND REDUCTION AT MULTIPLE CITY FACILITIES -](#)**

Request Council approve authorizing the Mayor and City Clerk to execute a ten-year Energy Service Contract with Green Charge Networks to install and maintain a battery powered energy storage system to reduce the demand charge at multiple City facilities. Resolution No. 2015-144 also finds that the anticipated costs to the City for services provided under the Contract will be less than the anticipated marginal cost of the electricity that would have been consumed by the City in the absence of the Contract.

Staff Recommendation: **Approval (Public Works Department: Ed Domingue)**

RESOLUTION NO. 2015-144

## CURRENT BUSINESS

6. **[BUDGET ADJUSTMENT REQUEST AND APPROVAL OF CHANGE ORDERS FOR THE RECYCLED WATER EASTERLY MAIN EXTENSION PROJECT \(BROADWAY TO CITRUS\) -](#)**

Request Council approve a budget adjustment in the amount of \$980,000 to Capital Improvement Program (CIP) No. 801201 (Recycled Water Easterly Main Extension) from the Wastewater Fund Operating, Debt, and CIP Reserve and authorize an amendment to the contract with MNR Construction, Inc. not to exceed \$1,263,258.91 (20.13% over the original contract amount of \$6,276,000).

Staff Recommendation: **Approval (Utilities Department: Christopher W. McKinney)**

RESOLUTION NO. 2015-169

7. **MILITARY TRIBUTE AND GRAPE DAY PARK MONUMENTS -**

Council discussion regarding maintenance for the Military Tribute and other Grape Day Park monuments.

Staff Recommendation: **None (Councilmember Gallo and Deputy Mayor Morasco)**

## **FUTURE AGENDA**

8. **FUTURE AGENDA -**

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: Diane Halverson)**

## **COUNCIL MEMBERS SUBCOMMITTEE REPORTS**

## **CITY MANAGER'S UPDATE/BRIEFING**

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety and Community Development.

- **CITY MANAGER'S UPDATE -**

## **ORAL COMMUNICATIONS**

The public may address the Council on any item that is not on the agenda and that is within the subject matter jurisdiction of the legislative body. 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. Speakers are limited to only one opportunity to address the Council under Oral Communications.

## **ADJOURNMENT**

**UPCOMING MEETING SCHEDULE**

<b>Date</b>	<b>Day</b>	<b>Time</b>	<b>Meeting Type</b>	<b>Location</b>
October 14	-	-	No Meeting	-
October 21	Wednesday	3:30 & 4:30 p.m.	Regular Meeting	Council Chambers
October 28	Wednesday	3:30 & 4:30 p.m.	Regular Meeting	Council Chambers
November 4	Wednesday	3:30 & 4:30 p.m.	Regular Meeting	Council Chambers



## 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. Submission of Speaker forms prior to the discussion of an item is highly encouraged. 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.

Nomination forms for Community Awards are available at the Escondido City Clerk's Office or at <http://www.escondido.org/city-clerks-office.aspx>

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.escondido.org/meeting-agendas.aspx>
- 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 U-verse Channel 99 – Escondido Gov TV. They can also be viewed the following Sunday and Monday evenings at 6:00 p.m. on those same channels. 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 clicking the "Live Streaming –City Council Meeting now in progress" button on the home page.

**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 3:30 in Closed Session and 4:30 in Open Session.  
(Verify schedule with City Clerk's Office)**

**Members of the Council also sit as the Successor Agency to the CDC, Escondido Joint Powers  
Financing Authority and the Mobilehome Rent Review Board.**

**CITY HALL HOURS OF OPERATION  
Monday-Friday 8:00 a.m. to 5:00 p.m.**



*If you need special assistance to participate in this meeting, please contact our ADA Coordinator at 839-4643. 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 OF ESCONDIDO**  
**September 23, 2015**  
**3:30 P.M. Meeting Minutes**  
**Escondido City Council**

**CALL TO ORDER**

The Regular Meeting of the Escondido City Council was called to order at 3:30 p.m. on Wednesday, September 23, 2015 in the Council Chambers at City Hall with Mayor Abed presiding.

**ATTENDANCE:**

The following members were present: Councilmember Olga Diaz, Councilmember Ed Gallo, Councilmember John Masson, Deputy Mayor Michael Morasco, and Mayor Sam Abed. Quorum present.

**ORAL COMMUNICATIONS**

**CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)**

**MOTION:** Moved by Councilmember Masson and Seconded by Councilmember Diaz to recess to Closed Session. Motion carried unanimously.

**I. CONFERENCE WITH LEGAL COUNSEL-- EXISTING LITIGATION (Government Code 54956.9(d)(1))**

**Case Name:** Stuck in the Rough, LLC. v. City of Escondido, et al.  
**Case No:** 37-2013-00074375-CU-WM-NC

**II. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)**

a. **Property:** 418 East Second Avenue  
**City Negotiator:** Debra Lundy, Real Property Manager  
**Negotiating Parties:** Talking Bibles International  
**Under Negotiation:** Price and Terms of Agreement

**ADJOURNMENT**

Mayor Abed adjourned the meeting at 4:23 p.m.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MINUTES CLERK

**CITY OF ESCONDIDO**  
**September 23, 2015**  
**4:30 P.M. Meeting Minutes**

**Escondido City Council**  
**and as Successor Agency to the CDC**

**CALL TO ORDER**

The Regular Meeting of the Escondido City Council was called to order at 4:30 p.m. on Wednesday, September 23, 2015 in the Council Chambers at City Hall with Mayor Abed presiding.

**MOMENT OF REFLECTION:**

Joan Reed led the Moment of Reflection.

**FLAG SALUTE**

Mayor Abed led the Flag Salute.

**PRESENTATIONS:**

Palomar College Alumnus of the Year presented to Police Chief Craig Carter – Debbie King, Assistant Director of the Palomar College Foundation

Award Presentation to Girl Scout Troop 2034

**ATTENDANCE:**

The following members were present: Councilmember Olga Diaz, Councilmember Ed Gallo, Councilmember John Masson, Deputy Mayor Michael Morasco, and Mayor Sam Abed. Quorum present.

Also present were: Clay Phillips, City Manager; Jeffrey Epp, City Attorney; Barbara Redlitz, Community Development Director; Ed Domingue, Director of Public Works; Diane Halverson, City Clerk; and Michael Thorne, Minutes Clerk.

**ORAL COMMUNICATIONS**

**Patsy Dixon, Escondido**, expressed concern about terrorist activities and her safety.

**Kenneth P. Kestner, Escondido**, requested that Police stop disturbing him at his residence.

**Mike Slater, Escondido**, requested information concerning the Stuck in the Rough litigation.

Jeffrey Epp, City Attorney, commented that there is no tangible action to report.

## CONSENT CALENDAR

Deputy Mayor Morasco removed items 11 and 12 from the Consent Calendar for discussion.

**MOTION:** Moved by Councilmember Diaz and seconded by Councilmember Masson to approve the following Consent Calendar items. Motion carried unanimously.

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency )**
3. **APPROVAL OF MINUTES: A) Regular Meeting of August 26, 2015 B) Regular Meeting of September 2, 2015**

4. **ANNUAL DESTRUCTION OF RECORDS -**

Request Council approve authorizing the destruction of Police Department records, and City records set forth in Exhibit "A" and Exhibit "B," which are attached to the resolution, for the following departments: City Attorney, City Clerk, City Treasurer, Community Development, Community Services, Employee Benefits, Finance, HARRF, Housing, Human Resources, Library, Payroll, Police, Public Works, Risk Management, Utilities, and Workers Compensation. (File No. 0160-35)

Staff Recommendation: **Approval (City Clerk's Office: Diane Halverson)**

RESOLUTION NO. 2015-104

5. **ADOPTION OF RESOLUTION NO. 2015-164 APPROVING RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS 15-16B) FOR JANUARY 2016 THRU JUNE 2016 -**

Request Council approve the adoption of the Recognized Obligation Payment Schedule (ROPS 15-16B) so that the Successor Agency may continue to make payments due for enforceable obligations. (File No. 0440-35)

Staff Recommendation: **Approval (Finance Department: Sheryl Bennett)**

RESOLUTION NO. 2015-164

6. **FISCAL YEAR 2014 REGIONAL REALIGNMENT RESPONSE GRANT - ADDITIONAL FUNDS AND BUDGET ADJUSTMENT -**

Request Council approve accepting additional funds in the amount of \$85,000 for the FY 2014 Regional Realignment Response Grant; authorize the Chief of Police or his designee to execute contract documents on behalf of the City; and approve budget adjustments needed to spend grant funds. (File No. 0480-70)

Staff Recommendation: **Approval (Police Department: Craig Carter)**

7. **FISCAL YEAR 2015-16 SAN DIEGO COUNTY LAW ENFORCEMENT FOUNDATION LESS LETHAL LIFE SAVING EQUIPMENT GRANT AND BUDGET ADJUSTMENT -**

Request Council approve authorizing the Escondido Police Department to accept a FY 2016 San Diego County Law Enforcement Foundation Grant in the amount of \$2,916; authorize the Chief of Police and Police Department staff to execute contract documents on behalf of the City; and approve budget adjustments needed to spend grant funds. (File No. 0480-70)

Staff Recommendation: **Approval (Police Department: Craig Carter)**

**8. FISCAL YEAR 2016 STATE OF CALIFORNIA OFFICE OF TRAFFIC SAFETY SELECTIVE TRAFFIC ENFORCEMENT PROGRAM GRANT AND BUDGET ADJUSTMENT -**

Request Council approve authorizing the Escondido Police Department to accept a FY 2016 California Office of Traffic Safety Selective Traffic Enforcement Program Grant in the amount of \$309,726; authorize the Chief of Police or Police Department staff to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds. (File No. 0480-70)

Staff Recommendation: **Approval (Police Department: Craig Carter)**

**9. SET THE DATE OF OCTOBER 21, 2015 FOR A PUBLIC HEARING TO CONSIDER ADOPTING RESOLUTIONS OF NECESSITY AUTHORIZING THE CITY ATTORNEY TO INITIATE CONDEMNATION PROCEEDINGS -**

Request Council approve setting the date of October 21, 2015 at 4:30 p.m. for a Public Hearing to consider adopting Resolutions of Necessity authorizing the City Attorney to initiate condemnation proceedings to acquire the property rights across portions of Assessor Parcel Numbers: 240-020-23 [Serrato]; 240-011-12/13 [Smith]; 240-011-01 [Toscano]; 240-011-03 [Heath] and 240-301-09 [Jauregui] for construction of the East Valley Parkway/Valley Center Road Project. (File No. 0690-50)

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

RESOLUTION NO. 2015-166

**10. NOTICE OF COMPLETION FOR TRACT 921 CONTEMPO -**

Request Council approve and accept the public improvements and authorize staff to file a Notice of Completion for Tract 921 - Contempo. (File No. 0800-10)

Staff Recommendation: **Approval (Public Works Department/Engineering: Ed Domingue)**

**11. AMENDING SCHEDULE OF TIME ZONE PARKING TO CONVERT THE EXISTING TWO-HOUR PARKING LIMITATION ON GRAND AVENUE BETWEEN ESCONDIDO BOULEVARD AND JUNIPER STREET TO THREE-HOUR PARKING LIMITATION -**

Request Council approve amending the Schedule of Time Zoned Parking to convert the existing two-hour parking limitation on Grand Avenue between Escondido Boulevard and Juniper Street to three-hour parking limitation. (File No. 1060-10)

Staff Recommendation: **Approval (Public Works Department/Engineering: Ed Domingue)**

RESOLUTION NO. 2015-163

Deputy Mayor Morasco questioned how the City would monitor the success of the program.

Abraham Bandegan, Engineering, noted that businesses requested the change and the City will reevaluate the change in 6 months.

**MOTION:** Moved by Councilmember Gallo seconded by Councilmember Diaz to approve amending the Schedule of Time Zoned Parking to convert the existing two-hour parking limitation on Grand Avenue between Escondido Boulevard and Juniper Street to three-hour parking limitation and adopt Resolution No. 2015-163. Motion carried unanimously.

**12. AMEND SCHEDULE OF STOP SIGNS TO ADD NEW STOP SIGNS ON WEST CITRACADO PARKWAY AT SOUTH ESCONDIDO BOULEVARD AND ON WEST CITRACADO AT SOUTH CENTRE CITY PARKWAY -**

Request Council approve amending the City's Schedule of stop signs to add one (1) new stop sign on West Citracado Parkway at South Escondido Boulevard, and one (1) new stop sign on West Citracado Parkway at South Centre City Parkway. (File No.1050-50)

Staff Recommendation: **Approval (Public Works Department/Engineering: Ed Domingue)**

RESOLUTION NO. 2015-168

Deputy Mayor Morasco requested a presentation on the proposal.

Ali Shahzad, Engineering, presented the staff report, utilizing a PowerPoint presentation.

**MOTION:** Moved by Councilmember Diaz and seconded by Councilmember Gallo to approve amending the City's Schedule of stop signs to add one (1) new stop sign on West Citracado Parkway at South Escondido Boulevard, and one (1) new stop sign on West Citracado Parkway at South Centre City Parkway and adopt Resolution No. 2015-168. Motion carried unanimously.

**13. CONTINUING EMERGENCY AND NEED TO REPAIR THE ESCONDIDO SEWER OUTFALL IN THE ESCONDIDO CREEK -**

Request Council approve declaring that, pursuant to the terms of Section 22050 of the California Public Contract Code, the City Council finds there is a need to continue the emergency action and pass a resolution by four-fifths vote declaring that public interest and necessity demand the expenditure to safeguard life, health, or property. (File No. 1330-45)

Staff Recommendation: **Approval (Utilities Department: Christopher W. McKinney)**

RESOLUTION NO. 2015-167

**14. CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT - AWARD OF CONSULTING AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES -**

Request Council approve authorizing the Mayor and City Clerk to execute a Consulting Agreement for \$329,448 with Michael Baker International for construction management services for the Cemetery Area Water Pipeline Replacement Project. (File No. 0600-10 [A-3163])

Staff Recommendation: **Approval (Utilities Department: Christopher W. McKinney)**

RESOLUTION NO. 2015-160

**15. BUDGET ADJUSTMENT REQUEST AND APPROVAL OF CHANGE ORDERS FOR THE INFLUENT PUMP STATION PROJECT AT THE HALE AVENUE RESOURCE RECOVERY FACILITY -**

Request Council approve a budget adjustment in the amount of \$75,000 to Capital Improvement Program No. 804001 (HARRF Influent Pump Station) from the Wastewater Fund Operating, Debt, and CIP Reserve, and authorize a second amendment to the contract with TC Construction Company, Inc. The value of this amendment is not to exceed \$75,000 (0.1% of the original contract amount of \$8,169,500). (File No. 0600-10 [A-3162])

Staff Recommendation: **Approval (Utilities Department: Christopher W McKinney)**

RESOLUTION NO. 2015-162

## CONSENT – RESOLUTIONS AND ORDINANCES (COUNCIL/SUCCESSOR AGENCY/RRB)

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

### 16. AMENDMENT TO ESCONDIDO MUNICIPAL CODE SECTION 20-2 -

Approved on September 2, 2015 with a vote of 5/0 (File No. 0680-50)

ORDINANCE NO. 2015-18R (Second Reading and Adoption)

## PUBLIC HEARINGS

### 17. CONDUCT A PUBLIC HEARING TO CONSIDER A RESOLUTION OF NECESSITY FOR EMINENT DOMAIN FOR THE CITRACADO PARKWAY EXTENSION PROJECT - ASSESSOR PARCEL NUMBER 235-040-15 (PACIFIC HARMONY GROVE DEVELOPMENT, LLC, ET. AL.) -

Request Council approve a Resolution of Necessity authorizing initiation of an Eminent Domain Action. (File No. 0690-50)

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

RESOLUTION NO. 2015-165

Debra Lundy, Real Property Manager, presented the staff report, utilizing a PowerPoint presentation.

**MOTION:** Moved by Councilmember Gallo and seconded by Councilmember Diaz to approve a Resolution of Necessity authorizing initiation of an Eminent Domain Action and adopt Resolution No. 2015-165. Ayes: Abed, Gallo, Morasco and Diaz. Noes: None. Abstained: Masson. Motion carried.

## CURRENT BUSINESS

### 18. AUTHORIZE REPAYMENT OF FUTURE STATE REVOLVING FUND LOANS FOR THREE RECYCLED WATER DISTRIBUTION EXPANSION PROJECTS -

Request Council approve authorizing the repayment of three State Revolving Fund Loans for Capital Improvement Projects that are part of the recycled water distribution system expansion. This expansion will bring recycled water to agricultural customers in the Cloverdale and Hogback areas of the water distribution system. A separate, future Council action will be required for each project to accept loan funds if loan applications are approved by the Department of Water Resources. (File No. 1340-70)

Staff Recommendation: **Approval (Utilities Department: Christopher W. McKinney)**

A). RESOLUTION NO. 2015-157 B). RESOLUTION NO. 2015-158

C). RESOLUTION NO. 2015-159

Chris McKinney, Director of Utilities, presented the staff report, utilizing a PowerPoint presentation.

**Scott Graves, Escondido**, questioned if projects can be combined to minimize citizen inconvenience.

**MOTION:** Moved by Deputy Mayor Morasco and seconded by Councilmember Masson to approve authorizing the repayment of three State Revolving Fund Loans for Capital Improvement Projects that are part of the recycled water distribution system expansion. This expansion will bring recycled water to agricultural customers in the Cloverdale and Hogback areas of the water distribution system. A separate, future Council action will be required for each project to accept loan funds if loan applications are approved by the Department of Water Resources and adopt Resolution No. 2015-157, Resolution No. 2015-158, and Resolution No. 2015-159. Motion carried unanimously.



**19. AUTHORIZE AN ENERGY SERVICE CONTRACT FOR ENERGY DEMAND REDUCTION AT MULTIPLE CITY FACILITIES -**

Request Council approve authorizing the Mayor and City Clerk to execute a ten-year Energy Service Contract with Green Charge Networks to install and maintain a battery powered energy storage system to reduce the demand charge at multiple City facilities. Resolution No. 2015-144 also finds that the anticipated costs to the City for services provided under the Agreement will be less than the anticipated marginal cost of electricity that would have been consumed by the City in the absence of the Agreement. **Continued from September 2, 2015.**

Staff Recommendation: **Approval (Public Works Department/Building Maintenance: Ed Domingue)**

RESOLUTION NO. 2015-144

**THIS ITEM WAS NOT DISCUSSED.**

**FUTURE AGENDA**

**20. FUTURE AGENDA -**

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: Diane Halverson)**

**COUNCIL MEMBERS SUBCOMMITTEE REPORTS**

Councilmember Gallo reported on North County Transit District and shared a message regarding train accidents; reported that ridership and revenue is above average; reported on the San Diego County Water Authority's bond refinancing that will save 15.1 million dollars.

Councilmember Masson noted that he will attend the California League of Cities meeting next week.

Deputy Mayor Morasco stated that the Regional Solid Waste Board Meeting is on October 8 and the California Center for the Arts will be holding a Subcommittee meeting on October 21.

Mayor Abed reported that the LAFCO merger between the Fallbrook Water District and the Rainbow Water District was unsuccessful; reported that SANDAG will be advancing with the San Diego Forward Regional Plan; Shared that Jim Rady, a former Mayor, has passed away.

**CITY MANAGER'S UPDATE/BRIEFING**

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety and Community Development.

- **CITY MANAGER'S UPDATE -**

**ORAL COMMUNICATIONS**

**ADJOURNMENT**

Mayor Abed adjourned the meeting at 5:26 p.m.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MINUTES CLERK



# CITY COUNCIL

For City Clerk's Use:

APPROVED     DENIED

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

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

**Agenda Item No.: 4**  
**Date: October 7, 2015**

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Samantha Foulke, Deputy City Attorney  
**SUBJECT:** Amendment of Escondido Municipal Code Chapter 1A Administrative Remedies

RECOMMENDATION:

It is requested that Council adopt Ordinance No. 2015-19 to improve the tools available to enforcement officers and to update the City's administrative citation procedures.

FISCAL ANALYSIS:

Staff anticipates no significant change to the current budget.

PREVIOUS ACTION:

The City Council enacted Escondido Municipal Code Chapter 1A in 1997 and last amended the Chapter in February 2000.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Neighborhood Improvement section of the City Council Action Plan.

BACKGROUND:

Administrative citations are civil penalties authorized as alternative tools to help the City achieve compliance with municipal laws. By providing the authority to assess penalties commensurate with the offense, enforcement officers can provide a prompt incentive in the field to achieve compliance without the need for greater civil or criminal litigation. Today, enforcement officers can issue a \$100 citation for the first offense, \$500 for a second offense, but the Code requires a \$1,000 penalty for each subsequent offense. Further, the current code automatically doubles the penalties if they are not paid within 30 days. As a result, violators can quickly find themselves owing the City \$3,200. At this point efforts at compliance can become counter-productive.

Thus escalation and doubling of the administrative penalties can actually complicate the City's ability to achieve prompt compliance. Experience shows that offenders routinely assert they want to correct their violation(s) but lack the immediate funds to do so. In practice, enforcement officers avoid writing the \$1,000 citations because of the negative consequences. And, in lieu of large administrative penalties, the City Attorney's office always has the authority and ability to pursue more severe criminal or civil prosecution to achieve the City's objective of code compliance.

The proposed changes lower the second administrative citation and subsequent citation amounts to \$200 and \$500. This will allow enforcement officers to better match the level of the penalty to the offense. The \$500 fine also aligns with the standard court imposed criminal fine for most first time misdemeanor offenses. The proposed changes also remove the 100% late fee. Since enforcement officers retain the authority to issue subsequent citations for continuing offenses, the late fee is not needed. If offenders do not take corrective action, the enforcement officer can issue additional citations or can obtain assistance from the City Attorney to explore alternate means to achieve compliance.

Remaining changes serve as administrative clean-up and update those sections that reference the old appeal procedure of the municipal court. Attachment A to this staff report contains a strike-out version showing all of the recommended changes.

Respectfully submitted,



SAMANTHA FOULKE  
Deputy City Attorney

ATTACHMENT "A"

**Sec. 1A-2. Administrative citations authorized.**

Any person violating provisions of this code may be issued an administrative citation, which is a civil penalty, by an enforcement officer as provided in sections 1A-6, 1A-7 and 1A-8 of this code. This chapter shall apply only to those titles and chapters of this code for which the city council has prescribed a civil penalty.

**Sec. 1A-4. Definitions.**

- (a) City means the City of Escondido.
- (b) Code means the Escondido Municipal Code, the Escondido Zoning Code, or any law, rule, regulation, or code which is adopted by reference.
- (c) Enforcement officer means any person authorized to enforce violations of this code.
- (d) Hearing officer means any person appointed by the city manager to preside over the administrative hearings provided for in section 1A-9 of this code.
- (e) Party means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity which is recognized by law as the subject of rights or duties.
- (f) Penalty shall include "civil penalty" and shall mean the amount assessed for violation of this code pursuant to the administrative citation.
- (g) Person means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity which is recognized by law as the subject of rights or duties.
- (h) Reinspection Fee shall mean a fee charged ~~pursuant to section 6-482 of this code~~ against a responsible person who has become the subject of city enforcement of state or local law, and for which there is a need to recover the city's actual cost of a second or any subsequent inspection of the property, caused by the responsible party's failure to comply with a lawful order from an enforcement officer. The amount of this fee shall be set by periodic resolution of the city council.
- (i) Respondent means any person or entity who is the registered owner, property owner, legal owner, driver, operator, tenant, lessee, or is otherwise liable for penalties in accordance with the applicable section of this code, and who contests or disputes liability for civil penalties.
- (j) Responsible Person or Party shall mean an owner of any property, a person who is responsible for control of the property or the condition of the property, or a person who is responsible for repair or maintenance of the property.

**Sec. 1A-9. Appeal of administrative citation.**

- (a) Persons receiving an administrative citation may appeal it within ten (10) calendar days from the date the citation is served. The appeal must be in writing and must indicate a return address. It must be accompanied by the penalty amount, specifying the basis for the appeal in detail, and must be filed with the

ATTACHMENT "A"

city as indicated in the administrative citation. If the deadline falls any day City Hall is closed, then the deadline shall be extended until the next regular business day.

- (b) As soon as practicable after receiving the written notice of appeal, the city agency shall fix a date, time and place for hearing before a hearing officer. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the appeal notice must be made at least ten (10) days prior to the date of the hearing to the party appealing the citation.
- (c) The failure of any person with an interest in the property, or other responsible party, to receive such properly addressed notice of the hearing shall not affect the validity of any proceedings under this chapter. Service by first class mail, postage prepaid shall be effective on the date of mailing.
- (d) Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of that person's rights to administrative determination of the merits of the citation and the amount of the penalty. If no appeal is filed, the citation shall be deemed a final administrative order.
- (e) A hearing officer shall be designated by the city manager for all appeal hearings under this chapter. The respondent may request the city manager recuse a hearing officer for reasons of actual prejudice against the party's cause. The hearing officer shall conduct an orderly fair hearing and accept evidence on which persons would commonly rely in the conduct of their ordinary business affairs as follows:
  - (1) A valid citation shall be prima facie evidence of the violation;
  - (2) The hearing officer shall accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation;
  - (3) The owner, agent, person responsible for the violation, or any other interested person may present testimony or evidence concerning the violation and the means and time frame for correction.
- (f) The city manager shall establish all appropriate administrative regulations for implementing this chapter, conducting hearings and rendering decisions pursuant to this section.
- (g) The hearing officer may reduce, waive or conditionally reduce the penalties stated in a citation or any late fees assessed if mitigating circumstances are shown and the hearing officer states specific grounds for reduction or waiver in the written decision. The hearing officer may impose conditions and deadlines for correction of violations or payment of outstanding penalties.
- (h) The hearing officer shall make findings based on the record of the hearing and make a written decision based on the findings. The processing agency shall preserve all exhibits submitted by the parties and shall serve the decision by first class mail on the respondent within ten (10) working days after the hearing. The decision of the hearing officer dismissing the citation is final and conclusive. The decision of the hearing officer affirming the citation is final and conclusive, subject only to review by the ~~municipal~~ superior court. There are no appeals to the city council.

ATTACHMENT "A"

**Sec. 1A-10. Court review procedures.**

- (a) After receipt of the hearing officer's decision, the respondent may file an appeal with the ~~municipal~~superior court for de novo review. The request for review shall be submitted within twenty (20) days of the date of mailing of the hearing officer's decision. ~~The request for review shall be submitted on a form prescribed by the court to the City of Escondido, code enforcement division, along with the applicable filing fee.~~ The request for ~~municipal~~superior court review shall state the reasons the party objects to the hearing officer's findings or decision.
- (b) ~~A final administrative order may be appealed to the municipal court as provided in section 1A-10(a) within twenty (20) days of the date that the citation is deemed a final administrative order.~~
- (c) ~~(b)~~ (b) The ~~municipal~~superior court shall conduct a de novo hearing except the contents of the processing agency file shall be received into evidence.
- (d) ~~(c)~~ (c) A copy of the notice of violation and imposition of penalty shall be entered as prima facie evidence of the facts stated therein.
- (e) ~~(d)~~ (d) The ~~municipal~~superior court filing fee shall be twenty-five dollars (\$25.00). If the court finds in favor of the respondent, the amount of the fee shall be reimbursed to the respondent by the city. Any deposit of penalty shall be refunded by the city in accordance with the judgment of the court.
- (f) ~~(e)~~ (e) If the penalty has not been deposited, and the decision of the court is against the respondent, the city may proceed to collect the civil penalty in the manner provided by law.

**Sec. 1A-11. Penalties assessed.**

- (a) The penalty amount shall be assessed at a rate as adopted by resolution of the city council as follows:
  - (1) One hundred dollars (\$100) for the first violation;
  - (2) Two hundred fifty dollars (\$200) for the second violation of the same provision within one year;
  - (3) Five hundred dollars (\$500) for the third and each subsequent violation of the same provision within one year.
- (b) If the violator or property owner fails to correct the violation, subsequent administrative citations may be issued for the same violation(s).
- (c) Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the city.
- (d) All penalties assessed shall be payable to the city.
- (e) ~~The failure of any person to pay a penalty assessed by administrative citation within the time specified on the citation pursuant to section 1A-8(g) shall result in the assessment of an additional late fee. The amount of the late fee shall be one hundred (100) percent of the total amount of the administrative penalty owed.~~
- (f) ~~(e)~~ (e) The failure of any person to pay a penalty assessed by administrative citation within the time specified on the citation constitutes a debt to the city. To

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enforce that debt, the city may file a civil action, impose a special assessment as set forth below, or pursue any other legal remedy to collect such money.

(g)(f) The city may impose a special assessment against the property that is the subject of a citation if the citation has been issued to the property owner. The city shall record a notice of lien in the office of the county recorder when the special assessment procedure is used. When so made and confirmed, the cost shall constitute a lien on that property for the amount of the assessment. After confirmation and recordation, a copy shall be turned over to the San Diego County tax collector. At that point, it will be the duty of the tax collector to add the amounts of the respective assessments to the next regular property tax bills levied against the lots and parcels of land for municipal purposes. Those amounts shall be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and procedures under foreclosure and sale as provided for with ordinary municipal taxes. Or, after recording, the lien may be foreclosed by judicial or other sale in the manner and means provided by law.

(h)(g) Any administrative penalty assessed under this chapter may also include a reinspection fee, as defined in section 1A-4.



ORDINANCE NO. 2015-19

AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AMENDING ESCONDIDO MUNICIPAL CODE  
CHAPTER 1A ADMINISTRATIVE REMEDIES

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN AS  
FOLLOWS:

SECTION 1. That Escondido Municipal Code Chapter 1A Administrative Remedies, Section 1A-2 is hereby repealed and replaced as follows:

**Sec. 1A-2. Administrative citations authorized.**

Any person violating provisions of this code may be issued an administrative citation, which is a civil penalty, by an enforcement officer as provided in sections 1A-6, 1A-7 and 1A-8 of this code. This chapter shall apply only to those titles and chapters of this code for which the city council has prescribed a civil penalty.

SECTION 2. That Escondido Municipal Code Chapter 1A Administrative Remedies, Section 1A-4, is hereby repealed and replaced as follows:

**Sec. 1A-4. Definitions.**

(a) City means the City of Escondido.

(b) Code means the Escondido Municipal Code, the Escondido Zoning Code, or any law, rule, regulation, or code which is adopted by reference.

(c) Enforcement officer means any person authorized to enforce violations of this code.

(d) Hearing officer means any person appointed by the city manager to preside over the administrative hearings provided for in section IA-9 of this code.

(e) Party means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity which is recognized by law as the subject of rights or duties.

(f) Penalty shall include "civil penalty" and shall mean the amount assessed for violation of this code pursuant to the administrative citation.

(g) Person means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity which is recognized by law as the subject of rights or duties.

(h) Reinspection Fee shall mean a fee charged against a responsible person who has become the subject of city enforcement of state or local law, and for which there is a need to recover the city's actual cost of a second or any subsequent inspection of the property, caused by the responsible party's failure to comply with a lawful order from an enforcement officer. The amount of this fee shall be set by periodic resolution of the city council.

(i) Respondent means any person or entity who is the registered owner, property owner, legal owner, driver, operator, tenant, lessee, or is otherwise liable for penalties in accordance with the applicable section of this code, and who contests or disputes liability for civil penalties.

(j) Responsible Person or Party shall mean an owner of any property, a person who is responsible for control of the property or the condition of the property, or a

person who is responsible for repair or maintenance of the property.

SECTION 3. That Escondido Municipal Code Chapter 1A Administrative Remedies, Section 1A-9, is hereby repealed and replaced as follows:

**Sec. 1A-9. Appeal of administrative citation.**

(a) Persons receiving an administrative citation may appeal it within ten (10) calendar days from the date the citation is served. The appeal must be in writing and must indicate a return address. It must be accompanied by the penalty amount, specifying the basis for the appeal in detail, and must be filed with the city as indicated in the administrative citation. If the deadline falls any day City Hall is closed, then the deadline shall be extended until the next regular business day.

(b) As soon as practicable after receiving the written notice of appeal, the city agency shall fix a date, time and place for hearing before a hearing officer. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the appeal notice must be made at least ten (10) days prior to the date of the hearing to the party appealing the citation.

(c) The failure of any person with an interest in the property, or other responsible party, to receive such properly addressed notice of the hearing shall not affect the validity of any proceedings under this chapter. Service by first class mail, postage prepaid shall be effective on the date of mailing.

(d) Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of that person's rights to administrative

determination of the merits of the citation and the amount of the penalty. If no appeal is filed, the citation shall be deemed a final administrative order.

(e) A hearing officer shall be designated by the city manager for all appeal hearings under this chapter. The respondent may request the city manager recuse a hearing officer for reasons of actual prejudice against the party's cause. The hearing officer shall conduct an orderly fair hearing and accept evidence on which persons would commonly rely in the conduct of their ordinary business affairs as follows:

(1) A valid citation shall be prima facie evidence of the violation;

(2) The hearing officer shall accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation;

(3) The owner, agent, person responsible for the violation, or any other interested person may present testimony or evidence concerning the violation and the means and time frame for correction.

(f) The city manager shall establish all appropriate administrative regulations for implementing this chapter, conducting hearings and rendering decisions pursuant to this section.

(g) The hearing officer may reduce, waive or conditionally reduce the penalties stated in a citation or any late fees assessed if mitigating circumstances are shown and the hearing officer states specific grounds for reduction or waiver in the written decision. The hearing officer may impose conditions and deadlines for correction of violations or payment of outstanding penalties.

(h) The hearing officer shall make findings based on the record of the hearing and make a written decision based on the findings. The processing agency shall preserve all exhibits submitted by the parties and shall serve the decision by first class mail on the respondent within ten (10) working days after the hearing. The decision of the hearing officer dismissing the citation is final and conclusive. The decision of the hearing officer affirming the citation is final and conclusive, subject only to review by the superior court. There are no appeals to the city council.

SECTION 4. That Escondido Municipal Code Chapter 1A Administrative Remedies, Section 1A-10, is hereby repealed and replaced as follows:

**Sec. 1A-10. Court review procedures.**

(a) After receipt of the hearing officer's decision, the respondent may file an appeal with the superior court for de novo review. The request for review shall be submitted within twenty (20) days of the date of mailing of the hearing officer's decision. The request for superior court review shall state the reasons the party objects to the hearing officer's findings or decision.

(b) The superior court shall conduct a de novo hearing except the contents of the processing agency file shall be received into evidence.

(c) A copy of the notice of violation and imposition of penalty shall be entered as prima facie evidence of the facts stated therein.

(d) The superior court filing fee shall be twenty-five dollars (\$25.00). If the court finds in favor of the respondent, the amount of the fee shall be reimbursed to the

respondent by the city. Any deposit of penalty shall be refunded by the city in accordance with the judgment of the court.

(e) If the penalty has not been deposited, and the decision of the court is against the respondent, the city may proceed to collect the civil penalty in the manner provided by law.

SECTION 5. That Escondido Municipal Code Chapter 1A Administrative Remedies, Section 1A-11, is hereby repealed and replaced as follows:

**Sec. 1A-11. Penalties assessed.**

(a) The penalty amount shall be assessed at a rate as adopted by resolution of the city council as follows:

(1) One hundred dollars (\$100) for the first violation;

(2) Two hundred fifty dollars (\$200) for the second violation of the same provision within one year;

(3) Five hundred dollars (\$500) for the third and each subsequent violation of the same provision within one year.

(b) If the violator or property owner fails to correct the violation, subsequent administrative citations may be issued for the same violation(s).

(c) Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the city.

(d) All penalties assessed shall be payable to the city.

(e) The failure of any person to pay a penalty assessed by administrative citation within the time specified on the citation constitutes a debt to the city. To enforce

that debt, the city may file a civil action, impose a special assessment as set forth below, or pursue any other legal remedy to collect such money.

(f) The city may impose a special assessment against the property that is the subject of a citation if the citation has been issued to the property owner. The city shall record a notice of lien in the office of the county recorder when the special assessment procedure is used. When so made and confirmed, the cost shall constitute a lien on that property for the amount of the assessment. After confirmation and recordation, a copy shall be turned over to the San Diego County tax collector. At that point, it will be the duty of the tax collector to add the amounts of the respective assessments to the next regular property tax bills levied against the lots and parcels of land for municipal purposes. Those amounts shall be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and procedures under foreclosure and sale as provided for with ordinary municipal taxes. Or, after recording, the lien may be foreclosed by judicial or other sale in the manner and means provided by law.

(g) Any administrative penalty assessed under this chapter may also include a reinspection fee, as defined in section 1A-4.

SECTION 6. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 7. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 8. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be prepared in accordance with Government Code section 36933, to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.



# CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

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

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

**Agenda Item No.: 5**  
**Date: October 7, 2015**

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

**FROM:** Edward N. Domingue, Public Works Director/City Engineer  
Richard O'Donnell, Deputy Director of Public Works/Maintenance

**SUBJECT:** Authorize an Energy Service Contract for Energy Demand Reduction at Multiple City Facilities

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2015-144 authorizing the Mayor and the City Clerk to execute a ten-year Energy Service Contract with Green Charge Networks to install and maintain a battery powered energy storage system to reduce the demand charge at multiple City facilities. Resolution No. 2015-144 also finds that the anticipated costs to the City for services provided under the Contract will be less than the anticipated marginal cost of electricity that would have been consumed by the City in the absence of the Contract.

FISCAL ANALYSIS:

The project will be funded at no cost to the City. Green Charge Networks will install and maintain the equipment. They will receive approximately 70 percent of the savings. The City's share of the total savings in energy cost would be approximately 30 percent. Over the ten-year period, the projected demand charge savings for the City is \$491,567.

BACKGROUND:

The City may enter into an energy service contract on terms that the City Council determines are in the City's best interest. The determination must be at a regularly scheduled public hearing and the City Council must find that the anticipated cost to the City for the conservation services provided under the contract will be less than the anticipated marginal cost to the City of electricity that would have been consumed without the Contract.

Green Charge Networks proposes to reduce the demand charge at multiple City facilities by utilizing a battery system that activates during the peak demand for energy use. By reducing the peak demand charge, the City will see a savings in energy costs that is shared with Green Charge Networks over a ten-year period. The City will not pay anything to Green Charge Networks if there are no savings. Installation and maintenance at each location are the responsibility of Green Charge Networks at no cost to the City.

Based on the City's energy use, Green Charge Networks analyzed ten city facilities that had Time of Use (TOU) electric meters. Of those ten sites, seven locations were viable candidates for the peak demand reduction program. The proposed facilities are: City Hall, Police and Fire Headquarters, Main Library, Park Avenue Community Center, East Valley Community Center, Kit Carson Skate Park, and the CCAE Central Plant.

The following chart illustrates the projected cost to the City for energy provided to the seven facilities without the contract. It also shows the projected cost of services provided under the contract and anticipated savings the City will receive.

### Cost and Savings Breakdown

7 Sites TOTAL	Year 1 2016	Year 2 2017	Year 3 2018	Year 4 2019	Year 5 2020	Year 6 2021	Year 7 2022	Year 8 2023	Year 9 2024	Year 10 2025	TOTAL 10 years
Projected SDG&E Cost	\$ 834,478	\$ 876,202	\$ 920,012	\$ 966,012	\$ 1,014,313	\$ 1,065,029	\$ 1,118,280	\$ 1,174,194	\$ 1,232,904	\$ 1,294,549	\$ 10,495,973
Total GCN Projected Savings	\$ 126,088	\$ 132,159	\$ 138,533	\$ 145,225	\$ 152,252	\$ 159,631	\$ 167,378	\$ 175,513	\$ 184,055	\$ 193,024	\$ 1,573,858
Gross Cost to City	\$ 708,390	\$ 744,043	\$ 781,479	\$ 820,787	\$ 862,061	\$ 905,398	\$ 950,902	\$ 998,681	\$ 1,048,849	\$ 1,101,525	\$ 8,922,115
Payment to GCN	\$ 86,047	\$ 90,349	\$ 94,867	\$ 99,610	\$ 104,591	\$ 109,820	\$ 115,311	\$ 121,077	\$ 127,131	\$ 133,487	\$ 1,082,291
Net Cost to City	\$ 794,437	\$ 834,393	\$ 876,346	\$ 920,398	\$ 966,651	\$ 1,015,218	\$ 1,066,213	\$ 1,119,758	\$ 1,175,980	\$ 1,235,013	\$ 10,004,406
Net Savings to City	\$ 40,041	\$ 41,809	\$ 43,666	\$ 45,615	\$ 47,662	\$ 49,811	\$ 52,067	\$ 54,436	\$ 56,924	\$ 59,536	\$ 491,567

The following chart illustrates the anticipated net savings at all seven locations over the ten year period.

### City's Net Savings All Locations

	Year 1 2016	Year 2 2017	Year 3 2018	Year 4 2019	Year 5 2020	Year 6 2021	Year 7 2022	Year 8 2023	Year 9 2024	Year 10 2025	TOTAL 10 years
Police and Fire Headquarters	\$ 17,253	\$ 18,008	\$ 18,800	\$ 19,633	\$ 20,507	\$ 21,425	\$ 22,388	\$ 23,400	\$ 24,462	\$ 25,578	\$ 211,453
East Valley Community Center	\$ 5,577	\$ 5,830	\$ 6,096	\$ 6,375	\$ 6,668	\$ 6,976	\$ 7,299	\$ 7,638	\$ 7,994	\$ 8,367	\$ 68,820
City Hall	\$ 5,482	\$ 5,730	\$ 5,990	\$ 6,264	\$ 6,551	\$ 6,853	\$ 7,170	\$ 7,503	\$ 7,852	\$ 8,219	\$ 67,614
Park Avenue Community Center	\$ 4,080	\$ 4,258	\$ 4,445	\$ 4,642	\$ 4,848	\$ 5,064	\$ 5,292	\$ 5,531	\$ 5,781	\$ 6,044	\$ 49,985
Kit Carson Park - Sports Center	\$ 2,791	\$ 2,918	\$ 3,051	\$ 3,190	\$ 3,337	\$ 3,491	\$ 3,652	\$ 3,822	\$ 4,000	\$ 4,187	\$ 34,438
Library	\$ 2,854	\$ 2,973	\$ 3,099	\$ 3,231	\$ 3,369	\$ 3,515	\$ 3,667	\$ 3,828	\$ 3,996	\$ 4,173	\$ 34,704
Central Plant	\$ 2,005	\$ 2,092	\$ 2,184	\$ 2,280	\$ 2,381	\$ 2,488	\$ 2,599	\$ 2,716	\$ 2,839	\$ 2,968	\$ 24,552
	\$ 40,041	\$ 41,809	\$ 43,666	\$ 45,615	\$ 47,662	\$ 49,811	\$ 52,067	\$ 54,436	\$ 56,924	\$ 59,536	\$ 491,567

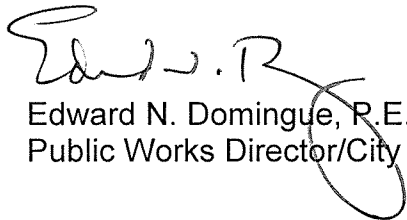
Since the anticipated cost to the City for the conservation services provided under the contract will be less than the anticipated marginal cost to the City of electricity that would have been consumed without the Agreement, the City may use the process authorized by Cal. Gov't Code § 4217.12, if approved by the City Council to directly award GCN this contract.

The services provided by GCN are relatively unique. Staff was able to obtain a quote from another company with a similar program for comparison. The quote required a twenty-year agreement and resulted in a lower net savings to the City. The City also would have been required to carry the loans and pay for the services whether or not the anticipated savings were realized.

Authorize Contract for Energy Demand Reduction  
October 7, 2015  
Page 3

Based on the analysis of the savings contained in this staff report and the closest comparable quote, staff recommends approval of the Resolution and the Contract.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward N. Domingue". The signature is stylized and includes a large, circular flourish at the end.

Edward N. Domingue, P.E.  
Public Works Director/City Engineer

A handwritten signature in black ink, appearing to read "Richard O'Donnell". The signature is written in a cursive style.

Richard O'Donnell  
Deputy Director of Public Works/Maintenance

RESOLUTION NO. 2015-144

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, AN ENERGY SERVICE CONTRACT  
WITH GREEN CHARGE NETWORKS FOR  
THE INSTALLATION OF ENERGY DEMAND  
CHARGE REDUCTION EQUIPMENT

WHEREAS, the City of Escondido is interested in operating its facilities in an energy efficient manner; and

WHEREAS, Green Charge Networks proposes to reduce the energy demand charge at multiple City facilities; and

WHEREAS, the equipment will be installed and maintained at no cost to the City; and

WHEREAS, the demand charge savings will be shared between the City and Green Charge Networks for a ten-year period; and

WHEREAS, the Director of Public Works/City Engineer recommends approving the Energy Service Contract ("Contract") with Green Charge Networks; and

WHEREAS, this City Council finds that the anticipated costs to the City for services provided under the Contract will be less than anticipated marginal cost of electricity that would have been consumed by the City in the absence of the Contract; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the Contract with Green Charge Networks.

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 Public Works/City Engineer to enter into a Contract with Green Charge Networks.
3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, the Contract with Green Charge Networks for the installation and maintenance of equipment to reduce the energy demand charge at multiple City facilities, and share the savings with Green Charge Networks. A copy of the Contract is attached as Exhibit "A" to this resolution and is incorporated by this reference.

**ENERGY SERVICE CONTRACT**

This Power Efficiency Agreement (this "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), by and between the City of Escondido, with offices located at 201 North Broadway, Escondido, CA 92025 ("Host"), and Green Charge Networks Energy Services, LLC, a Delaware limited liability company with offices located at 4151 Burton Drive, Santa Clara, CA 95054 ("Owner" and, together with Host, each, a "Party" and together, the "Parties").

**RECITALS**

WHEREAS, Host owns and occupies certain premises as identified in Exhibit A (collectively, the "Premises");

AND WHEREAS, Owner develops, constructs and installs energy storage systems to reduce customer demand charges;

AND WHEREAS, Owner has conducted an analysis of Host's energy usage and electric utility bills and completed a demand charge reduction proposal requiring installation of an energy storage system, as more fully described on Exhibit B hereto (collectively, the "System"), on a portion of the Premises;

AND WHEREAS, the purpose of installing the System is to generate electric utility bill savings for Host by reducing Host's peak demand for electrical energy through storage and discharge of electrical energy on and from the System (such energy savings services, the "Conservation Services");

AND WHEREAS, Host desires to enter into this Agreement for Conservation Services in order to reduce demand charges that Host pays from time to time to its local utility provider, and Owner is willing to provide the Conservation Services, on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**AGREEMENT**

1. TERM AND TERMINATION;

1.1 Term. The term of this Agreement with respect to any Site (as defined in Subsection 1.5), and the Conservation Services provided under it, shall commence on the Effective Date and shall run for a period ending on the Ten (10) year anniversary of the Site Commercial Operation Date (as defined in Section 3.8 below) applicable to such Site (the "Initial Term"), unless terminated earlier pursuant to the provisions of this Agreement. Provided that there has not been an early termination pursuant to the provisions of this Agreement, after the Initial Term, Host may elect to (a) require removal of the system by Owner pursuant to Section

1.2 of this Agreement; (b) purchase the System at fair market value to be agreed upon by the Parties; or (c) request that Host and Owner negotiate a renewal term ("Renewal Term") for this Agreement ( Host elections (a) (b) and (c) of this Section 1.1 referred to "Host Termination Options").

At least ninety (90) days, but no more than one-hundred and eighty (180) days prior to the expiration of the Initial Term, Host shall notify Owner which of the Host Termination Options it wishes to elect. If Host elects Host Termination Option (b) or (c), but the Parties are unable to agree on the terms for a fair market value purchase or a Renewal Term (as the case may be), Owner shall remove the System in accordance with Section 1.2 of this Agreement. The Initial Term and the Renewal Term, if any, are referred to collectively as the "Term." The date on which the Term ends is referred to herein as the "Expiration Date."

1.2 Removal of System. Owner shall, at Owner's sole expense, remove all tangible property comprising the System from the Premises on a mutually convenient date, but in no event later than thirty (30) days after the Expiration Date or earlier termination of this Agreement in accordance with its terms. Owner shall undertake such removal in such a manner as to not interrupt operation of the business at the Premises, including an interruption of electrical power. In connection with such removal, Owner shall remove above ground support structures and repair any damage to the Site and any other area in which any portion of the System was installed and restore such areas to their original condition, excluding ordinary wear and tear, provided that Owner shall not be required to remove large electrical conduits which Owner shall cause to be capped and secured. Owner shall leave the Premises in neat and clean order. If Owner fails to completely remove the System and repair the affected area as provided above, within forty-five (45) days of the Expiration Date, Host may, upon ten (10) business days prior written notice to Owner, complete the necessary removal and/or restoration and Owner shall reimburse Host for the costs incurred by Host within ten (10) days after presentation by Host to Owner of documentation describing the work performed and the cost thereof. In addition, should Owner fail to remove the System within such forty-five (45)day period, Owner will be deemed to have abandoned the System and Host may, at Owner's sole cost, remove and dispose of the System, including by sale or otherwise, as Host sees fit in its discretion, provided that if Host realizes any proceeds from the sale of the System (which may or may not occur) Host will credit such proceeds against the cost of removal.

1.3 Host's Right to Terminate this Agreement. Host shall have the right to terminate this Agreement, without penalty:

- (a) upon any Owner Default;
- (b) in consideration of Government Code sections 4217.10 et seq, upon ninety (90) days' notice if Host is not realizing any cost savings under this Agreement, as measured on a rolling twelve-month period throughout the Term, to be calculated by comparison of (i) Host's actual electrical energy costs with the System installed versus (ii) Host's estimated electrical energy costs based on actual energy usage at the then actual Host tariff rates in effect at the respective times, assuming that the System was not operational.

1.4 Owner's Right to Terminate this Agreement. Owner shall have the right to terminate this Agreement with regard to one or all Sites, without penalty:

- (c) upon any Host Default;
- (d) upon ninety (90) days' notice, if an unstayed order of a court or administrative agency is entered having the effect of subjecting the provision and/or sale of the Power Efficiency Service to federal or state regulation of prices and/or service;
- (e) upon ninety (90) days' notice, if the Host load profile or electricity provider changes the manner in which Host's rate structures and demand charges are calculated which results in an actual materially lower Demand Charge Reduction Savings;
- (f) if at any time during the first ninety (90) days following the Effective Date Owner determines that the Site conditions are not optimal for installation of the System.
- (g) if at any time Owner determines that it will not receive continued funding of the SGIP Incentive or financing; or
- (h) if Owner is unable to obtain proper permits or interconnection with the Local Provider.

1.5 Site Access.

(a) Host does hereby provide access to Owner to certain space at each location comprising the Premises as identified on Exhibit A attached hereto (each space at each location, a "Site") for the sole purpose of installing, maintaining, operating, accessing, removing and replacing the System on such Site and otherwise satisfying its obligations and availing itself of the rights set forth in this Agreement. Owner may install, with Host's prior written consent, any improvements on each Site that Owner determines are reasonably necessary for the efficient operation of the System and provision of the Conservation Services.

(b) Owner shall provide Host prior written notice at least five (5) business days before it or its contractors and/or subcontractors commence installation at any Site.

(c) At all times during the Term, Owner shall maintain insurance coverage as set forth in Section 16 to cover any damage caused to the Premises resulting from the installation, maintenance and operation of the System.

2. CONTINGENCIES.

2.1 Contingencies Available to Host. Host shall have the option to rescind this Agreement in the event of the following contingent events:

(a) Site. Host may rescind this Agreement in respect of a Site, if the Site conditions are not optimal for installation of the System, and only if Host provides Owner with written notice of the rescission prior to the time installation of the System has



commenced at the Site but in no event later than sixty (60) days following the Effective Date (the "Site Contingency Period").

(b) Notice to Proceed. At any time prior to the expiration of the Site Contingency Period Host may waive all its available contingencies and rescission rights thereunder (as set forth above in Section 2.11(a)) by issuing to Owner a written notice advising Owner to proceed with activities necessary to the sourcing of components for and installation of the System at a particular Site (the "Notice to Proceed"). Email shall be an acceptable method for delivery of the Notice to Proceed. Once such Notice to Proceed is given Host may not exercise its rescission rights specified in subparagraphs (a) and (b) of this Subsection.

2.2 Post-Rescission. In the event Host exercises its rescission rights as set forth above in Section 2.1, Host shall have no further liability to Owner and shall not be obligated to pay Owner a termination payment or termination of this Agreement in respect of the relevant Site(s).

### 3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Use of Contractors and Sub-contractors. Owner shall be permitted to use contractors and sub-contractors to perform its obligations under this Agreement. Owner shall continue to be responsible for the quality of the work performed by its contractors and sub-contractors. Owner shall remain responsible for obligations, services and functions performed by sub-contractors to the same extent as if such obligations, services and functions were performed by Owner's employees and for purposes of this Agreement such work shall be deemed work performed by Owner.

3.2 Liens and Payment of Contractors and Suppliers. Owner shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Owner in connection with work to be performed in connection with this Agreement ("Charges") and shall keep the Facility free and clear of any liens related to such Charges. Owner shall indemnify Host for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such Charges; provided, however, that Owner shall have the right to contest any such lien and related Charges, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Site and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Site and the Premises. Owner will give Host copies of certificates of completion or similar documentation from Owner's contractors or sub-contractors, along with copies of all final lien waivers from Owner's contractors or sub-contractors, within thirty (30) days of installation on the Premises.

3.3 Notice to Contractors and Sub-contractors. Owner shall, prior to commencing construction or maintenance of the System, notify all contractors and sub-contractors that Host shall not be responsible for payment for their work done on the Site, and all contractors and sub-contractors shall acknowledge in writing receipt of such notice.

3.4 Access Rights. Owner and its employees, agents, financiers, representatives and sub-contractors, if any, is granted the right to use such portions of the Premises as are reasonably required in order for Owner and its employees, contractors and sub-contractors, if any, to install,

operate, maintain, and remove the System and otherwise satisfy its obligations under this Agreement. Owner shall notify Host prior to entering the Premises except in situations where there is imminent risk of damage to persons or property.

3.5 OSHA Compliance; Compliance with Law. Owner shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement. Owner shall comply with all applicable laws in its performance hereunder.

3.6 Approvals; Installation, Permitting and Interconnection. Owner shall submit detailed drawings (including, without limitation, an electrical plan showing all planned modifications to the existing electrical systems of the Site and such other plans as may be reasonably requested by Host) related to the installation of the System at a particular Site to Host for approval. Owner shall, at Owner's sole cost and expense, obtain all governmental approvals and other permits and approvals required for the installation and operation of the System, including approval for interconnection (the "Interconnection Notice") of the System with the local electricity provider or utility serving the Site (the "Local Provider"). Owner will be responsible for all permits, applications or other fees required in connection with the foregoing. Host will, if necessary, cooperate with Owner's reasonable requests to assist Owner in obtaining such permits or approvals, but shall not be required to incur any costs or expenses in connection with such cooperation.

3.7 Financial Incentives. Unless expressly provided otherwise, all Rebates, or incentives available in connection with the System are owned by Owner. "Rebates" shall mean any and all federal, state, local or Local Provider rebates, grants, or other funding offered for the development, installation or operation of energy system projects, including, but not limited to the Self Generation Incentive Program, Investment Tax Credit or local incentive programs. Host agrees, if necessary, to take all actions reasonably requested by Owner in order for Owner to obtain all rebates or subsidies made available in connection with the installation and operation of the System by any federal government, state government, local government, Local Provider or other source. Per the SGIP program, all SGIP application fees will be refunded to Host. Upon receipt of the SGIP refund, Owner will add this amount to the next invoice.

3.8 Commercial Operation Date. The commercial operation of the System with respect to each Site will commence on the date specified in the Interconnection Notice for such Site (each, a "Site Commercial Operation Date"). Host will use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary to result in Owner being able to obtain or issue the Interconnection Notice and obtain all other approvals needed to install, operate and maintain the System with respect to each Site.

#### 4. SYSTEM OPERATIONS.

4.1 Owner as Owner and Operator. Host shall have no ownership rights in the System. Notwithstanding that it will be affixed to the Sites, the System will not be deemed a part of, or a fixture to, the Premises or any portion of it. The System shall at all times retain the legal status of personal property of Owner (or its operating subcontractor, as applicable) who shall pay any personal property assessments or charges owed on the System. Owner shall assure that all statements for personal property or other taxes applicable to the existence of, or operation of,

the System are sent by the taxing authority(ies) directly to Owner. Owner shall at all times keep the System in good operating condition and in compliance with all manufacturer specifications, including periodic maintenance, and shall assure that all warranties remain in effect. Owner shall operate and perform, or cause to be performed, all repairs to, or maintenance of, the System at its sole cost and expense, except to the extent that any necessary repairs result from the sole, gross negligence or willful misconduct of Host.

4.2 Tax Returns. Host will not take a position on any tax return or in other filings suggesting that it is anything other than a purchaser of the Power Efficiency Service and Owner shall be treated as the owner of the System for federal and state income tax purposes and shall retain title to any tax credits available under federal or state law with respect to the System.

5. DELIVERY OF SERVICES; FEES.

5.1 Calculation of Demand Charge Reduction Savings; Power Efficiency Fees.

(a) It is anticipated by the Parties that the operation of the System at each Site will result in a reduction in the demand charge, power or Kilowatt (KW) portion of Host's obligations to its Local Provider (such reduction in demand charges that would otherwise be paid, with respect to all Sites, in the aggregate, the "Demand Charge Reduction Savings") listed in Exhibit C. Owner shall calculate and provide to Host the amount of Demand Charge Reduction Savings on a monthly basis. This calculation will be based upon comparing the actual charges due to "demand charge" portion of Host's utility bills issued from its Local Provider to the avoided "demand charge" that Owner calculates that Host would otherwise have had to pay without the use of the System. In consideration of the Conservation Services provided hereunder, Host shall pay to Owner an amount equal to the applicable percentage of the Demand Charge Reduction Savings applicable to such Site as set forth in Exhibit C (the "Power Efficiency Fee"). Host shall make all of its invoices/statements with its Local Provider available to Owner for purposes of calculating the Power Efficiency Fee promptly after Host receives such invoices/statements. If a payment to Owner would not result in a cost savings when compared to the previous year, then no payment shall be due.

(b) Owner shall invoice Host for the amounts due hereunder on a monthly basis or as otherwise agreed to by the parties, and undisputed bills shall be paid within thirty (30) days of receipt by Host.

5.2 Operational Change. If at any time during this Agreement Host makes any changes to its business operations that reduce the amount or peaks of its electrical energy usage with its Local Provider by more than 20% of the previous year's demand for the same consecutive three-month billing period (an "Operational Change"), then Host agrees to increase Owner's percentage of the monthly Power Efficiency Fee to an amount that most closely approximates the monthly Power Efficiency Fee paid for the relevant three-month billing period in the prior year before such Operational Change, but in no event shall the Power Efficiency Fee exceed 95% of the Demand Charge Reduction Savings. The increased Power Efficiency Fee shall continue for the remainder of the Term unless and until such time as Host's usage of electrical energy over a three-month billing period increases to a level higher than the usage during the relevant three-month billing period in the year preceding such Operational Change.

5.3 Environmental Attributes. Host's purchase of Power Efficiency Service pursuant to this Agreement does not include any entitlement to Environmental Attributes, tax benefits or other attributes of ownership of the System. All Environmental Attributes shall be retained by Owner, and may be used or disposed of by Owner in its sole discretion. For the purposes hereof, the term "Environmental Attributes" means any and all marketable environmental attributes or renewable energy credits, including but not limited to, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags and tradable renewable credits, provided that in no event will the foregoing sever, erode or affect Host's right, title and interest in and to the Premises.

5.4 Risk of Loss. As between the Parties, Owner shall be deemed to have exclusive control (and shall be responsible for any property damage or injuries caused thereby) of the System and the electricity generated up to and including the point at which the System is interconnected to the customer meter. Owner shall bear all risk of loss or damage to the System whatsoever, except to the extent resulting from the willful misconduct or sole, gross negligence of Host (to the extent not otherwise covered by Owner's insurance). Owner shall be required to carry casualty and property insurance sufficient to protect Owner's interest in the System, as provided by Section 15 below.

5.5 ISO Markets & Demand Response Programs. Upon mutual agreement (Host's agreement not to be unreasonably withheld or delayed), Owner may secure additional revenue streams for both Host and Owner, and Owner may aggregate the System and the electrical energy stored in the System with other customers of Owner that have similar systems in order to allow Owner to operate as a participating generator for an Independent System Operator ("ISO") or Local Provider. As a participating generator to an ISO or Local Provider or participating in a utility "Demand Response Program", Owner would be able to provide capacity, transmission and ancillary services to the electrical power system for a fee. Similarly, Host will cooperate with Owner to enter into any "Demand Response Programs using the System that Owner believes may generate additional savings beyond the Demand Charge Reduction Savings. Any revenue generated from Owner's operation as a participating generator to an ISO, Local Provider or from entering into any Demand Response Programs will be mutually agreed upon.

## 6. RELOCATION OF SYSTEM.

Notwithstanding anything to the contrary in this Agreement, if Host ceases to operate at and/or vacates the Premises or is prevented from operating the System at the Premises at any time after the Site Commercial Operation Date (defined in Section 3.8 above) and prior to the expiration of the Term, Host shall have the option to provide Owner with a mutually agreeable substitute premises, but only to the extent that Host assumes the responsibility and risk for the substitute site complying with the SGIP regulations and the substitute site is located within the same Local Provider district as the terminated System. Host shall provide written notice of this intended substitution at least ninety (90) days prior to the date of decommissioning the System. In connection with such substitution, Host shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) Site Access, which will be amended to grant rights in the Premises where the System relocated to; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Host agrees to pay "relocation fees" in connection with any such substitution as follows: all direct relocation costs

to the relocated Premises (including any costs associated with Owner removing and relocating the System or returning the Premises to its original condition). Owner shall remove and relocate the System from the vacated Premises (at Host's cost). Excluding ordinary wear and tear, Owner shall return the Premises to its original condition including the removal of System support structures in accordance with Section 1.2 (at Host's cost). If Host does not provide a substitute premises to which to relocate the System that meets the above requirements (including compliance with the SGIP regulations to allow Owner to continue to receive all applicable SGIP payments, an early termination treated as a default by Host in accordance with Section 1.4(a) of this Agreement will be deemed to have occurred.

## 7. OPERATIONS AND MAINTENANCE.

7.1 O&M Services. Owner shall be responsible for performing, or causing to be performed, all operation, repair, maintenance and monitoring services for the System during the Term. At all times, Owner shall promptly provide Host with all information reasonably requested relating to the operation, use, or any other matter relating to the System, subject, however, to any confidentiality requirements set forth herein. Owner shall be permitted, upon mutual agreement, to re-baseline, recalibrate and otherwise make modifications to the System, including, but not limited to, adding modular components such as additional batteries or inverters. Notwithstanding the foregoing and anything in this Agreement to the contrary, all damage or injury to the System, whether requiring structural or nonstructural repairs, that are directly caused by, or that result solely from the gross negligence of, Host may be repaired by Owner, at Host's sole cost and expense, to the condition that existed before the damage.

7.2 The O&M and system warranty will be provided for a 10 year period or the term of this contract. The O&M and system warranty will provide support, problem diagnosis, on-site repair and preventative maintenance to make sure the system is functioning correctly for 10 years after the Site Commercial Operational Date.

7.3 Host Site Obligations. Host shall take reasonable precautions to protect the System from vandalism. Notwithstanding anything to the contrary in this Agreement, Host shall not be required to undertake any additional measures related to the monitoring and security of the System than it otherwise would in its normal course of business if the System were not installed on the Premises. For the avoidance of doubt, Host shall be under no obligation to maintain the System or any other equipment installed by Owner within the Site.

7.4 Host Rights to Premises. Host further represents, warrants and covenants that it has obtained or it shall obtain from any third parties (i) with an interest in the Premises (including, without limitation, any owner, lender, lessee, ground lessor, or any party to any reciprocal easement agreement) or (ii) whose consent is otherwise required under conditions, covenants and restrictions documents, declarations or similar agreements affecting the Premises, any and all consents or approvals required in order for Host to grant to Owner the access to the Premises contemplated under Section 1.5 of this Agreement and to perform its obligations under this Agreement, and for Owner to take the actions with respect to the Premises contemplated in this Agreement.

7.5 Suspension of Service. Owner shall be entitled to reasonably suspend delivery of Power Efficiency Service to the Premises for the purpose of maintaining and repairing any

System and such suspension of service shall not constitute a breach of this Agreement. Owner shall ensure that any suspension in the delivery of Power Efficiency Service to Host shall not cause an interruption of electricity service to the Premises supplied by the Local Provider.

7.6 Notifications of Malfunctions and Emergencies. Each Party shall notify the other as soon as reasonably practicable following the discovery by it of any material malfunction of the System or interruption in the supply of Power Efficiency Service from the System ("System Emergency"). Each Party shall designate and advise the other Party in writing of personnel to be notified in the event of a System Emergency.

7.7 Structural Damage to Site Premises. Subject to Sections 13 and 16 below, Owner shall be liable for any damage caused by the System or Owner's access to the Premises hereunder, including, without limitation, any damage to the Premises, damage to property, or injury to persons, or from any operation and/or maintenance activity of Owner resulting in such damage. Owner shall, within ten (10) business days from receiving notice of any such damage make all repairs. In the event Owner does not complete the repairs within twenty (20) business days, Host shall have a right to make all repairs, and Owner shall reimburse Host for all costs related thereto incurred by Host within ten (10) days after presentation by Host to Owner of supporting documentation describing the work performed and the cost thereof.

## 8. GENERAL COVENANTS.

8.1 Owner's Covenants. As a material inducement to Host's execution and delivery of this Agreement, Owner covenants and agrees to the following:

(a) Health and Safety. Owner shall strictly comply with all applicable laws, statutes, rules, regulations and ordinances for the Premises (if any).

(b) Notice of Damage. Owner shall immediately notify Host of any matters it is aware of pertaining to any actual or potential damage to or loss of the use of the System or the Premises or that could reasonably be expected to adversely affect the System (or the operation of the System) or the Premises.

(c) Liens. Owner shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens (other than those temporary liens that automatically arise as a matter of law) on or with respect to the Premises or any interest therein except that Owner may grant a lien on or security interest in its rights and interests in the Agreement for financing purposes. If Owner breaches its obligations under this Section, it shall promptly cause any liens to be discharged and released of record without cost to Host.

(d) Host's Reservation of Rights. Owner shall not inhibit Host from access to the Site.

8.2 Host's Covenants. As a material inducement to Owner's execution and delivery of this Agreement, Host covenants and agrees that it shall not alter, repair, modify or otherwise tamper or interfere with the System without the prior written consent of Owner. Host agrees to cooperate in all reasonable manner to enable Owner to execute and perform its obligations under the Agreement.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) it has the full right and authority and has taken all requisite corporate or other action to enter into, execute, deliver, and perform its obligations under this Agreement;

(c) it has the financial resources necessary to perform its obligations under this Agreement;

(d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other governmental authority by, against, affecting or involving any of its business or assets that would affect its ability to carry out the transactions contemplated herein; and

(f) Neither the execution and delivery of this Agreement by such Party nor the performance by such Party of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which such Party is a party or by which such Party is bound.

9.2 Owner's Warranties. Owner represents and warrants the following:

(a) Quality of Services. The Conservation Services will be performed in a diligent and professional manner, in accordance with the highest industry standards by qualified workers experienced in performing the type of work specified herein.

(b) In Accordance with the Agreement. The Conservation Services shall be performed strictly in accordance with the requirements of the Agreement.

(c) In Accordance with the Law. The Conservation Services shall be performed strictly in accordance with all applicable laws, statutes, rules, regulations and ordinances for the Premises (if any).

(d) Permits. Owner has and shall maintain all necessary permits and certifications required by any governmental authority to perform the Conservation Services; any such permits, governmental approvals and certifications will be maintained current and valid throughout the Term hereof.

(e) Intellectual Property. Owner is the lawful owner or licensee of all intellectual property used by Owner in the performance of the Conservation Services.

With respect to any application or hosted software that Owner uses in performing the Conservation Services (“Software”), Owner warrants that: (a) Owner is the lawful owner or licensee of all Software and has the right to license Host to use it; and (b) all Software is free of any defect or computer virus that could impact Host and will function in accordance with its specifications.

(f) Third Party. The Conservation Services will not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any trademark, copyright or patent rights.

10. TAXES AND GOVERNMENTAL FEES.

Owner shall be responsible for paying and remitting all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed by a governmental authority against it due to its ownership of the System. If a tax is imposed upon Host related to the improvement of real property by the existence of the System on the Premises, Owner shall reimburse Host for such tax.

11. FORCE MAJEURE.

11.1 Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Article 11 shall (a) as soon as practicable after occurrence of the claimed Force Majeure event notify the other Party in writing of the existence and nature of the Force Majeure Event, (b) promptly exercise all reasonable efforts necessary to minimize impact on the respective obligations of the parties under this Agreement caused by such Force Majeure Event, (c) promptly notify the other Party in writing of the cessation or termination of said Force Majeure Event, and (d) resume performance of its obligations hereunder as soon as practicable thereafter. For the purposes hereof, a “Force Majeure Event” means the failure or interruption of the production, delivery, or acceptance of Conservation Services resulting from any of the following events to the extent not caused by the Party claiming a Force Majeure Event: (a) war, riot, acts of a public enemy, insurrection, acts of terrorism, or civil disturbance; and (b) acts of God, including but not limited to storms, flood, lightening, earthquake, hailstorms, ice storms, tornados, hurricanes, landslides, fires (whether deliberately set or otherwise); (c) Owner is required by Utility or local authority to stop operation of system; and (d) limited access to the Site(s) due to labor disturbance or investigations by policing authorities.

11.2

11.3 Consequence°of Force Majeure Event. If the System is substantially damaged or destroyed by a Force Majeure Event, Owner shall elect, upon written notice to Host given within ten (10) days after receipt of notice of such substantial damage or destruction, to repair or replace the System and upon commencement of operation of the replacement System all terms and conditions of this Agreement shall remain in effect, including the remaining Term of this Agreement. Alternatively, if the System is substantially damaged or destroyed by a Force Majeure Event, Owner or Host may, by providing written notice to the other within twenty (20)



days, terminate this Agreement without fault or liability to the other. Owner shall have sixty (60) days after either giving or receiving notice of termination pursuant to this section to remove a damaged or destroyed System; otherwise, it shall be considered abandoned and Host may remove and dispose of the System pursuant to Section 1.2.

12. DEFAULT.

12.1 Owner Defaults and Host Remedies. The following events shall be defaults with respect to Owner (each, an "Owner Default"):

(a) A breach by Owner of a material term of this Agreement that remains uncured for twenty (20) business days after Host provided Owner with notice of a breach by Owner that by its nature may not be cured.

(b) If any representation or warranty of Owner proves at any time to have been incorrect in any material respect when made.

In the event of an Owner Default, Host may, in addition to any other remedy available at law or in equity, immediately terminate this Agreement pursuant to Section 1.3(a) above.

12.2 Host Defaults and Owner Remedies. The occurrence of any of the following events shall be deemed a "Host Default" for purposes of this Agreement:

(a) Host breaches any material term of this Agreement that remains uncured for twenty (20) business days after Owner provided Host with notice of a breach by Host that by its nature may not be cured;

(b) If any representation or warranty of Host proves at any time to have been incorrect in any material respect when made;

(c) Host fails to pay Owner any amount owing to Owner under this Agreement, including any Power Efficiency Fee, within thirty (30) days of receiving written notice from Owner that such undisputed amount is past due.

In the event of a Host Default, Owner may, in addition to any other remedy available at law or in equity, terminate this Agreement pursuant to Section 1.4(a) above.

13. LIMITATION OF LIABILITY.

EXCEPT AS OTHERWISE PROVIDED HEREIN, FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS, FOR VIOLATION OF ANY APPLICABLE LAW BY OWNER OR ITS SUBCONTRACTORS, AND TO THE EXTENT ASSERTED BY A THIRD PARTY AS PART OF A CLAIM COVERED BY THE INDEMNIFICATION OBLIGATIONS OF SECTION 16, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY

INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

EACH PARTY'S TOTAL LIABILITY FOR ANY AND ALL LIABILITY TO THE OTHER PARTY AND TO SUCH OTHER PARTY'S SUBCONTRACTORS OR AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, ELECTED OFFICIALS OR EMPLOYEES (ON AN AGGREGATE BASIS) ARISING OUT OF OR IN CONNECTION THIS AGREEMENT WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) SHALL NOT EXCEED TWO MILLION DOLLARS (\$2,000,000.00).

14. ASSIGNMENT.

14.1 Except as provided in Sections 14.2 and 14.3 below, this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees. Any prohibited assignment is void.

14.2 Owner's Rights.

(a) Notwithstanding anything to the contrary in Section 14.1, Owner may assign or subcontract any of the terms or obligations under this Agreement. Host acknowledges and agrees that Owner intends to assign and subcontract certain of its rights and obligations under this Agreement, including relating to construction, installation, testing, operation and maintenance, and a sublease of its rights to the Site for such purposes; Host hereby consents to such assignment and subcontracting. Owner shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the Systems in order to protect its rights in the Systems, provided, however, in no event shall Owner be permitted to make any filings that would be an encumbrance on title to the real property on which the System is situated.

14.3 Host's Rights.

(b) Host may assign its rights and interests in and to this Agreement to any successor owner or person lawfully occupying the Premises, provided that any such assignee shall agree in writing to be bound by the terms of this Agreement.

14.4 Exceptions

(a) Notwithstanding anything to the contrary in Section 14.1, each of the Parties shall have the right without any requirement to obtain consent hereunder, to assign this Agreement to a subsidiary or affiliate, or a successor by merger, acquisition or consolidation, or to an acquirer of all or substantially all of the assets of such Party, its subsidiary or affiliate, provided that such assignment shall be effective upon the assigning Party providing written notice of such assignment to the other Party.

(b) Notwithstanding anything to the contrary in Section 14.1, Owner may assign its rights hereunder for the purposes of arranging financings, provided Owner shall remain bound by all obligations under the Agreement. In the event Owners seeks to arrange such financings, Host shall cooperate by providing written acknowledgements and consents, provided that doing so does not impose any obligation, cost or financial burden on Host and provided that doing so does not create an encumbrance on Host's interest in the Premises. Further, provided, that such assignment shall be effective upon Owner providing written notice of such assignment to Host.

## 15. CONFIDENTIALITY.

14.1 Confidential Information. If either Party provides confidential information, including, without limitation, business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Host's business ("Confidential Information") to the other, or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) to the extent permitted by law, refrain from using such Confidential Information, except to the extent necessary in the negotiation and performance of this Agreement. A Party may provide such Confidential Information to its, officers, directors, members, managers, elected officials, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, lenders, investors, potential lenders, actual or potential investors and potential assignees of this Agreement (provided and on condition that such potential lenders, potential or actual investors and potential assignees agree in writing to be bound by the terms of this Section 15), in each case whose access is reasonable only to the extent necessary to the negotiation and performance of this Agreement, the financing of the System or the sale of any interest in Owner. In any event, except where disclosure was required by law, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 15, except as set forth in Section 15.2. All Confidential Information shall remain the property of the disclosing Party and, except where retention is required by law, shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. The parties agree that should either Party breach or otherwise indicate that it intends to breach the provisions in this Section 15.1, the non-breaching Party will suffer irreparable damages and its remedy at law will be inadequate. Therefore, if a party indicates that it will breach or actually breaches this Section 15.1, the non-breaching party shall be entitled, in addition to all other remedies available to it at law or in equity, to the following: (a) equitable relief, including specific performance and injunctive relief to enforce the provisions of this Section 15.1 and to restrain the breaching party from using or disclosing, in whole or in part, directly or indirectly, any Confidential Information, without having to prove that actual damages or monetary damages would not be an adequate remedy, and without having to post a bond; and (b) recovery for damages, losses, and expenses (including, but not limited to, attorneys' fees and other litigation expenses) arising out of the breach or

indicated intention to breach. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 15.1, but shall be in addition to all other remedies available at law or in equity.

14.2 Permitted Disclosures. Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by it or its affiliates pursuant to applicable law or regulation, a subpoena or order of a court, or for evidentiary purposes in any relevant action, proceeding or arbitration to which the receiving Party or any of its partners, officers, directors, shareholders, members or affiliates is a party; provided in the event that the receiving Party receives a request to disclose any Confidential Information under such subpoena, order or otherwise, the Party receiving the subpoena or court order shall, to the extent permitted by applicable law: (i) promptly notify the other Party thereof, (ii) consult with the other Party on the advisability of taking steps to resist or narrow such request, and (iii) if disclosure is required, reasonably cooperate with the other Party in any attempt that it may make to obtain an order or other reliable assurance that confidential treatment will be accorded to the Confidential Information. Any such efforts shall be at the sole cost of the Party wishing to prevent or limit disclosure of the Confidential Information;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

16. INDEMNIFICATION.

Subject to the limits set forth in Section 13 above, Owner agrees to indemnify, defend, and hold harmless Host from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any of the following; provided, however, that Host shall not, however, be required to reimburse or indemnify Host for any such losses to the extent such losses are caused by the sole negligence or willful misconduct of Host or Host's conduct in breach of this Agreement:

- a. Any claim of liability arising out of the negligence or any acts or omissions of Owner in the performance of this Agreement;
- b. Any personal injuries, property damage or death that Owner may sustain while using Host-controlled property or equipment, while participating in any activity sponsored by Host, or from any dangerous condition of property; or
- c. Any injury or death which results or increases by any action taken to medically treat Owner.

17. INSURANCE. Owner, at its own expense, shall provide and maintain insurance coverage during the complete term of the Agreement that conforms in all material respects with the following requirements:

17.1 Workers' Compensation and Employer's Liability Insurance. Statutory Workers' Compensation coverage for all of its employees, including occupational disease coverage, as

required by applicable law, and employer's liability with limits of at least \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease per employee, and \$1,000,000 bodily injury by disease in the aggregate.

17.2 Commercial General Liability Insurance. Commercial General Liability Insurance written on an "occurrence" basis with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including bodily injury, hazards of operation, broad form property damage liability coverage, products/completed operations coverage, independent contractor coverage and broad form contractual coverage for liability assumed under the Agreement, to the extent insurable under the policy. Coverage shall include liability arising out of acts of agents or contractors of Owner.

17.3 Automobile Liability Insurance. Coverage for all motor vehicles operated by or for Owner, including protection for automobiles and trucks used by Owner either on or away from the sites at which work is being performed, with a combined single limit of at least \$1,000,000 per occurrence for bodily injury and property damage. The policy shall include coverage for all hired, owned and non-owned vehicles.

17.4 Insurance Requirements Applicable to Contractors. Owner shall require each of its contractors to maintain policies of insurance of the types described above with insurance limits as are customary for the industry in which each such contractor operates and coverage limits as are commercially reasonable given the nature of the work to be provided by such contractor.

17.5 Policy Provisions. Owner agrees that it will maintain insurance to cover any indemnity obligation that it has assumed under this Agreement. All policies will be primary and at Owner's sole expense. Host will be included as an additional insured on all coverage listed above with the exception of Workers' Compensation, Employer's Liability, Property, and Professional Liability. All workers compensation, general liability, and auto liability insurance policies will include provisions that the insurers waive the rights of recovery or subrogation against Host. Insurance coverage will be in a form and carrier acceptable to Host with a minimum A.M. Best rating of A-/VII or higher. The insolvency, bankruptcy or failure of any insurance company shall not relieve Owner of any of its obligations herein. Within five (5) days of a request by Host, Owner shall provide certificates of insurance including additional insured endorsements.

17.6 Certificates. A certificate of insurance evidencing the above must be presented and satisfactory to Host prior to commencement of the Conservation Services. Owner must provide ten (10) days' notice to Host in the event of cancellation of such coverage and ten (10) days' notice in the event of non-payment of premium; and, Owner shall notify Host in the event of material change or cancellation.

18. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile, overnight courier service or e-mail during Owner's and Host's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage

prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to Host:

City of Escondido  
Attn: Director of Public Works  
201 North Broadway  
Escondido, CA 92025  
Fax: 760-839-4597

If to Owner:

Green Charge Networks  
Attn: Legal Department  
4151 Burton Drive  
Santa Clara, CA 95054  
Fax: \_\_\_\_\_

19. MISCELLANEOUS.

19.1 Integration; Exhibits. This Agreement, together with any Exhibits and Schedules attached hereto, constitutes the entire agreement and understanding between Owner and Host with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect.

19.2 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Owner or Host shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

19.3 Limited Effect of Waiver. The failure of Owner or Host to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

19.4 Changes and Modifications to the Agreement. Any modification, alteration or change to this Agreement shall be made only by written amendments executed by the Parties.

19.5 Governing Law Provision: The validity of the Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by, and construed in accordance with, the laws of the State of California, without giving effect to conflict of laws principles. Each Party irrevocably agrees that any legal action, suit or proceeding brought by it that in any way arises out of the Agreement ("Proceeding") must be litigated exclusively in the State of California, except on an appeal that by its nature must occur outside the State of California.

19.6 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under applicable law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

19.7 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Owner and Host and their respective permitted successors and assigns.

19.8 Survival. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive.

19.9 No Partnership. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

19.10 No Third Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

19.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which may be delivered by facsimile transmission or electronically in .PDF format and each of which shall be an original but all of which together will constitute one instrument, binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart.

17.12 Location of Execution. This Agreement is executed and entered into in the City of Escondido, California.

[Signature page follows]

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Owner and Host have executed this Agreement as of the Effective Date.

**HOST:**

CITY OF ESCONDIDO

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

Name: Sam Abed

Title: Mayor

**OWNER:**

GREEN CHARGE NETWORKS ENERGY SERVICES, LLC

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

Name: Vic Shao

Title: Chief Executive Officer

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

Name: Diane Halverson

Title: City Clerk



**EXHIBIT A**

**Site Locations**

City of Escondido Sites	Address
Police and Fire HQ	1163 N. Centre City Pkwy
EVCC	2245 E. Valley Pkwy
City Hall 2	201 N. Broadway
Park Ave CC	210 Park Ave
Kit Carson Skate Park	3333 Bear Valley Pkwy
Library	239 S Kalmia
Central Plant	400 N. Escondido Blvd

**EXHIBIT B**

[System –Specifications]

City of Escondido Sites	Size kW	Size kWh	Green Charge Product ID #	Number of Green Charge Units
Police and Fire HQ	250	500	GreenStation 3.1	1
EVCC	60	120	GreenStation 2.1	2
City Hall 2	60	120	GreenStation 2.1	2
Park Ave CC	60	120	GreenStation 2.1	2
Kit Carson Skate Park	30	60	GreenStation 2.1	1
Library	30	60	GreenStation 2.1	1
Central Plant	30	60	GreenStation 2.1	1

**EXHIBIT C**

[Annual Demand Charge Reduction Savings]

Expected savings for Year 1

Site	Address	Account ID	Meter #	Power Efficiency Fee	% Shared Savings to the City of Escondido	Total First Year Expected Demand Savings
Police and Fire HQ	1163 N. Centre City Pkwy	3776196405	6583957	66.80%	33.20%	\$47,806.00
EVCC	2245 E. Valley Pkwy	1237351353	6576546	74.00%	26.00%	\$15,817.00
City Hall 2	201 N. Broadway	6715252123	6572873	67.70%	32.30%	\$15,527.00
Park Ave CC	210 Park Ave	6711384553	6697854	72.10%	27.90%	\$13,444.00
Kit Carson Skate Park	3333 Bear Valley Pkwy	8560688804	6700938	72.30%	27.70%	\$7,916.00
Library	239 S Kalmia	7786181858	6688045	62.69%	37.31%	\$7,877.00
Central Plant	400 N. Escondido Blvd	8965235954	6701453	72.10%	27.90%	\$6,597.00

# CITY COUNCIL

For City Clerk's Use:

APPROVED  DENIED

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

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

**Agenda Item No.: 6**

**Date: October 7, 2015**

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

**FROM:** Christopher W. McKinney, Utilities Director

**SUBJECT:** Budget Adjustment Request and Approval of Change Orders for the Recycled Water Easterly Main Extension Project (Broadway to Citrus)

## RECOMMENDATION:

The Utilities Department requests that Council approve a budget adjustment in the amount of \$1,030,621.10 to Capital Improvement Program (CIP) No. 801201 (Recycled Water Easterly Main Extension) from the Wastewater Fund Operating, Debt, and CIP Reserve, and adopt Resolution No. 2015-169 authorizing an amendment to the contract with MNR Construction, Inc. not to exceed \$1,313,880.01 (21 percent over the original contract amount of \$6,276,000). The new contract amount will be \$7,589,880.01.

## FISCAL ANALYSIS:

As of July 1, 2015, CIP No. 801201, Recycled Water Easterly Main Extension project had an available project balance of \$1,960,410.80. The requested funds are available in the Wastewater Fund Operating, Debt and CIP Reserve Fund.

## PREVIOUS ACTION:

On September 24, 2014, Council adopted Resolution No. 2014-145 awarding a Public Improvement Agreement to MNR Construction, Inc. for the construction of the initial phase of the Recycled Water Easterly Main Extension project in the amount of \$6,276,000.

## BACKGROUND:

The Recycled Water Easterly Main Extension project will install two pipelines along the northern side of the Escondido Creek between N. Broadway Avenue and Citrus Avenue:

- 13, 800-LF of 15-inch PVC, brine gravity pipeline
- 13,783-LF of 24-inch DIP, recycled water pipeline (ductile iron pipe)

This project is the first phase of the Recycled Water and Potable Reuse Program. It will deliver recycled water to agricultural land in the eastern portion of the City's water service area.

The project was designed for High-Density Polyethylene Pipe (HDPE), but the City's specifications allowed contractors to select between two other types of material—Polyvinyl Chloride (PVC) and Ductile Iron Pipe (DIP)—with the understanding that by selecting either PVC, DIP or a

Budget Adjustment Request and Approval of Change Orders for the Recycled Water Easterly Main Extension Project (Broadway to Citrus)

October 7, 2015

Page 2

combination of the two, the contractor would have to provide engineered drawings (redesign) of the proposed alignment, thus showing the new deflection angles and any additional appurtenances required to allow for gravity and pressure flow for the brine and recycled water pipelines.

**Utility Conflicts:** The contractor opted to install a combination of DIP and PVC. This option required engineered plans. During the potholing for utilities, the contractor discovered approximately 30 more utilities than were accounted for in the original design. Some were implemented after the original design was completed as a result of new construction, some were discovered after the utilities mark-out (i.e. the pedestrian bike path lighting electrical conduits crossing over into the path of the pipeline alignment, not as per plan), while other conflicts were discovered during excavation along the alignment. The increase in utilities will require the contractor to traverse either around, under or over those conflicts, thus creating additional siphons for the gravity pipeline, which will require additional venting to prevent the pipe from air-locking and for the pressure pipeline; additional air vacuum releases are required to prevent the pipeline from collapsing. The construction manager has exercised due diligence towards negotiating with the contractor on fair and reasonable compensation resulting in a cost savings to the City (approximately \$203,000) by agreeing to additional non-compensatory time and avoiding potential claims.

**Pedestrian Bike Path Lights:** Lights were installed along the bike path, adjacent to the Escondido Creek Channel, to increase public safety and to mitigate vandalism to the surrounding areas. The original design for the recycled water project took this into consideration. Specifically, during construction the light poles and the electrical conduits were to be supported in place and protected, provided a temporary lateral support system was installed. However, the resultant pipe alignment—taking into consideration the redesign and increased utility conflicts—places the pipelines closer to the creek channel and in direct conflict with the light poles in most locations. The narrow width of the bike path limits the size of equipment to equipment that is just large enough to excavate the trench and safely maneuver the heavy Ductile Iron Pipe into position.

To complete the project, the light poles must be removed in phases to: (1) avoid delays in construction from having possible pole installation failures, (2) maintain a safe working environment for the crews, and (3) avoid damaging the poles. As part of the work phasing, the contractor will make every effort to maintain lighting along the bike path in areas that are not under construction. The public should anticipate using an alternate route away from the construction zone, and such routes will be marked. The bike path will be closed in two-block sections to avoid closure of the entire path between Broadway and Citrus at one time.

The proposed budget adjustment will fund additional costs to the project including:

(1) Outstanding anticipated changes required to complete construction amounting to \$777,695, and (2) anticipated costs for removing and replacing the decorative pedestrian bike path lights to allow installation and operation of the proposed pipeline amounting to \$252,926.02.

### DETAILS CONCERNING CHANGE ORDERS

Construction is ongoing and should be completed by the end of June 2016. Progress payments to date total \$2,654,955.07 including \$283,258.91 (4.51 percent) in change orders.

The Construction Manager and the Contractor have successfully negotiated and agreed to the following costing for each item. Each item amount represents a fair and reasonable price for the additional work required to successfully complete the Recycled Water Easterly Main Extension project.

The eight most costly anticipated change orders are:

1. Installation of fiber optics pull boxes, *\$3,370 each, quantity 20*. These items were crucial to the re-design required to allow installation and operation of the proposed conduits. Installing these pull boxes is prudent, as it provides the benefit of eliminating future trench-construction impacts to the pedestrian bike path. The additional costs for this work amounts to \$67,400.
2. Installation of appurtenances for the Brine pipeline: Air Vents (located at manholes), *\$4,450 each, quantity 16*; and Air Vents (located at pipe tees), *\$6,380 each, quantity 21*. These appurtenances are crucial to the re-design required to allow installation and operation of the proposed Brine pipeline. The additional costs for this work amounts to \$205,180.
3. Installation of appurtenances for the Recycled pipeline: Combination Air Relief Valves, *\$8,300 each, quantity 28*. These appurtenances are crucial to the re-design required to allow installation and operation of the proposed Recycled pipeline. Credit to City due to renegotiated bid item \$7,350 each, quantity 17, totaling (\$124,950) for a readjusted unit price to include support pedestals for each Air Relief Valve. The additional costs for this work amounts to \$107,450.
4. Pipe installation under-crossings *\$1,350 each, quantity 31*, resulting from additional potholing per Project Specification Section 02100-3.6. These utilities are crucial to the re-design required to allow installation of the proposed pipeline. The additional costs for this work amounts to \$41,850.
5. Installation of appurtenances for Recycled pipeline: Blow Offs, *\$9,000 each, quantity 11*. These appurtenances are crucial to the re-design required to allow installation and operation of the proposed Recycled pipeline. The additional costs for this work amounts to \$99,000.
6. Differing site conditions encountered during installation of the Brine pipeline which included the concentric shafting of an existing sewer manhole that conflicted with the proposed horizontal alignment and an unforeseen concrete encased storm drain, which conflicted with the proposed horizontal alignment that had to be chipped and removed to allow clearance for the proposed Brine pipeline. The additional costs for this work amounts to \$8,025.39.

Budget Adjustment Request and Approval of Change Orders for the Recycled Water Easterly Main Extension Project (Broadway to Citrus)

October 7, 2015

Page 4

7. Differing site conditions encountered during installation of the Brine and Recycled pipelines, included an unforeseen concrete collar below the existing storm drain box, which conflicted with the proposed horizontal alignment. The additional cost for this work amounts to \$18,789.69.
8. Additional Field Order Allowance to be used, as required (Bid Item #5), to account for future differing site conditions \$150,000.

Respectfully submitted,



Christopher W. McKinney  
Director of Utilities



**CITY OF ESCONDIDO**  
**BUDGET ADJUSTMENT REQUEST**

Date of Request: September 24, 2015

Department: Utilities

Division: Wastewater (420)

Project/Budget Manager: Randy Manns 7031  
Name Extension

Council Date (if applicable): October 7, 2015  
(attach copy of staff report)

For Finance Use Only	
Log #	_____
Fiscal Year	_____
_____	Budget Balances
_____	General Fund Accts
_____	Revenue
_____	Interfund Transfers
_____	Fund Balance

Project/Account Description	Account Number	Amount of Increase	Amount of Decrease
Wastewater Fund Operating, Debt, and CIP Reserve	3050-558		1,030,621.10
Recycled Water Easterly Main Extension	5203-557-420-801201	\$1,030,621.10	

Explanation of Request:

This budget adjustment is necessary to cover the costs of anticipated change orders required to complete construction of the Recycled Water Easterly Main Extension.

**APPROVALS**

<u>Christopher W. McKing</u>	<u>10.06.2015</u>	_____	_____
Department Head	Date	City Manager	Date
<u>Jedw Low</u>	<u>10/6/15</u>	_____	_____
Finance	Date	City Clerk	Date



RESOLUTION NO. 2015-169

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AUTHORIZING THE DIRECTOR OF UTILITIES  
TO EXECUTE, ON BEHALF OF THE CITY, A  
BUDGET ADJUSTMENT AND CHANGE  
ORDERS FOR THE RECYCLED WATER  
EASTERLY MAIN EXTENSION PROJECT

WHEREAS, the Recycled Water Easterly Main Extension project ("Project") will install both a brine gravity pipeline and a recycled water pipeline as the first phase of the Recycled Water and Potable Reuse program; and

WHEREAS, on September 24, 2014, through resolution 2014-145, the City Council authorized the award of a Public Improvement Agreement with MNR Construction, Inc. in the amount of \$6,276,000; and

WHEREAS, the construction manager has processed contract change orders to date in the amount of \$283,258.91; and

WHEREAS, the unforeseen and differing site conditions resulting from the re-design of the Project from high-density polyethylene pipe("HDPE") to polyvinyl chloride pipe ("PVC") and ductile iron pipe ("DIP") have resulted in additional project costs; and

WHEREAS, the City Council recognizes that a budget adjustment and approval of change orders for the Project is required to continue construction; and

WHEREAS, the Utilities Director recommends authorization of a budget adjustment and change orders to the contract with MNR Construction, Inc. in the amount of \$1,030,621.10 bringing the total contract value to \$7,589,880.01 to fund

anticipated change orders to complete the Project; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve said budget adjustment and change orders,

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 hereby approves the budget adjustment and execution of the change orders to the contract with MNR Construction, Inc.



**Item No. 7: Military Tribute and Grape Day Park  
Monuments -**

- No materials available



**FUTURE CITY COUNCIL AGENDA ITEMS**  
**October 1, 2015**

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

**October 14, 2015**  
**No Meeting**

**October 21, 2015**  
**4:30 p.m.**

<b>PROCLAMATION</b>
<b>Certificate of Recognition Presented to Bob and Gale Pruitt</b>
<b>PRESENTATION</b>
<b>Presentation to the City Council by FC Heat Soccer Team – Steve York</b>
<b>2015 Annual Report – California Center for the Arts, Escondido</b>
<b>CONSENT CALENDAR</b>
<p><b>Fiscal Year 2015-2016 Rotary Club of Escondido Grant and Budget Adjustment</b> (L. McKinney)</p> <p><i>The \$1,500 grant from the Rotary Club of Escondido will provide needed funds to purchase books that support the "One Book One San Diego" County-wide collaborative as well as to purchase new, popular, and in-demand titles that are highly desired by the Escondido community. A part of the new purchases will be used to help build the collection for one of the newest and most successful library programs, "Book Club in a Bag."</i></p>
<p><b>Purchase Tow GapVax Combination Sewer Jet Trucks from GapVax Inc.</b> (E. Domingue)</p> <p><i>The Houston-Galveston Area Council (HGAC) conducted a competitive bid process for sewer equipment and GapVax Inc was deemed to be the lowest responsive bidder. Fleet services requests to utilize cooperative purchasing through HGAC as allowed per Escondido Municipal Code Chapter 10 Article 5 Section 10-90.</i></p>
<p><b>Bid Award for Sixteen Police Interceptor Utility Vehicles</b> (S. Bennett)</p> <p><i>On August 31, 2015, requests for bids were mailed to ten vendors and on September 24, 2015, five bids were received and opened.</i></p>
<p><b>First Amendment to Lease Agreement with Charros De El Caballo Park at 3400 Valley Center Road (Por.)</b> (J. Masterson/D. Lundy)</p> <p><i>In collaboration with the City Attorney's office, staff has amended language in the ADA and Termination clauses of the City's standard lease agreement. This amendment would serve to revise the Charros lease accordingly.</i></p>

**October 21, 2015**  
**Continued**

**CONSENT CALENDAR Continued**

**Easement Deed to San Diego Gas & Electric Company for the Temporary Relocation of an Existing Overhead Electric Facility for the El Norte Bridge Project**

(J. Masterson/D. Lundy)

*SDG&E will be relocating an existing overhead line and related facilities for the City's El Norte Bridge Project. Once the bridge has been completed, the utility facilities will be converted to underground. This easement will be quitclaimed back to the City upon permanent relocation of SDG&E's facilities underground within the franchise area.*

**Summary Street Vacation and Sale of 418 East Second Avenue to Talking Bibles International**

(J. Masterson/D. Lundy)

*Talking Bibles International owns the property adjacent to City surplus right of way on Second Avenue between Valley Boulevard and South Ivy Street. Talking Bibles made an unsolicited offer to purchase the property. Upon completion of an appraisal, the offer was increased to reflect market value. The parties now desire to have the excess right of way vacated and execute paperwork necessary to complete the sale to Talking Bibles.*

**PUBLIC HEARINGS**

**A Hearing to Consider Adopting a Resolution of Necessity to Acquire Real Property by Eminent Domain for the East Valley Parkway/Valley Center Road Project: Assessor Parcel Numbers 240-202-23 (Serrato); 240-011-01 (Toscano); 240-011-03 (Heath); and 240-301-09 (Jauregui)**

(J. Masterson/D. Lundy)

*This action is required to allow the City of Escondido to proceed with eminent domain actions to acquire property interest in portions of Assessor Parcel Numbers: 240-020-23 (Serrato); 240-011-01 (Toscano); 240-011-03 (Heath); and 240-301-09 (Jauregui) for construction of the East Valley Parkway/Valley Center Road Project.*

*Staff is in discussions with all the property owners except one (Serrato), who has not yet been responsive to our communications. Negotiations will continue with the objective of acquiring all of the rights-of-way by voluntary settlement. If a settlement is not able to be reached with one or more of the property owners, the requested Resolutions of Necessity will allow the City's Project to move forward. Funding sources for the Project require the right-of-way to be completed by December 31, 2015.*

**CURRENT BUSINESS**

**Disabled Veterans Business Enterprise Designation**

(J. Masson & O. Diaz)

**Financial Report for the Quarter Ending June 30, 2015**

(S. Bennett & J. Ryan)

*Quarterly financial reports present written financial updates to Council concerning certain funds of the City based on the most recent financial information available. These quarterly financial reports include budgetary information along with the actual resources received to date and the use of these resources in fulfilling each fund's financial plan. The report provides information for the General Fund, Recreation Fund, Reidy Creek, Successor Agency, and water and Wastewater funds.*

**October 21, 2015**  
**Continued**

	<b>CURRENT BUSINESS Continued</b>
	<b>Appointment to the Planning Commission</b> (D. Halverson)  <i>An appointment needs to be made to fill an unscheduled vacancy on the Planning Commission, term to expire March 31, 2016.</i>
	<b>WORKSHOP</b>
	<b>Update on the Innovate 78 Collaborative</b> (J. Masterson)  <i>To update Council on the activities of the Innovate 78 collaborative.</i>
	<b>Future Agenda Items (D. Halverson)</b>



# City Manager's **WEEKLY UPDATE** to City Council

September 30, 2015

## ECONOMIC DEVELOPMENT

- Black Angus Restaurant will open at Westfield North County on October 6.
- The Daley Ranch House was included in an article about Ranch Weddings in the October/November edition of San Diego Style Weddings (Magazine and website <http://www.sandiegostyleweddings.com>). We anticipate this will generate more interest in weddings and other events there.
- Through Visit Escondido's Napa Valley connections, two of our local wineries were invited to participate at KAABOO Del Mar event. Orfila Vineyards and Winery and Domaine Artefact were among a dozen top wineries from all over California, participating in the recent 3-day event at the Del Mar Racetrack. The high-end, experiential event had over 200,000 attendees and featured over 100 bands, culinary competitions and tastings, an art gallery (Distinction Gallery participated), comedy performances, and more. Next year we plan to have three of our wineries participate.
- Valley Center High School will host a North County Conference Cross Country meet this Thursday October 1<sup>st</sup> and Friday October 2<sup>nd</sup> in Kit Carson Park. Kit Carson Park is considered one of the premier Cross Country course in San Diego County. They will be expecting over 800 runners and spectators over the two days from San Diego County High Schools. Teams will be transported in from their schools and will be off loading and loading in Kit Carson Park near the start line located by the El Arroyo 1 & 2 area. Palomar League race will be on Thursday and Valley League will race on Friday. I have attached the race map for you to view.

## SPECIAL EVENTS

- No special events
- For information about other activities taking place in Escondido, please visit [www.visitescondido.com](http://www.visitescondido.com)

## PUBLIC WORKS UPDATE

- The Drainage Crew cleaned 3,290 linear feet of concrete lined drainage channel last week. The channel segment cleaned was between N. Andreasen and the eastern leg of Auto Park Way. Over 540 cubic yards of debris consisting of trash, vegetation and silt were removed from this segment of channel in preparation of the predicted winter storms.

# City Manager's WEEKLY UPDATE to City Council

- Crews completed the removal of the deteriorated corrugated metal pipe at the intersection of Lincoln and Rose and replaced it with a HDPE 18" diameter pipe. A resident of the area reported a sinkhole and exploratory excavation revealed the metal pipe had rusted to the extent there was no bottom of the pipe. Crews had to work around a 16" diameter high pressure gas main and several potable water mains. The pipe was replaced last week and this week crews will complete the needed concrete repairs, consisting of a pedestrian ramp and curb and gutter replacement. The street was repaved and opened to traffic last week. There will be some delays to traffic this week as the concrete work is completed.
- The Tree Crew completed the pruning and removing of seed pods on approximately 1,000 queen palms. Numerous comments had been received regarding the seed pods releasing seeds which ended up on sidewalks. The City's inventory contains over 5,200 queen palms.

## COMMUNITY DEVELOPMENT

### Planning:

- An application has been submitted for a 19-lot single family residential subdivision and planned development on a 7.2 acres site addressed as 701 San Pasqual Valley Rd. and 1201 E. 5<sup>th</sup> Ave. (formerly Tract 898). The application is under review.
- Solutions for Change has received preliminary approval of State tax credits for their project at 1560-1576 S. Escondido Blvd. A modification to the approved planned development project to increase the number of affordable units from 24 to 33 units is scheduled for consideration by the Planning Commission on October 13<sup>th</sup>, and tentatively for City Council hearing on Nov. 18<sup>th</sup>.
- The Escondido Auto Park Association is proposing to upgrade the existing electronic message sign along Interstate 15. On Sept. 23<sup>rd</sup>, the Economic Development Subcommittee considered a request by the association to enter into an agreement with the City for reimbursement of a portion of the cost of the upgraded sign and expressed support for a five-year agreement based on anticipated public benefit of additional sales tax revenue. Staff is developing a draft agreement for consideration by the Auto Park Association and will then bring it to the full Council for consideration.
- A community workshop is scheduled on October 15<sup>th</sup> to discuss the South Centre City Area Plan. The meeting will be held at 6:30 PM at Central Elementary School:  
<http://www.escondido.org/Data/Sites/1/media/pdfs/planning/SouthCentreCityAreaPlan/Invitation.pdf?v=2>
- Major Projects Update:



# City Manager's WEEKLY UPDATE to City Council

1. Oak Creek (NUW) – No change from the following update reported last week: A LAFCO hearing for the reorganization (annexation) is scheduled for October 5, 2015. Staff will make a presentation at the meeting emphasizing the City's support for the project and opposition to the potential expansion of the annexation boundary to include an additional segment of Hamilton Road.
2. Amanda Estates (NUW) – No change from the following update reported last week: LAFCO approved the reorganization (annexation) at their meeting on August 3, 2015.
3. Centerpointe 78 Commercial – The public review period for the Draft Environmental Impact Report (EIR) ended September 28, 2015. Three comment letters were received, and are under review. The Draft EIR is available at the following link: <http://www.escondido.org/centerpointe-78-commercial-project.aspx>
4. Pradera - Grading is underway. Staff is reviewing the improvement plan and the final map submittals, as well as the precise grading plans for the proposed model homes.
5. Zenner – No change from the following update reported last week: *The annexation was approved by LAFCO on Sept. 14, 2015.*
6. Kaen Planned Development (2516 S. Escondido Blvd.) – Comments have been provided on the revised planned development submittal for "Stella Point Condominiums". The applicant is pursuing selection of consultants for preparation of numerous technical studies (including a Water Quality Technical Report) and the CEQA document which is anticipated to be a mitigated negative declaration. Staff is completing design review of the project site plan, architecture and landscaping plans.
7. Wohlford – No change from the following update reported last week: *Staff is reviewing revised submittals and technical reports from the applicant in response to the letter identifying necessary submittals to continue processing. Two alternative designs for the Specific Alignment Plan for Bear Valley Parkway are under review. The Request for Qualifications for consultant preparation of an EIR will be released when the application is deemed as complete. Tribal consultation meetings have been completed.*
8. Latitude II – The project was approved by the City Council on August 19, 2015. Staff is waiting for the applicant to submit grading plans, which are behind schedule. The applicant's delay may jeopardize their ability to pull grading permits prior to implementation of the new storm water requirements. The project may need to be revised to reflect the provisions of the new storm water regulations.
9. Shea Homes (Tract 932) – Staff approved the substantial conformance determination for the revised tentative map for the 179-lot residential subdivision known as Hidden Valley Ranch. Staff continues to coordinate with the applicant on the proposed grading plan. The Precise Plan application was submitted on Aug. 6, 2015; additional information is needed to complete the application. The applicant is pursuing purchase of mitigation credits at Daley Ranch, and pursuing acquisitions needed for offsite improvements.

# City Manager's WEEKLY UPDATE to City Council

10. Safari Highlands – Engineering is finalizing a contract with a consultant to perform as an extension of staff for engineering services. The applicant has selected a consultant to prepare a draft Municipal Services Review and Sphere of Influence (SOI) update. Staff met with representatives from the City of San Diego to discuss their concerns regarding the proposed improvements to Zoo Road for emergency access. A public agency scoping meeting was September 24<sup>th</sup> to discuss the scope of the EIR. Attendees included school district representatives and members of the public. A community meeting is scheduled on October 5<sup>th</sup> at 6:00 PM in the Mitchell Room regarding the project.
11. Felicita Development, LLC - No change from the following update reported last week: *The proposed planned development includes the phased development of a 140-unit hotel, an 80-unit extended stay hotel, a 120-bed assisted living facility and a gas station and car wash located at the southeast corner of Felicita Rd. and Gamble Lane. Additional technical analysis and coordination is needed to address traffic, biology, water and sewer service, geotechnical and storm water concerns, along with a market study for the proposed uses. A letter addressing items and technical studies needed to complete the application has been sent. Staff is coordinating with the applicant regarding a date for a neighborhood meeting in October.*
12. EDI – The CUP modification to expand the existing facility was approved by the Planning Commission on August 25, 2015. Staff comments have been sent regarding the post-approval plan submittals including grading and landscape plans. The County has notified the City that the applicant has made their application to the State permitting agency.
13. Westfield Theater – No change from the following update reported last week: *The Economic Development Subcommittee authorized expedited processing of the modification to the planned development for the proposed 10-auditorium movie theater. The project will bypass the Planning Commission and will be directly considered by the City Council at a future public hearing, anticipated in late October or Early November. A draft Mitigated Negative Declaration is anticipated to be released next week for a 20-day public review period. A revised Water Quality Technical report is under review.*
14. Paseo Escondido – No change from the following update reported last week: *The Phair Company application for a mixed-use planned development for the property at the southwest corner of Ash Street and Washington Ave. (currently owned by the City) is under review. The proposed project consists of 26 one-bedroom and 96 two-bedroom apartments (122 units total) in three four-story buildings, and two 5,000 SF commercial buildings (10,000 SF total) oriented around an outdoor plaza. Additional submittals required to complete the application.*
15. High Pointe (Palos Vista Neighborhood 3) – No change from the following update reported last week: *Staff has prepared a bond and fee letter based on the proposed grading and landscape plans, and has sent it to the applicant.*
16. Valiano (County Project) – Engineering staff met with the applicant to discuss mitigation measures that could include construction of traffic improvements to address anticipated traffic distribution on City streets.

# City Manager's **WEEKLY UPDATE** to City Council

17. Springhill Suites – The proposed planned development at 300 La Terraza Drive includes 4 stories, 105 suites, a small conference room and an enlarged lobby for serving continental breakfast. Grading and landscaping plans were submitted for review on September 9, 2015. Submittal of the building permit application is anticipated next week.
18. Del Prado (former Woody's site) – No change from the following update reported last week: *The project involves a Planned Development containing 113 attached residential townhomes, recreational facility, pool, and open space areas located at the southwestern corner of Brotherton Road and the Centre City Parkway frontage road. A formal application was submitted on September 10, 2015, and routed for initial department comments.*
19. BMW Dealership – A Precise Plan application to expand the existing dealership showroom an additional approximately 4,000 square feet and enhance the building façade at 1557 Auto Park Way has been submitted and is under review; the project is tentatively scheduled for Planning Commission on October 13<sup>th</sup>.

## **Building Division:**

1. The Building Department issued 79 permits for the week with a total valuation of \$454,689.
2. 28 photovoltaic permits were issued for the week. Building has issued 943 solar permits so far this year compared to 501 issued at the same time last year.
3. A building permit was issued for the new Taco Bell office building on N. Broadway.
4. Building inspectors and counter staff contacts remain constant with inspections averaging 41 inspections per day with 40 inspections on Friday and counter contacts averaging 39 per day with 32 on Friday. Thursday was very busy with 55 counter contacts.
5. A plan check fee estimate was prepared for the 105-unit Springhill Suites hotel at 200 La Terraza Blvd. Plan submittals are anticipated this week.

## **Code Enforcement:**

1. As of September 28th, the total number of open code enforcement case is 379 cases, with a backlog of an additional 114 cases not yet opened for assignment and investigation. During the prior week, 53 new cases were opened, and 36 cases were closed. A total of 145 signs were pulled. One 1 Public Records Request (PRR) was processed, for a total of 89 PRRs processed this year to date. Recruitment is underway for three vacant positions, including two part-time officer positions and one Code Enforcement Assistant to assist with the backlog.



# City Manager's **WEEKLY UPDATE** to City Council

2. Last week the Business License Division received 21 new applications and 212 renewals, and issued 54 new licenses.

## **CAPITAL IMPROVEMENTS**

### **FY 2014-2015 Maintenance Project:**

The striping contractor is actively reapplying striping and roadway legends throughout the project limits.

### **High Visibility Crosswalk and Stop Signs @ Ash Street and Sheridan Avenue**

The Engineering Division has bid and awarded a contract for the installation of stop signs and high visibility cross walks at this intersection. The City is responding to concerns brought to its attention by parents in the neighborhood. The work will be completed by October 30, 2015.

### **Private Development**

#### **Bear Valley Parkway between Boyle Avenue and San Pasqual Valley Road (County Project):**

No change from the following update reported last week: *The roadway widening of the southern portion of Bear Valley Parkway between Suburban Hills Drive and San Pasqual Valley Road (SR78) is continuing this week. Work will continue on the storm drain boxes as well as the sidewalk and traffic signal modifications at Bear Valley Parkway and (SR78). New concrete improvements as well as signal foundations have been installed at the Boyle Avenue end of the project this week.*

#### **2412 South Escondido Boulevard:**

No change from the following update reported last week: *On site construction of new homes is continuing this week.*

#### **Pradera - Lennar Communities:**

The grading contractor is scheduled to complete the import of material this Friday October 2, 2015. The offsite improvement for water main construction and connecting to the Cities facilities is proceeding with work located along Lehner Avenue.

### **Future Capital Projects**

#### **East Valley Parkway/Valley Center Road:**

Potholing of utilities is scheduled to begin on October 5, 2015. The work will be performed between the hours of 12 a.m. and 7 a.m. Monday through Friday in an attempt to lessen the impact to this heavily traveled roadway. The information gathered will assist in the design of the final improvement drawings.

# City Manager's WEEKLY UPDATE to City Council

## PUBLIC SAFETY

### Police:

#### Incidents

- On 9/20/2015, the City of Escondido experienced a loss of power in a large portion of the city. Officers responded to numerous calls for service related to the blackout. During the outage the Police Department experienced a 100% increase in 911 calls. Nearly all of these calls were not emergencies, and were simply inquiries as to why the power was out. The Escondido Police would like to remind the public that 911 should only be used for emergency situations, and that any inappropriate use or misuse of 911 tremendously delays the public safety response to legitimate emergency calls for help. During unforeseen events, such as a power outage, there are other methods to retrieve information. San Diego Gas & Electric maintains a website which features a map of existing outages. For more information go to: <http://www.sdge.com/>. Another resource for information is 2-1-1 San Diego. Dialing 211 connects you with a variety of information resources related to community, and health and disaster services. 211 is available 24 hours a day, 7 days a week. For more information go to: <http://www.211sandiego.org>
- On 9/26/2015, Officers responded to a single vehicle collision in the 1600 block of E. Valley Pkwy. A vehicle had collided into a building causing damage to the west wall and plate glass window.

#### EVENTS

- 9/23/2015 - Congratulations to Escondido Police Department Chief Craig Carter. Chief Carter was honored at the start of the City Council Meeting and received an award from the Palomar College Alumni Association. He is the 2015 Alumnus of the Year.
- On 9/23/2015 - The City recognized employees for their dedication and service to the Citizens of Escondido. The photograph below represents over 210 years of combined police experience. We are proud of each of them and thank them for making our organization great!





# City Manager's WEEKLY UPDATE to City Council

- 9/26/2015 - About 80 men and women were at the Police and Fire Headquarters to test for the position of Police Officer. In the next few months we will be once again testing. Information about that will be posted on the City of Escondido and Escondido Police Department websites.
- On October 2, 2015, The Escondido Police Department will be participating in the 5th Annual Global Police Tweet-a-thon. They will be conducting a virtual ride-along during swing shift (3 p.m. to 1 a.m.) that evening. Law Enforcement agencies around the globe will be participating in this event and will use the hashtag #PolTwt.

## Fire:

All of the City's Fire Department's personnel have returned from fire assignments in Central and Northern California. In fact, most of the fire personnel and equipment from San Diego County are now back home with their departments. This is great news as we head into October which is typically San Diego County's worst month for devastating wildland fires. Most of the fires in Northern California are now more than 90% contained. Below is a comparison of this year's fire activity through September 26<sup>th</sup> compared to last year and the five year average.

<u>Statewide Fire Activity</u>	<u># of Fires</u>	<u>Acres Burned</u>
January 1, 2015 through September 26, 2015	5,496	305,264
January 1, 2014 through September 26, 2014	3,318	190,204
5 Year Average (Same Interval)	3,859	106,499

*(Statistics include all wildfires responded by CAL FIRE in both State Responsibility Area (SRA), as well as the Local Responsibility Area (LRA) under contract with CAL FIRE, plus all large wildfires in SRA protected by CAL FIRE's Contract Counties)*

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