



# Council Meeting Agenda

October 5, 2011

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>Marie Waldron</b>
COUNCIL MEMBERS	<b>Olga Diaz</b> <b>Ed Gallo</b> <b>Michael Morasco</b>
CITY MANAGER	<b>Clay Phillips</b>
CITY CLERK	<b>Marsha Whalen</b>
CITY ATTORNEY	<b>Jeffrey Epp</b>
DIRECTOR OF COMMUNITY DEVELOPMENT	<b>Barbara Redlitz</b>
DIRECTOR OF ENGINEERING SERVICES	<b>Ed Domingue</b>

**ELECTRONIC MEDIA:**

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

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

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

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



# Council Meeting Agenda

October 5, 2011  
3:30 p.m. Meeting

## Escondido City Council Community Development Commission

### CALL TO ORDER

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

### ORAL COMMUNICATIONS

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

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

- I. CONFERENCE WITH LABOR NEGOTIATOR (Government Code §54957.6)**
  - a. Agency negotiator: Sheryl Bennett, Clay Phillips  
Employee organization: Police Officers' Association
  - b. Agency negotiator: Sheryl Bennett, Clay Phillips  
Employee organization: Escondido Firefighters' Association
  
- II. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)**
  - a. Property: 272 E. Via Rancho Parkway, Escondido  
Agency Negotiator: Clay Phillips  
Negotiating parties: City and Westfield Shopping Town, Inc.  
Under negotiation: Price and terms of payment

### ADJOURNMENT



# Council Meeting Agenda

October 5, 2011  
4:30 p.m. Meeting

Escondido City Council  
Community Development Commission

## CALL TO ORDER

### MOMENT OF REFLECTION:

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

### FLAG SALUTE

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

**PROCLAMATIONS:** Constitution Week  
KVS Stainless  
Ride Share Week  
Walk and Bike to School Day

## ORAL COMMUNICATIONS

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## CONSENT CALENDAR

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

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/CDC/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/CDC)**
3. **APPROVAL OF MINUTES: None Scheduled**
4. **BUDGET ADJUSTMENT FOR AN UPGRADE TO THE QUESTYS RECORDS MANAGEMENT SYSTEM**– Request Council authorize a budget adjustment in the amount of \$25,000.00 from the Recycling and Waste Reduction Fund to the City Clerk's General Fund budget in order to upgrade the Questys Records Management System to be compatible with the Windows 7.

Staff Recommendation: Approval **(City Clerk's Office: Marsha Whalen)**

5. **CONSULTING AGREEMENT FOR THE CITY'S INSURANCE BENEFIT PROGRAM** – Request Council authorize the Mayor and City Clerk to execute a Consulting Agreement with Willis Insurance Services of California.

Staff Recommendation: Approval **(Human Resources: Sheryl Bennett)**

RESOLUTION NO. 2011-120

6. **MERCADO AND GRAND AVENUE LIGHTING PROJECT BUDGET ADJUSTMENT** --- Request Council approve a budget adjustment in the amount of \$50,000.00 for the Mercado and Grand Avenue Lighting construction contract.

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

7. **NOTICE OF COMPLETION FOR 2010-2011 STREET AND SIDEWALK MAINTENANCE PROGRAM** – Request Council authorize staff to file a Notice of Completion for the 2010-2011 Street and Sidewalk Maintenance Program.

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

8. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND 2011/2012 ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL (AADPL)** – Request Council approve the establishment of the 2011/2012 DBE Program and an AADPL of 1.48% with a Race Conscious Goal of 0.54% and a Race Neutral Goal of 0.94% for the period October 1, 2011 through September 30, 2012; and authorize the Director of Engineering Services to execute the DBE Annual Submittal Form.

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

RESOLUTION NO. 2011-127

**CONSENT CALENDAR - Continued**

9. **MITIGATED NEGATIVE DECLARATION FOR THE REMEDIATION OF THE BENTON DUMP/BURN SITE (CASE ENV 10-0005)** – Request Council adopt a Final Mitigated Negative Declaration (MND) and the associated Mitigation Monitoring Report Program for the remediation of the Benton Dump/Burn site.

Staff Recommendation: Approval (**Community Development/Planning: Barbara Redlitz**)

RESOLUTION NO. 2011-126

10. **AWARD PURCHASE OF POLICE PATROL VEHICLES** – Request Council approve the purchase of thirteen 2011 Ford Crown Victoria Interceptor Patrol Vehicles utilizing a cooperative purchase clause from a public bid and purchase agreement by the City of Sacramento.

Staff Recommendation: Approval (**Fleet Services: Richard O'Donnell**)

11. **ASSET FORFEITURE FUND BUDGET ADJUSTMENT** – Request Council authorize staff to establish a budget in the amount of \$151,595.00 with Asset Forfeiture Funds to purchase equipment, services and training for front-line law enforcement operations.

Staff Recommendation: Approval (**Police Department: Jim Maher**)

12. **AWARD DESIGN AND CONSTRUCTION CONTRACT TO ERICKSON-HALL CONSTRUCTION AS THE GENERAL CONTRACTOR FOR RECONSTRUCTION AND REMODEL OF FIRE STATION #4** – Request Council authorize the Mayor and City Clerk to execute a "design-build" contract with Erickson-Hall Construction for an amount not to exceed \$2.1 million for the reconstruction and remodel of Fire Station #4.

Staff Recommendation: Approval (**Fire Department: Michael Lowry**)

RESOLUTION NO. 2011-130

13. **CALIFORNIA STATE LIBRARY SERVICES AND TECHNOLOGY ACT GRANT: LIBRARYYOU: SHARING KNOWLEDGE** – Request Council approve the California State Library Grant award in the amount of \$35,000.00.

Staff Recommendation: Approval (**Community Services/Library: Jerry VanLeeuwen**)

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

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

- 14. MODIFICATION TO MASTER AND PRECISE DEVELOPMENT PLAN FOR 84 RESIDENTIAL UNITS IN THE CITY SQUARE CONDOMINIUM DEVELOPMENT (PHG 11-0009)** – Approved on September 14, 2011 with a vote of 5/0.

ORDINANCE NO. 2011-12 Second Reading and Adoption

## PUBLIC HEARINGS

- 15. RECOMMENDATIONS FOR ALLOCATION OF NEIGHBORHOOD STABILIZATION PROGRAM (NSP) FUNDS** – Request Council approve allocations of funds and the disposition of properties; and authorize the Mayor and City Clerk to execute the necessary affordable housing agreements and grant deeds.

Staff Recommendation: Approval (**Housing Division: Jerry Van Leeuwen**)

RESOLUTION NO. 2011-102

## CURRENT BUSINESS

- 16. RESOLUTION OF INTENTION TO SET THE PUBLIC HEARING DATE TO DISESTABLISH THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT** – Request Council set November 2, 2011 at 4:30 p.m., as the public hearing date to disestablish the Downtown Business Improvement District.

Staff Recommendation: Approval (**City Manager's Office: Joyce Masterson and City Attorney's Office: Corrine Neuffer**)

RESOLUTION NO. 2011-129

## CURRENT BUSINESS - Continued

17. **REQUEST TO INITIATE AN ANNEXATION, SPHERE OF INFLUENCE AMENDMENT, PREZONE, GENERAL PLAN AMENDMENT, AND THE PREPARATION OF SPECIFIC PLANS AND DEVELOPMENT AGREEMENTS FOR APPROXIMATELY 1,700 ACRES LOCATED NEAR THE NORTHEASTERN AREA OF THE CITY (SAGER/VON SEGGERN ANNEXATION INITIATION)** – Request Council consider a request from the Sager and Von Seggern families for their properties and approximately 972 acres of City-owned land in an area generally located between Daley Ranch and Lake Wohlford.

Staff Recommendation: Provide direction to staff (**Community Development/Planning: Barbara Redlitz**)

18. **GENERAL PLAN UPDATE AND ENVIRONMENTAL IMPACT REPORT (CASE NO.: PHG 09-0020)** – Request Council approve the first amendment to the contract with Atkins Consultants in the amount of \$217,135.00 for completion of the Environmental Impact Report (EIR) associated with the General Plan Update, Climate Action Plan and updated Downtown Specific Plan; and receive and review an updated status report on the General Plan, EIR and associated technical studies.

Staff Recommendation: Approval (**Community Development/Planning: Barbara Redlitz**)

RESOLUTION NO. 2011-128

## FUTURE AGENDA

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

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

## ORAL COMMUNICATIONS

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**COUNCIL MEMBERS' COMMITTEE REPORTS/COMMENTS/BRIEFING**

**ADJOURNMENT**

<b>UPCOMING MEETING SCHEDULE</b>				
<b>Date</b>	<b>Day</b>	<b>Time</b>	<b>Meeting Type</b>	<b>Location</b>
October 12	Wednesday	3:30 & 4:30 p.m.	Council Meeting	Council Chambers
October 19	Wednesday	3:30 & 4:30 p.m.	Council Meeting	Council Chambers
October 26	No Meeting	-	-	-
November 2	Wednesday	3:30 & 4:30 p.m.	Council 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. Comments are generally limited to 3 minutes.

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

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

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

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

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

## LIVE BROADCAST

Council meetings are broadcast live on Cox Cable Channel 19 and 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 selecting: City Council/broadcasts of City Council Meetings/live video streaming.

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

**The City Council is scheduled to meet the first four Wednesdays of the month at 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 Community Development Commission and the Mobilehome Rent Review Board.**

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



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

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

**CITY COUNCIL**

For City Clerk's Use:

**APPROVED**       **DENIED**

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

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

**Agenda Item No.:** 4  
**Date:** October 5, 2011

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

**FROM:** Marsha Whalen, City Clerk

**SUBJECT:** Budget Adjustment for an upgrade to the Questys Records Management System

**RECOMMENDATION:**

It is requested that Council authorize a budget adjustment in the amount of \$25,000 from the Recycling and Waste Reduction Fund to the City Clerk's General Fund budget in order to upgrade the Questys Records Management system to be compatible with Windows 7.

**FISCAL ANALYSIS:**

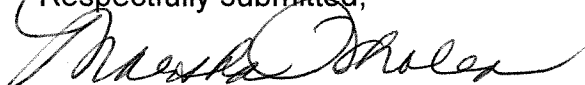
The cost to upgrade the records management software and migrate all data bases to the new version are estimated to be covered by the amount requested.

**BACKGROUND:**

When the City-wide network software was upgraded to Windows 7 recently, the current software version of Questys was no longer compatible with the new operating system. In addition, the incompatibility means that City Clerk staff utilizing the Questys and Legistream systems are unable to upgrade to Windows 7. Questys is the City-wide records management imaging system that hosts more than 5 Million images, and allows us to search and retrieve historical and legislative documents that are required to be kept permanently in accordance with the City's records retention policies. Legistream is a component of Questys and allows us to deliver the electronic City Council agendas to our website.

Original and subsequent funding for the records management system has been obtained from the Recycling and Waste Reduction Fund, and meets the guidelines for use of such funding. The City-wide records management system stores official documents and allows us to destroy an average of 600 file boxes of records annually. The paper is then recycled through Escondido Disposal Industries.

Respectfully submitted,



Marsha Whalen, CMC  
City Clerk

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

Date of Request: **OCTOBER 5, 2011**

Department: **CITY CLERK**

Division:

Requestor: **MARSHA WHALEN** **X 4560**  
Name Phone Extension

Council Date (if applicable): **OCTOBER 5, 2011**  
 (attach copy of staff report)

For Finance Use Only	
Log # _____	
Fiscal Year _____	

Project/Account Description	Account Number	Amount of Increase	Amount of Decrease
Recycling & Waste Reduction Fund Balance	<del>3050</del> 3500-117	\$	\$ 25,000
Hardware/software installation	<del>5193</del> 5100-001-004	\$ 25,000	
Transfer IN	4999 - 001	25,000	
Transfer Out	5999 - 117	25,000	

Explanation of Request:

Funding to upgrade Questys/Legistream software systems to be compatible with Windows 7.

APPROVALS

Department Head: *Marsha Whalen* City Manager: \_\_\_\_\_

Director of Finance: *Jodi Corbellano 9/27/11* City Clerk: \_\_\_\_\_

Distribution (after approval):      White: Finance      Yellow: City Clerk      Pink: Originating Department



# CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

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

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

**Agenda Item No.: 5**  
**Date: October 5, 2011**

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

**FROM:** Sheryl Bennett, Human Resources Director  
Cindy Titgen, Benefits and Workers' Compensation Manager

**SUBJECT:** Consulting Agreement for the City's Insurance Benefit Program

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2011-120 authorizing the Mayor and City Clerk to execute a Consulting Agreement with Willis Insurance Services of California

FISCAL ANALYSIS:

Fees are capped at 10% below the current contract. Fee is \$155,000 (capped) per calendar year and is included in the FY 11/12 budget.

PREVIOUS ACTION:

In July 1999 the City Council Adopted Resolution 99-166 authorizing the Mayor and City Clerk to execute a Consulting Agreement with Marsh Risk & Insurance Services.

On June 7, 2006, the City Council adopted Resolution No. 2006-102 authorizing the Mayor and City Clerk to execute a Consulting Agreement with Willis Insurance Services of California.

BACKGROUND:

In 1992 the City Council approved a written policy that required a formal broker selection process for the City Health and Benefits programs every five years. In July 1999, Resolution 99-166 authorized the City to enter into a Consulting Agreement with Marsh Risk & Insurance Services. As the City's contract with Marsh expired in 2005, and certain services were not being provided, City Council authorized an interim Consulting Agreement appointing Willis Insurance Services of California as the City's consultant providing insurance consulting and brokerage services until a formal request for proposal (RFP) was completed. On June 6, 2006, Resolution No. 2011-120 authorized the City to enter into a Consulting Agreement with Willis Insurance Services of California.

In June 2011 an RFP sought proposals from qualified organizations to perform Employee Benefit Broker Services. A total of six (6) proposals were received by the City of Escondido with varying

Resolution No. 2011-120  
October 5, 2011  
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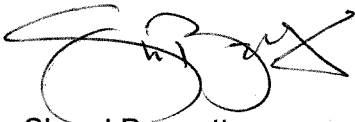
levels of experience and expertise in employee benefit broker services. Based on evaluation matrix criteria, four (4) organizations whose proposals best met the criteria for the City's Scope of Services were invited to make presentations to a selection committee. The selection committee consisted of one representative from the City Human Resources staff, two City Benefit staff representatives and one representative from another City. Of the four (4) brokers who were interviewed, the selection committee recommended three finalists to advance to present to the final selection panel.

The final selection panel consisted of the Human Resources Director, Benefits and Workers' Compensation Manager, Benefits Analyst and the Sr. Workers' Compensation/HR Analyst.

Based on the information provided in the Request for Proposal, the oral presentations, fees for services and recommendations by both of the selection panels, it has been determined to be in the City's best interest to enter into a new contract with Willis Insurance Services of California.

Therefore, staff recommends that the City Council adopt Resolution No. 2011-120 authorizing the Mayor and City Clerk to execute a Consulting Agreement with Willis Insurance Services of California for the City's benefits program beginning January 1, 2012 and may be extended each year thereafter for a total of an additional four years.

Respectfully submitted,



Sheryl Bennett  
Human Resources Director



Cindy Titgen  
Benefits and Workers' Compensation Manager

RESOLUTION NO. 2011-120

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND CITY CLERK, TO EXECUTE, ON BEHALF OF THE CITY, A CONSULTING AGREEMENT WITH WILLIS INSURANCE SERVICES OF CALIFORNIA AS THE CITY'S CONSULTANT PROVIDING INSURANCE CONSULTING AND BROKERAGE SERVICES

WHEREAS, it has been determined to be in the City's best interest to retain professional services to provide insurance consulting and brokerage services; and

WHEREAS, based on the information provided in the responses to the Request for Proposals, the selection committee presentations, and reference checks on current clients it is deemed that the most competent consultant to perform the necessary professional services for the City is Willis Insurance Services of California.

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

1. That the above recitations are true.
2. That the Mayor and the City Clerk are authorized to execute, on behalf of the City, a Consulting Agreement ("Agreement") for Willis Insurance Services of California to perform insurance consulting and brokerage services for the City's insurance benefit programs. A copy of the Agreement is attached as Exhibit "A" and incorporated by this reference.
3. City Council delegates to the Human Resources Director authority to execute future privacy provision changes to the Business Associate Agreement, (pages 11 – 14 of Exhibit "A," Attachment "D" of the Agreement) after review by the City Attorney's office.



CITY OF ESCONDIDO  
CONSULTING AGREEMENT

This Agreement is made this \_\_\_\_\_ day of October, 2011.

Between: CITY OF ESCONDIDO  
a Municipal Corporation  
201 N. Broadway  
Escondido, California 92025  
Attn: Cindy Titgen  
760-839-4588  
("CITY")

And: WILLIS INSURANCE SERVICES OF CALIFORNIA  
4250 Executive Square, suite 250  
La Jolla, CA 92037  
Attn: Christie Barr  
858-678-2133  
("CONSULTANT")

Witness that whereas:

- A. It has been determined to be in the CITY's best interest to retain the professional services of a consultant to provide insurance consulting and brokerage services; and
- B. The CONSULTANT is considered competent to perform the necessary professional services for CITY;

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

- 1. Services. The CONSULTANT will furnish all of the services as described in "Attachment A" which is attached and incorporated by this reference.
- 2. Compensation. The CITY will pay the CONSULTANT in accordance with the conditions specified in "Attachment B"). Any breach of this Agreement will relieve CITY from the obligation to pay CONSULTANT, if CONSULTANT has not corrected the breach after CITY provides notice and a reasonable time to correct it. FURTHER, the compensation for the services CONSULTANT provides CITY will be the commission paid to CONSULTANT by certain insurers. Commissions are earned for the entire policy period at the time the policies are placed or in the event of early termination; CONSULTANT will receive commission through the effective date of the termination. CONSULTANT will disclose to the CITY the rate or amount of the commissions it earns annually. The compensation CONSULTANT is entitled to receive may be revised if the CITY requests a change in the Coverage's and/or Services during the TERM of this agreement and CONSULTANT enters into a written agreement documenting any change in Coverage's Services and compensation.

3. Other parties such as third party administrators, utilization review companies, underwriting managers, or managing general agents may also earn and retain usual and customary commissions or other compensation for their roles in providing insurance products and services to the CITY. The CITY requires disclosure of the rate or amount of the compensation they will earn before the CITY purchases the coverage.

The insurance market is complex, and there could be other relationships which are not described in this document which might create conflicts of interest. Notwithstanding any possible conflict which might exist, CONSULTANT will act in the CITY's best interests at all times in providing services to the CITY. If a conflict arises for which there is no practicable way of complying with this commitment, CONSULTANT will promptly inform the CITY and withdraw from the engagement, unless the CITY wishes CONSULTANT to continue to provide the services and will provide its written consent. Any taxes or charges upon the services provided hereunder now imposed or hereafter becoming effective during the Term of this agreement, shall be added to the price herein provided and paid by CITY unless, in lieu thereof, CITY provides CONSULTANT with a valid tax exemption certificate acceptable to it. Any service not included in Appendix A may result in additional fees. The CONSULTANT will review these services with the CITY prior to performing them and any additional fee must be mutually agreed upon in advance.

4. Scope of Compensation. The CONSULTANT will be compensated for performance of tasks specified in "Attachment B" only. No compensation will be provided for any other tasks without specific prior written consent from the CITY.
5. Duties. CONSULTANT will be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other services furnished by the CONSULTANT under this Agreement, except that the CONSULTANT will not be responsible for the accuracy of information supplied by the CITY. CITY agrees to fully cooperate with CONSULTANT to provide CONSULTANT with timely information pertaining to performance of CONSULTANT's duties.
6. Personnel. The performance of services under this Agreement by certain professionals is significant to the CITY. CONSULTANT will assign the persons listed on "Attachment C," which is attached and incorporated by this reference, to perform the Services described in Paragraph 1, and will not add or remove persons from the list without the prior written consent of the CITY. CONSULTANT will not subcontract any tasks under this Agreement without obtaining the advance written consent of the CITY.
7. Terms of Agreement. The term of this Agreement shall be until December 31, 2012 and may be extended each year thereafter for a total of an additional four years, upon mutual written agreement of the parties.
8. Termination. Either CONSULTANT or the CITY may terminate this Agreement with thirty (30) days advance written notice. Additionally, at the CITY's option, CITY may immediately terminate this Agreement if the professionals listed in "Attachment C" are no longer employed by Consultant.
9. City Property. All original documents, drawings, electronic media, and other material prepared by CONSULTANT under this Agreement immediately becomes the exclusive property of the CITY, and may not be used by CONSULTANT for any other purpose without prior written consent of the CITY.

10. Nondisclosure of Confidential Information

- a. CONSULTANT agrees that neither it nor any of its subsidiaries, divisions, employees, agents or other persons or organizations over which it has control, if, at any time during the term of its relationship with CITY, directly or indirectly make use of or disclose any information furnished to CONSULTANT by CITY or at the request of CITY (the "Information") for any purposes other than in furtherance of the insurance brokerage and related services being provided by CONSULTANT. It is understood by the parties hereto that CONSULTANT may make in-house use of the information, and, in the ordinary course of rendering services to CITY, may release to third parties all or any portion of the information that is relevant to the underwriting and pricing of risks and the processing of claims.
- b. Upon the request of CITY, CONSULTANT agrees that all documents and records in its possession containing the information, including copies thereof, whether prepared by it or others, will be returned to CITY. CONSULTANT may, however, retain copies of documents and records which CITY has agreed (which agreement will not be unreasonably withheld) are necessary for the conduct and proper recordkeeping of CONSULTANT's business in accordance with CONSULTANT's standard operating procedure.
- c. CONSULTANT will not disclose the Information to third parties or use the Information other than as set forth herein and/or as required by state or federal laws. However, this agreement shall not apply to any information:
  - (1) Which at the time disclosed or obtained is in the public domain;
  - (2) Which becomes part of the public domain through no act, omission or fault of CONSULTANT;
  - (3) Which CONSULTANT demonstrates was received by it from a third party, who had no confidentiality obligations to the CITY with respect thereto; or
  - (4) Which the law requires be disclosed by statute, regulations enacted pursuant to statute, the terms of a court-issued subpoena or other similar document; however, CONSULTANT shall use its best efforts to give prior timely notice of such disclosure to the CITY. Such prior timely notice will be a minimum of ten (10) days unless ordered to turn over such information in less than ten (10) days by an administrative or judicial body of appropriate jurisdiction, in which case timely notice will be as soon as practicably possible.

11. Business Associate Agreement. Privacy provisions as required by Health Insurance Portability and Accountability Act of 1996 and certain regulations promulgated by the U.S. Department of Health and Human Services are defined in the Business Associate Agreement, "Attachment D."

12. Insurance.

- a. The CONSULTANT shall secure and maintain at its own cost, for all operations, the following insurance coverage, unless reduced by the City Attorney:
  - (1) General liability insurance. Occurrence basis with minimum limits of \$1,000,000 each occurrence, and \$2,000,000 General Aggregate
  - (2) Automobile liability insurance of \$1,000,000 combined single-limit per accident for bodily injury and property damage, unless waived as provided in 8(b) below; and

- (3) Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship; and
  - (4) Errors and Omissions professional liability insurance with minimum coverage of \$1,000,000.
- b. It is the parties' understanding that the use of a motor vehicle is not a primary subject of this Agreement. CONSULTANT acknowledges that operating a motor vehicle is outside the scope of this Agreement and occurs only at the convenience of the CONSULTANT. A waiver of automobile liability insurance is only effective if both sets of initials appear below, otherwise such insurance is required.

Acknowledged by CONSULTANT \_\_\_\_\_

Waiver appropriate by CITY \_\_\_\_\_

- c. Each insurance policy required above must be acceptable to the City Attorney.
- (1) Each policy must provide for notice to the City of Escondido in accordance with the policy provisions within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A- rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
  - (2) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
  - (3) Both the General Liability and the Automobile Liability policies must name the CITY specifically as an additional insured under the policy on a blanket endorsement basis. The CITY includes its officials, employees, and volunteers. The endorsement must be ISO Form CG 20 10 11 85 edition or its equivalent for General Liability endorsements and CA 20 01 for Automobile Liability endorsements.
  - (4) The General Liability policy must include coverage for bodily injury and property damage arising from CONSULTANT's work, including its on-going operations and products-completed operations hazard.
  - (5) The General Liability policy must be primary and noncontributory and any insurance maintained by CITY is excess.
- c. In executing this Agreement, CONSULTANT agrees to have completed insurance documents on file with the CITY within thirty days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.

13. Indemnification.

CONSULTANT (which in this paragraph 13 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless the CITY from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any of the following, except for liability, personal injury, property damage or death arising out of the City's negligence:

- a. Any claim of liability arising out of the negligence or any acts or omissions of CONSULTANT in the performance of this Agreement;

- b. Any personal injuries, property damage or death that CONSULTANT may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or
  - c. Any injury or death which results or increases by any action taken to medically treat CONSULTANT.
14. Anti-Assignment Clause. The CONSULTANT may not assign, delegate or transfer any interest or duty under this Agreement without advance written approval of the CITY, and any attempt to do so will immediately render this entire Agreement null and void.
  15. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.
  16. Independent Contractor. CONSULTANT is an independent contractor and no agency or employment relationship, either express or implied, is created by the execution of this Agreement.
  17. Merger Clause. This Agreement and its Attachments, if any, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and any of its Attachments, the provisions of this Agreement must prevail.
  18. Anti-Waiver Clause. None of the provisions in this Agreement will be waived by CITY because of previous failure to insist upon strict performance, nor will any provision be waived by CITY because any other provision has been waived, in whole or in part.
  19. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.
  20. Choice of Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in San Diego County, California.
  21. Multiple Copies of Agreement/Counterparts. Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
  22. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the CITY.
  23. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below. Each party agrees to promptly send notice of any changes of this information to the other party, at the address first above written.
  24. Business License. The CONSULTANT is required to obtain a City of Escondido Business License prior to execution of this Agreement.



25. Compliance with Applicable Laws, Permits and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. CONSULTANT shall obtain any and all licenses, permits, and authorizations necessary to perform services set forth in this Agreement. Neither CITY, nor any elected nor appointed boards, officers, officials, employees, or agents of CITY shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
26. Prevailing Wages. If applicable, pursuant to Section 1770 et seq. of the Labor Code, CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable State and Federal Law, will be paid in the carrying out of this Agreement. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the 'General Prevailing Wage Rates' approved by the Department of Industrial Relations as of the date of the execution of this Agreement. Said rates and scales are herein referred to and adopted in this Agreement as though fully and completely set forth herein, and said scale as adopted by the Department is made a part of this Agreement by reference. Copies of the prevailing rate of per diem wages are available on the Intranet at (<http://www.dir.ca.gov/DLSR>).
27. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. CONSULTANT affirms that as an employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. CONSULTANT agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.
28. E-Verify Participation. CONSULTANT agrees to enroll in and begin use of the United States Department of Homeland Security's ("DHS") E-Verify program ("E-Verify") within thirty (30) days of the execution of this Agreement to confirm employment eligibility of all of CONSULTANT'S potential new hires. CONSULTANT agrees and understands that E-Verify enrollment requires CONSULTANT to sign a Memorandum of Understanding ("MOU") with DHS which provides the E-Verify terms of use. Any violation of the MOU by CONSULTANT is grounds for DHS' termination of CONSULTANT'S participation in the E-Verify program. Any such termination by DHS shall constitute grounds for City's immediate termination of this Agreement.

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

CITY OF ESCONDIDO

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

\_\_\_\_\_  
Sam Abed  
Mayor

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

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

WILLIS INSURANCE SERVICES OF CALIFORNIA  
4250 Executive Square, Suite 250  
La Jolla, CA 92037

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

\_\_\_\_\_  
Christie Barr  
\_\_\_\_\_  
Senior Vice President

APPROVED AS TO FORM:

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

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

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

**ATTACHMENT "A"**  
**SCOPE OF SERVICES**

Specific responsibilities include, but are not limited to:

- A. Assist the City in developing long-range employee benefit goals and strategies.
- B. Assist the City in administering group insurance plans, respond promptly to questions and provide accurate information to staff and provide other consulting services during the course of the plan year.
- C. Assist the City with insurance carriers/vendors as needed in the resolution of problems, disputes and other issues during the course of the programs.
- D. Assist the City in complying with laws and regulations related to employee benefits. Additionally, advise the City of new developments in employee benefit programs as well as Health Insurance Reform.
- E. Monitor ongoing contracts, including plan administration, provider compliance with contracts, booklets, employee communication, and education materials.
- F. Review claims experience census, claims service and claims administration to ensure maximum benefit to the City.
- G. Determine and recommend the most economical funding method for benefit programs and assist in forecasting/budgeting.
- H. Represent the City in negotiations with all providers on all issues, including those related to premiums, benefit levels, plan design, employee insurance issues, and special terms and conditions. Negotiate all changes and additions to contracts and ensure amendments are completed. Providers include all ancillary lines, communication materials provider, health fair provider, EAP, COBRA and Flexible Spending Accounts.
- I. Meet with and provide reports to various City representatives including Human Resources/Benefits Division, City Council, City Management, employee groups and/or the Health Insurance Committee. Coordinate with City representatives on labor relations issues concerning group insurance and benefit programs.
- J. Conduct benchmarking to ascertain employee's benefit needs, levels of satisfaction, benefits educational needs and any other pertinent information on local and/or national basis.
- K. Assist the City with the implementation and communication of new programs or changes to existing programs. Includes attending/assisting employee meetings as required.
- L. As requested by the City, prepare bid specifications; solicit bids from insurance markets which specialize in group insurance plans. Evaluate bids and bidders, including administration, coverage, claim payment procedures, customer service, networks, reserve establishment policies, financial soundness, and identify the most cost beneficial package from among the various bidders. Supply the City with original documents from all bid solicitations received.

**Willis Cost for Broker Services  
Attachment "B"**

Carrier	2011 Carrier's Monthly Premium	Total Estimated Commissions (Annual)	Contingent or other remuneration	Net Commissions (Annual)	Notes
<b>Medical</b>					
- Kaiser	\$380,000	\$136,800	\$0	\$136,800	
- Anthem HMO/HDHP	\$188,000	\$67,680	\$0	\$67,680	
- Retirees	\$81,700	\$7,200	\$0	\$7,200	
<b>Dental</b>					
- DeltaCare	\$3,800	\$4,560	\$0	\$4,560	
- Delta DPO (740 ee's) - monthly average self insured claims	\$50,000	\$11,722	\$0	\$11,722	
<b>Voluntary Products</b>					
-United Healthcare Vision	\$2,700	\$3,240	\$0	\$3,240	
-Arag Legal	\$500	\$300	\$0	\$300	
-AFLAC Vol. Lines	\$4,500	\$1,900	\$0	\$1,900	
<b>Prudential Life Insurance</b>					
- Basic Life	\$5,500	\$0	\$0	\$0	
- AD&D	\$680	\$0	\$0	\$0	
- Voluntary Life	\$5,600	\$0	\$0	\$0	
- STD (employee paid)	\$12,000	\$0	\$0	\$0	
- LTD (employee paid)	\$12,500	\$0	\$0	\$0	
<b>Tri-Ad</b>					
- FSA Administration	\$800	\$0	\$0	\$0	
- COBRA Administration	\$750	\$0	\$0	\$0	Willis-funded
<b>Other</b>					
Health Fair, Communication, COBRA (estimate)		-\$25,500	\$0	-\$25,500	Includes all Communications, COBRA services, Health Fair
<b>TOTAL ANNUAL COMMISSIONS</b> January 1 to December 31	Year 1 (2012) Year 2 (2013) Year 3 (2014) Year 4 (2015) Year 5 (2016)	Gross Commissions \$227,074 \$247,240 \$269,019 \$292,540 \$317,944	Rebate Amount <sup>1</sup> \$72,074 \$92,240 \$114,019 \$137,540 \$162,944	Net Commissions \$155,000 \$155,000 \$155,000 \$155,000 \$155,000	

**Notes:**

- <sup>1</sup>Rebate amount can be paid in form of a rebate check, additional services (e.g. outsourcing or billing consolidation), or Willis will lower commissions on any aforementioned product lines to reach net commissions.
- <sup>2</sup>Willis will include a performance agreement equal to 10% of our net commissions if our services do not exceed our agreed-upon performance standards.
- <sup>3</sup>Willis does not accept contingent commissions tied to retention or profitability of business placed with carriers.

**Personnel Attachment "C"**

The City shall have the right and opportunity to approve or reject any proposed Willis benefits account representative(s) placed on the City of Escondido account. The City shall also have the opportunity to request a new account representative(s) if the service is unacceptable to the City at any time.

It is critical to the City's benefits programs that the persons (talent) currently working on the City of Escondido account remains consistent.

Accordingly, the persons critical to the City of Escondido's account are:

**Senior Vice President: Christie Barr**

**Account Executive: Jesus Mendoza**

ATTACHMENT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") is made between City of Escondido ("CLIENT") and Willis Risk & Insurance Services of CA ("WILLIS").

RECITALS:

A. CLIENT and WILLIS have entered into an arrangement or arrangements pursuant to which WILLIS provides certain services for and on behalf of CLIENT (the "Arrangement");

B. Under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations which include the Standards for the Privacy of Individually Identifiable Health Information (the "Privacy Rule") (45 C.F.R. Parts 160 and 164) and the Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule") (45 C.F.R. Parts 160 and 164), as amended by applicable provisions of the Health Information Technology for Economic and Clinical Health Act (Title XIII, Subtitle D) and its implementing regulations (the "HITECH Act") (collectively, the "HIPAA Rules"), CLIENT and WILLIS must enter into a business associate agreement to enable WILLIS to carry out its obligations under the Arrangement since CLIENT discloses to WILLIS, and/or WILLIS creates and receives on behalf of CLIENT Individually Identifiable Health Information, as such term is defined in 45 C.F.R. 160.103; and

C. CLIENT and WILLIS desire to make this Agreement to the Arrangement in order to enable CLIENT to satisfy its obligations under the HIPAA Rules.

**NOW, THEREFORE**, for and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**DEFINITIONS.**

Capitalized terms used in this Agreement and not otherwise defined herein shall have that meaning given to them in HIPAA, the Privacy Rule, Security Rule and HITECH Act.

**USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION BY WILLIS.**

Confidentiality. WILLIS shall hold Protected Health Information confidentially, and shall not Use or Disclose it other than as permitted or required by this Agreement or as Required by Law.

Use or Disclosure to Provide Services Under the Arrangement. WILLIS may Use and Disclose Protected Health Information as necessary to perform its obligations under the Arrangement; provided, however, that WILLIS shall not, and shall ensure that its directors, officers, employees, contractors and agents (the "Representatives") do not, Use or Disclose Protected Health Information in any manner that would violate the Privacy Rule, as amended from time to time, if done by CLIENT.

Use or Disclosure for WILLIS' Management and Administration. Notwithstanding Section 0 above, WILLIS may Use or Disclose Protected Health Information for its proper management and administration provided that, before Disclosing Protected Health Information to a third party for WILLIS' proper management and administration, WILLIS must obtain reasonable assurances from the third party that: (i) the Protected Health Information will be held confidentially and subject to the same restrictions and conditions that apply to WILLIS under this Agreement and will only be Used or Disclosed as Required by Law or for the purposes for which it was Disclosed to the third party; and (ii) the third party will immediately notify WILLIS of any instances of which it is aware in which the confidentiality of the Protected Health Information Disclosed to it has been breached.

Use or Disclosure to Provide Data Aggregation Services. WILLIS may Use or Disclose Protected Health Information to provide Data Aggregation services relating to the Health Care Operations of CLIENT.

De-Identification of Protected Health Information. WILLIS may de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of the Privacy Rule. The parties acknowledge and agree that de-identified data does not constitute Protected Health Information and is not subject to the terms of this Agreement.

Use and Disclosure of Limited Data Sets. WILLIS may Use Protected Health Information to create Limited Data Sets and may Use or Disclose such Limited Data Sets for only research, public health or health care operations purposes. Except as set forth in this Section, the conditions and restrictions contained herein on WILLIS' Use and Disclosure of Protected Health

Information apply to WILLIS' Use and Disclosure of Protected Health Information contained in such Limited Data Sets. Further, WILLIS agrees that it shall not identify the information contained in such Limited Data Sets or contact the Individuals who are the subject of the Protected Health Information contained in such Limited Data Sets, except as otherwise permitted or required by this Agreement.

#### **RESPONSIBILITIES OF WILLIS.**

Safeguards Against Misuse of Information. WILLIS agrees that it will implement appropriate safeguards to prevent the Use or Disclosure of Protected Health Information other than pursuant to the terms and conditions of this Agreement.

Reporting Disclosures of Protected Health Information. WILLIS shall, within fifteen (15) days of becoming aware of a Disclosure of Protected Health Information in violation of this Agreement by WILLIS or its Representatives, report such Disclosure to CLIENT. WILLIS agrees to have procedures in place for mitigating, to the extent practicable, any harmful effect known to WILLIS and arising from such Use or Disclosure.

Agreements by Third Parties. WILLIS shall enter into an agreement with any agent or subcontractor that will have access to Protected Health Information pursuant to which such agent or contractor agrees to be bound by the same or substantially similar restrictions, terms, and conditions of this Agreement that apply to WILLIS with respect to such Protected Health Information.

Access to Information. WILLIS shall provide access, at the request of CLIENT or an Individual, to Protected Health Information maintained by WILLIS in a Designated Record Set(s), to CLIENT, or as directed by CLIENT, to an Individual in order to meet the requirements of 45 C.F.R. § 164.524. WILLIS shall use commercially reasonable efforts to provide such access within fifteen business (15) days of receiving such request.

Availability of Protected Health Information for Amendment. WILLIS shall make any amendment to Protected Health Information maintained in a Designated Record Set by WILLIS that is requested by CLIENT, or as directed by CLIENT, that is requested by an Individual. WILLIS shall use its best efforts to make such amendments within twenty (20) days of receiving such request.

Accounting of Disclosures. WILLIS shall document such Disclosures of Protected Health Information and information related to such Disclosures as would be required for CLIENT to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

WILLIS shall provide to CLIENT or, as directed by Client, to an Individual, information collected in accordance with the preceding paragraph to permit CLIENT to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. WILLIS shall use commercially reasonable efforts to provide such information within twenty (20) days of receiving such written request.

Uses and Disclosures Required by Law. Except to the extent prohibited by law, WILLIS shall immediately notify CLIENT upon its receipt of a request for Use or Disclosure of Protected Health Information with which WILLIS believes it is Required by Law to comply. WILLIS shall provide CLIENT with a copy of such request, shall consult and cooperate with CLIENT concerning the proper response to such request and shall provide CLIENT with a copy of any information Disclosed pursuant to such request.

Availability of Books and Records. WILLIS hereby agrees to make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of Health and Human Services (the "Secretary") for purposes of determining CLIENT's compliance with the HIPAA Rules. Notwithstanding the foregoing, nothing herein shall be deemed to require WILLIS to waive any attorney-client, accountant-client, or other legal privilege.

Security Obligations for Electronic Protected Health Information. WILLIS shall, in accordance with the Security Rule, implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information it creates, receives, maintains, or transmits on behalf of CLIENT. Further, WILLIS shall ensure that any agent, subcontractor, or other party to whom WILLIS provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information. At such time and to the extent required by the HITECH Act, WILLIS shall implement the safeguards, policies, procedures, and documentation required by 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316. If WILLIS becomes aware of any Successful Security Incidents, WILLIS shall report the same in writing to CLIENT within fifteen (15) business days of such Successful Security Incident, and WILLIS agrees to reasonably mitigate, to the extent practicable, any harmful effect resulting from such Successful Security Incidents. To avoid unnecessary burden on either party, WILLIS shall report to CLIENT any Unsuccessful Security Incidents of which it becomes aware of only upon request of the CLIENT. The frequency, content and the format of the report of Unsuccessful Security Incidents shall be mutually agreed upon by the parties.

If the definition of "Security Incident" is amended under the Security Rule to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify or destroy Electronic Protected Health Information, then this Section shall be amended so that the provisions relating to "Unsuccessful Security Incidents" no longer apply as of the effective date of such change to the law.

For the purposes of this Agreement, "Successful Security Incidents" mean Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of Electronic Protected Health Information and "Unsuccessful Security Incidents" mean Security Incidents that do not result in unauthorized access, use, disclosure, modification or destruction of Electronic Protected Health Information.

At such time as required by the HITECH Act, in the event that WILLIS has Knowledge or a Reasonable Belief that a Breach of Unsecured Protected Health Information of CLIENT has occurred or may have occurred, WILLIS shall promptly (but in no event more than twenty (20) days of Knowledge of the Breach or Reasonable Belief that a Breach has occurred) notify CLIENT of the identification of each individual who has been or is reasonably believed to have been affected by the Breach, along with any other information that CLIENT as a Covered Entity will be required to include its notification of the individual under the HITECH Act or its implementing regulations, including, without limitation, a description of the breach, the date of the breach and its discovery, types of Unsecured PHI involved and description of the WILLIS investigation, mitigation and prevention efforts.

Agreed to Restrictions. WILLIS shall abide by any restrictions, of which WILLIS is aware, relating to the Disclosure of Protected Health Information which CLIENT has agreed upon pursuant to the HITECH Act.

#### **RESPONSIBILITIES OF CLIENT.**

Requests for Uses or Disclosures. CLIENT shall not request WILLIS to Use or Disclose Protected Health Information in any manner that would violate this Agreement or the HIPAA Rules.

Notice of Privacy Practices. CLIENT hereby agrees to provide, to the extent required by 45 C.F.R. § 164.520 (or any successor provision of the Privacy Rule), a notice of privacy practices (the "Notice") to Individuals (or their personal representatives) who are the subject of the Protected Health Information, which Notice shall be sufficiently broad so as to permit the Uses and Disclosures of Protected Health Information by WILLIS contemplated by this Agreement and the Arrangement. CLIENT shall not amend such Notice unless the amended Notice is sufficiently broad so as to permit the Uses and Disclosures of Protected Health Information contemplated by this Agreement and the Arrangement.

Written Permission. CLIENT hereby agrees to ensure that it obtains Individuals' permission or the permission of Individuals' personal representatives, to the extent required under the Privacy Rule and in the form required by the Privacy Rule, for WILLIS' Uses and Disclosures of Protected Health Information contemplated by this Agreement and the Arrangement and to inform WILLIS of any changes in, or withdrawal of, such written permission provided to CLIENT by Individuals or their personal representatives, including without limitation revocations of authorizations pursuant to 45 C.F.R. § 164.508.

Other Arrangements. CLIENT hereby agrees to promptly notify WILLIS, in writing and in a timely manner, of any arrangements permitted or required of CLIENT under the Privacy Rule that may impact in any manner the Use or Disclosure of Protected Health Information by WILLIS under this Agreement or the Arrangement, including without limitation restrictions on the Use or Disclosure of Protected Health Information agreed to by CLIENT, as provided for in 45 C.F.R. § 164.522 as amended by the HITECH ACT.

Compliance with HIPAA. To the extent required and at such time as required under applicable law, CLIENT agrees to comply with HIPAA, the Privacy Rule, Security Rule and HITECH Act.

#### **TERMINATION.**

Return or Destruction of Protected Health Information Upon Termination. Upon termination of the Arrangement, WILLIS shall, at the option of WILLIS, either return or destroy all Protected Health Information and Electronic Protected Health Information which WILLIS still maintains in any form. WILLIS shall not retain any copies of such Protected Health Information or Electronic Protected Health Information. Notwithstanding the foregoing, to the extent that it is not feasible, in WILLIS' reasonable discretion, to return or destroy such Protected Health Information and Electronic Protected Health Information, the terms and provisions of this Agreement shall survive the termination of the Arrangement with respect to such Protected Health Information and Electronic Protected Health Information, and such Protected Health Information and Electronic Protected Health Information shall be Used or Disclosed solely for such purpose or purposes which prevented its return or destruction.



**MODIFICATIONS TO COMPLY WITH STANDARDS.**

In the event that additional standards are promulgated under the HIPAA Rules, or any existing standards are amended, the parties agree to enter into a mutually acceptable amendment to this Agreement to enable CLIENT to satisfy its obligations under such additional or amended standard(s).

**MISCELLANEOUS.**

The parties agree and acknowledge that, as between CLIENT and WILLIS, CLIENT is the owner of the Protected Health Information and Electronic Protected Health Information.

In the event that a provision of this Agreement conflicts with a provision of the Arrangement, the provision of this Agreement shall control. Otherwise, this Agreement shall be construed under, and in accordance with, the terms of the Arrangement.

This Agreement may be amended only by written agreement between the parties. This Agreement shall be interpreted by and construed in accordance with the laws of the State of California. The headings of sections in this Agreement are for reference only and shall not affect the meaning of this Agreement.

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors and assigns of the parties any rights, remedies, obligations, or liabilities whatsoever.

Any ambiguity in this Agreement shall be resolved to permit the applicable party to comply with HIPAA, Privacy Rule, Security Rule, and the HITECH Act. The parties acknowledge that the HITECH Act requires the Secretary to promulgate regulations and interpretative guidance that is not available at the time of executing this Agreement. In the event a party determines in good faith that any such regulation or guidance adopted or amended after the execution of this Agreement shall cause any paragraph or provision of this Agreement to be invalid, void or in any manner unlawful or subject either party to penalty, then the parties agree modify and amend this Agreement in a manner that would eliminate any such risk.

**CITY COUNCIL**

For City Clerk's Use:

**APPROVED**       **DENIED**

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

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

**Agenda Item No.:** 6  
**Date:** **October 5, 2011**

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Edward N. Domingue, Director of Engineering Services  
**SUBJECT:** Mercado and Grand Avenue Lighting – Budget Adjustment

RECOMMENDATION:

It is requested that Council approve a budget adjustment in the amount of \$50,000 for the Mercado and Grand Avenue Lighting Project.

FISCAL ANALYSIS:

Funding is available in the Street Fund Available Reserve.

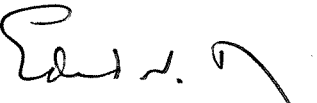
PREVIOUS ACTION:

City Council awarded the construction contract for the Mercado and Grand Avenue Lighting to Dick Miller, Inc. in the amount of \$2,185,920.29 on July 21, 2011.

BACKGROUND:

Construction of the Mercado and Grand Avenue Lighting project is now complete and additional funding is needed to cover additional unanticipated costs due to increased staff charges from the extended duration of the contract, soil analysis for potential contaminated soil, overtime charges for inspection to minimize impacts to surrounding businesses, added costs due to federal processing of the project, and storm drain redesign due to underground conflicts.

Respectfully submitted,

  
Edward N. Domingue  
Director of Engineering Services



**CITY COUNCIL**

For City Clerk's Use:

APPROVED     DENIED

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

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

Agenda Item No.: 7  
Date: **October 5, 2011**

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

**FROM:** Edward N. Domingue, Director of Engineering Services  
Dan Higbee, Acting Construction Project Manager

**SUBJECT:** Notice of Completion for 2010-2011 Street & Sidewalk Maintenance Program

**RECOMMENDATION:**

It is requested that Council approve and accept the public improvements and authorize staff to file a Notice of Completion for the 2010-2011 Street & Sidewalk Maintenance Program.

**FISCAL ANALYSIS:**

The contract was awarded to George W. Weir Asphalt Construction, Inc. The total cost of the project was \$3,101,034.35.

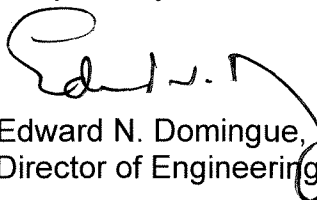
**PREVIOUS ACTION:**

Council awarded the contract to George W. Weir Asphalt Construction, Inc. on March 24, 2010

**BACKGROUND:**

This project consisted of removing 4", 6", 8" and 12" deteriorated asphalt and replacing it with hotmix asphalt overlay and restriping. Concrete sidewalks that were in disrepair were removed and replaced, curb & gutter was installed and City approved trees were planted in various neighborhoods. Existing asphalt at various bus stops was replaced with concrete. 24 pedestrian curb ramps were demolished and rebuilt with new concrete pedestrian ramps. A 12" concrete turn lane was installed from W. Valley Parkway to Tulip St. Video cameras were installed in various locations and a new street light was installed at Elm & Peach.

Respectfully submitted,



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



Dan Higbee  
Acting Construction Project Manager

# 2010 - 2011 STREET & SIDEWALK MAINT. PROGRAM

## Various Locations

MISSION AVENUE  
GOLDENROD STREET  
FERN STREET  
ERICA STREET  
DAISY STREET  
CAMELLIA STREET  
BEGONIA STREET  
ASTER STREET  
OLINDA STREET  
OLEANDER PL.  
WABASH STREET  
WILSON AVE.  
MAGNOLIA PLACE  
ELM ST.  
FIG ST.

MILLS ST.  
ROOSEVELT STREET  
JEFFERSON AVE.  
ASH STREET  
BEECH STREET  
CEDAR STREET  
WEST VALLEY PARKWAY  
ESCONDIDO BLVD.  
BROADWAY  
SECOND AVENUE  
THIRD AVENUE  
FOURTH AVENUE  
FIFTH AVENUE  
BEAR VALLEY PKWY.



NOTICE OF COMPLETION  
CITY COUNCIL MEETING 10-05-2011



# CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

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

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

**Agenda Item No.: 8**  
**Date: October 5, 2011**

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

**FROM:** Edward N. Domingue, Director of Engineering Services

**SUBJECT:** Disadvantaged Business Enterprise (DBE) Program and 2011/2012 Annual Anticipated DBE Participation Level (AADPL)

**RECOMMENDATION:**

It is requested that Council adopt Resolution No. 2011-127 establishing the 2011/2012 DBE Program and an AADPL of 1.48%, with a race conscious goal of 0.54%, and a race neutral goal of 0.94% for the period of October 1, 2011, through September 30, 2012.

**FISCAL ANALYSIS:**

This program is federally mandated and adoption of the AADPL is a requirement for receipt of any federal funding.

**PREVIOUS ACTION:**

Since 1995 the City has been required to approve DBE goals in each year that federal funding has been requested.

**BACKGROUND:**

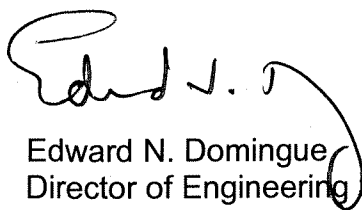
All federally funded projects require that local agencies establish an annual plan with a goal to have a certain percentage of work completed by DBE businesses. Two years ago Caltrans received approval from Federal Highway Administration (FHWA) to implement a partially Race Neutral and partially Race Conscious Program. The Race Conscious portion of the program will cover four groups: African-American, Asian-Pacific American, Women, and Native American businesses. These four groups were considered to be Underutilized Disadvantaged Business Enterprises (UDBE) based upon a disparity study that was conducted.

A comparison of available DBE firms in San Diego County, as determined from the Caltrans website, versus the total number of firms in San Diego County, as determined by the Census Bureau's County Business Patterns-California was used. Both the DBE firms and non-DBE firms were ready, willing, and able to do work in San Diego County. The base figure determined from this calculation is 1.48%.

October 5, 2011  
DBE Program  
Page 2

Under the new guidelines, the AADPL is split into two parts, Race Conscious and Race Neutral. The Race Conscious Goal is calculated by determining the number of UDBE's in San Diego that are ready, willing, and able to participate in Federally-funded projects. The Race Conscious Goal calculated is 0.54%. The Race Conscious Goal is then subtracted from the AADPL in order to establish the race Neutral Goal of 0.94%.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward N. Domingue". The signature is fluid and cursive, with a large loop at the end of the last name.

Edward N. Domingue  
Director of Engineering Services

RESOLUTION NO. 2011-127

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM AND ESTABLISHING A 2011/2012 ANNUAL PARTICIPATION GOAL OF 1.48% WITH A RACE CONSCIOUS GOAL OF 0.54% AND A RACE NEUTRAL GOAL OF 0.94%

WHEREAS, the Federal Department of Transportation, under the Code of Federal Regulations, Title 49; Part 23, requires each local government entity receiving Federal Transportation funds to establish Disadvantaged Business Enterprise ("DBE") Program with an Annual Anticipated DBE Participation Level ("AADPL"); and

WHEREAS, the City is now required to implement a partially Race-Conscious and partially Race-Neutral program; and

WHEREAS, the City proposes an overall annual goal of 1.48%, with a Race-Conscious Goal of 0.54% and a Race-Neutral Goal of 0.94% for Federal Fiscal Year 2011/2012;

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 does hereby approve the Disadvantaged Business Enterprise Program for the City of Escondido and adopts the 2011/2012 AADPL with an overall annual goal of 1.48%, with a Race-Conscious Goal of 0.54% and a Race-Neutral Goal of 0.94% for Federal Fiscal Year 2011/2012.





# CITY COUNCIL

For City Clerk's Use:

APPROVED  DENIED

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

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

Agenda Item No.: 9

Date: October 5, 2011

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Barbara Redlitz, Director of Community Development  
**SUBJECT:** Mitigated Negative Declaration for the remediation of the Benton Dump/Burn site (Case:ENV 10-0005)

**STAFF RECOMMENDATION:**

It is requested that Council approve Resolution No. 2011-126 adopting a Final Mitigated Negative Declaration (MND) and the associated Mitigation Monitoring Report Program for the remediation of the Benton Dump/Burn site.

**PROJECT DESCRIPTION:**

The project involves a MND for the remediation of the former Benton Dump site pursuant to the Remedial Action Plan (RAP) prepared for CalRecycle, (formerly the CA Integrated Waste Management Board), which would consist of the consolidation of waste and the capping of the surface with clean soil in an area less than one acre. The remediation work would remove about 0.05 acre of Coastal Sage Scrub and affect 0.06 acre of a drainage that may be considered jurisdictional waters, which would be mitigated through the purchase of conservation credits.

**BACKGROUND:**

Early this year, Engineering Services was awarded a \$200,000 grant from CalRecycle to remediate the site according to the approved Remedial Action Plan. The Mitigated Negative Declaration was prepared for the remediation activities of consolidating the burn ash and capping the surface with clean soil. CEQA requires the MND and mitigation monitoring report to be approved before commencing the work.

**LOCATION:**

The project site involves portions of three parcels, one parcel within the City of Escondido, and two parcels within the County of San Diego, generally located in a ravine between Still Water Glen and Sleepy Hill Road, (APNs 224-163-42, 224-190-36 and 224-190-52).

**FISCAL ANALYSIS:**

The city was awarded a \$200,000 grant from CalRecycle to do the remediation work.

**PUBLIC COMMENT:**

As part of the MND 30-day public review, various responsible or affected agencies were contacted and/or sent a notice/copy of the environmental document, including the County of San Diego Department of Environmental Health -LEA; Department of Fish and Game (CDFG); U.S. Army Corps of Engineers; the Department of Resources Recycling and Recovery (CalRecycle); and the Regional Water Quality Control Board. Property owners within a 500-foot-radius of the site also were sent

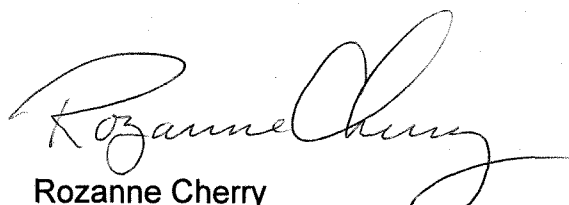
notices of the MND. No comments were received from neighboring property owners. A comment letter was received from the State Department of Toxic Substances Control regarding soil testing, long term monitoring and maintenance, and the need for a Health & Safety Plan for the proposed work. Clarifications have been made in the Final MND further emphasizing this information in the text. The only other comment letter was from the Department of Fish and Game indicating that construction activities should avoid the other avian species breeding season in addition to that of the California gnatcatcher, increasing the construction buffer distance from any active nests, and noting that the agency will evaluate the jurisdictional delineation upon submittal of a formal streambed notification package. These comments have been incorporated into the final MND, the mitigation measures, and the Mitigation Monitoring Report Program.

SUMMARY:

Staff feels that Final MND adequately addresses the potential environmental impacts of the remediation project. The comments submitted by the agencies have been addressed in the revised environmental document and mitigation measures. Therefore, staff recommends adoption of the Final MND. Following the Council's action, the adopted Final MND will be forwarded to CDFG, USACE and RWQCB to complete the City's permit applications with these agencies.

Respectfully submitted,

  
Barbara Redlitz  
Director of Community Development

  
Rozanne Cherry  
Principal Planner



CITY OF ESCONDIDO  
PLANNING DIVISION  
201 NORTH BROADWAY  
ESCONDIDO, CA 92025-2798  
(760) 839-4671

## MITIGATED NEGATIVE DECLARATION

CASE NO.: ENV 10-0005, Benton Burn Site Remediation Project

DATE ISSUED: August 15, 2011

PUBLIC REVIEW PERIOD: August 18, 2001 through September 19, 2011

**PROJECT DESCRIPTION:** The proposed project is the remediation of the former Benton Dump site. The activity involves less than one acre and would consist of consolidating waste and capping the surface with an engineered soil cover. The cap would include clean soil to meet the State Minimum Standards and minimize the potential for human exposure to burn ash-containing waste present on the ground surface and in shallow soil (less than two feet). A small area of unoccupied coastal sage scrub (0.05 acre) will be removed and mitigated at a 2:1 ratio with the purchase of 0.10 acre conservation credits. The remediation will also affect 0.06 acre of a drainage area, which may be un-vegetated jurisdictional waters that would be subject to permits from US Army Corps of Engineers and/or the California Department of Fish & Game. Construction activities will be limited to the hours between 8 A.M. and 5 P.M. Upon completion of construction, the project site would return to the relative appearance of existing conditions. The project would not construct any buildings and does not include lighting components. Existing non-native vegetation would be replaced by native seed mix over the soil cap.

**LOCATION:** The project site is located approximately two miles northwest of downtown Escondido, west of Interstate 15, near the intersection of Still Water Glen and David Glen, partly within the limits of the City of Escondido and partly within an unincorporated area of the County of San Diego, California. The site lies primarily in a ravine where the surrounding areas have been developed with residences. The project site is located on three parcels. One parcel is undeveloped, and part of a subdivision (Assessor's Parcel Number 224-163-42). The two other parcels are residential properties (Assessor's Parcel Number 224-190-36 and Assessor's Parcel Number 224-190-52 formerly APN 224-190-47) located at 2346 and 2374 Sleepy Hill Lane, respectively

**APPLICANT:** City of Escondido, Edward Domingue, Director of Engineering Services

An Initial Study has been prepared to assess this project as required by the California Environmental Quality Act and Guidelines, Ordinance and Regulations of the City of Escondido. The Initial Study is on file in the City of Escondido Planning Division.

**Findings:** The findings of this review are that the Initial Study identified potentially significant impacts associated with biology. However, mitigation measures incorporated into the project, and agreed to by the applicant, would reduce impacts to a less than significant level.

  
Rozanne Cherry, Principal Planner

**Benton Burn Site Remediation Project  
Response to Comments on Draft Mitigated Negative Declaration**

No.	Commenter	Date	Comment	Response to Comment*
1	Department of Toxic Substances Control Al Shami Project Manager Brownfields and Environmental Restoration Program 5796 Corporate Avenue Cypress, California 90630	9/12/2011	1) The document states that the ND would identify any known or potentially contaminated sites within the proposed project area.	The extent of the footprint of the former burn site has been identified and is the subject of this MND. There are no other known or potentially contaminated sites in the vicinity of the subject site.
2	Department of Toxic Substances Control Al Shami Project Manager Brownfields and Environmental Restoration Program 5796 Corporate Avenue Cypress, California 90630	9/12/2011	2) Appropriate sampling is necessary prior to disposal of the excavated soil. Land Disposal Restrictions (LDRs) may be applicable to these soils. Also, if the project proposes to import soil to backfill the areas excavated, proper sampling should be conducted to make sure that the imported soil is free of contamination.	As indicated in the MND and the RAP dated October 5, 2009, the remedial action involves consolidation and capping burn ash-containing soil in place. No burn ash-containing soil will be exported from the site and disposed. Both the MND and the RAP indicate that the imported fill to the site will be sampled and analyzed to ensure that it is free of contamination in accordance with existing guidelines. The following information has been added to the MND on page 3: "No burn ash-containing soil will be exported and disposed off site." No other changes to the text of the MND have been made.
3	Department of Toxic Substances Control Al Shami Project Manager Brownfields and Environmental Restoration Program 5796 Corporate Avenue Cypress, California 90630	9/12/2011	3) Long term monitoring and maintenance will be necessary to ensure the proposed cap is performing as designed and remains protective of human health and the environment. Also, formal land use controls will be necessary to ensure the cap and areas immediately surrounding it are not disturbed. Signage will need to be addressed to prevent trespasser access and to inform persons not to disturb the capped burn ash. Drainage and erosion control measures need be implemented to ensure the proposed cap design is not compromised. Also, confirmation samples should be collected to ensure that any unexcavated soils beyond the limits of the proposed cap footprint do not pose a threat to human health and the environment. It is necessary to ensure that adequate dust monitoring and control measures will be implemented during soil excavation and consolidation activities. All remediation work should be performed under a Health & Safety Plan which is compliant with Occupational Safety and Health Administration (OSHA) guidelines.	Please see pages 3-4 of the MND and Sections 5.2 and 5.5 of the RAP for discussion regarding monitoring and maintenance and land use controls. Please see pages 13-14 of the MND for a detailed discussion regarding dust monitoring and control measures. Please see page 21 of the MND for a discussion of the Health and Safety Plan prepared for this Project. These items are addressed in the MND and/or the RAP with the exception of signage and confirmation sampling on the perimeter of the burn site footprint. Therefore, the following information has been added to the MND on pages 5 and 4, respectively: "Permanent signage will be placed at the site for purpose of discouraging access by trespassers." And, "Confirmation samples will be collected on the perimeter of the footprint to ensure that surface soil remaining in place does not contain lead above the cleanup objective."

**Benton Burn Site Remediation Project  
Response to Comments on Draft Mitigated Negative Declaration**

No.	Commenter	Date	Comment	Response to Comment*
4	<p>Department of Fish and Game Edmund Pert Regional Manager South Coast Region 3883 Ruffin Road San Diego, CA 92123</p>	9/19/2011	<p>1. Migratory non-game native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 353.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA). Accordingly, the Department recommends that the final MND reflect that if maintenance work is necessary adjacent to habitat occupied by native nesting birds, that not activity will occur within a buffer of 300 feet (500 feet for raptors) of active nests. Exceptions include implementing measures to minimize noise and disturbances to those adjacent birds during the avian breeding season generally February 15 to September 15, (as early as January for some raptors). Therefore, the Department recommends that section V (subsection Mitigation Measures, page 16) be edited to incorporate the changes indicated.</p> <p>Biological Resources v. MITIGATION MEASURES 3. To avoid take of active bird nests, the Project will avoid construction in California gnatcatcher and other avian nesting habitat during the California gnatcatcher and other avian species breeding season' (approximately February 15 through August 31-September 15, as early as January for some raptors). If vegetation clearing or other construction work will occur during the California gnatcatcher and other avian species breeding season, a qualified biologist will survey the area within 500 feet of construction, no more than 10 days prior to the beginning of project activities, to identify active nests. If active nests are found within the Project area, construction activities shall not occur within 400 300 feet of an active gnatcatcher or other avian species nest (500 feet for raptors), or a sound barrier will be erected in conjunction with biological monitoring to avoid take. A 50-foot buffer will be provided for common-bird-species detected during the nest survey.</p>	<p>Text on pages 16 and 31 of the MND has been revised to incorporate edits as recommended by CDFG:</p> <p>Biological Resources v. MITIGATION MEASURES 3. To avoid take of active bird nests, the Project will avoid construction in California gnatcatcher and other avian nesting habitat during the California gnatcatcher and other avian species breeding season' (approximately February 15 through August 31-September 15, as early as January for some raptors). If vegetation clearing or other construction work will occur during the California gnatcatcher and other avian species breeding season, a qualified biologist will survey the area within 500 feet of construction, no more than 10 days prior to the beginning of project activities, to identify active nests. If active nests are found within the Project area, construction activities shall not occur within 400 300 feet of an active gnatcatcher or other avian species nest (500 feet for raptors), or a sound barrier will be erected in conjunction with biological monitoring to avoid take. A 50-foot buffer will be provided for common-bird-species detected during the nest survey.</p>

**Benton Burn Site Remediation Project  
Response to Comments on Draft Mitigated Negative Declaration**

No.	Commenter	Date	Comment	Response to Comment*
5	Department of Fish and Game Edmund Pert Regional Manager South Coast Region 3883 Ruffin Road San Diego, CA 92123	9/19/2011	<p>2. The fourth mitigation measure located in section V, subsection Mitigation Measures, page 16 of the MND should state that the areas defined with the current jurisdictional delineation report as being regulated pursuant to Section 1600 et seq. of the Fish and Game Code will be evaluated (including mitigation ratios and effected acreage) at the time the project applicant formally submits a streambed notification package to the Lake and Streambed Alteration Program of the Department. During this time the Department will determine if a Streambed Alteration Agreement will be required. Therefore, the Department recommends that this section should be edited to incorporate the changes indicated below.</p> <p>Biological Resources                      v. MITIGATION MEASURES                      4. The drainage feature located onsite may be unvegetated jurisdictional waters that would be subject to a CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and/or CDFG 1602 Streambed Alteration Agreement for impacts to 0.06 acre. Assuming the USACE, RWQCB, and CDFG take jurisdiction. Impacts to the 0.06 acre of potentially jurisdictional waters on the site will be mitigated by adhering to the terms and conditions identified in the CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and CDFG 1602 Streambed Alteration Agreement. Areas defined with the current jurisdictional delineation report as being regulated pursuant to Section 1600 et seq. of the Fish and Game Code will be evaluated (including mitigation ratios and effected acreages) at the time the project applicant formally submits a streambed notification package to the Stream Alteration Team of the Department.</p>	<p>Text on pages 17 and 31 of the MND has been revised to incorporate edits as recommended by CDFG:</p> <p>Biological Resources                      v. MITIGATION MEASURES                      4. The drainage feature located onsite may be unvegetated jurisdictional waters that would be subject to a CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and/or CDFG 1602 Streambed Alteration Agreement for impacts to 0.06 acre. Assuming the USACE, RWQCB, and CDFG take jurisdiction. Impacts to the 0.06 acre of potentially jurisdictional waters on the site will be mitigated by adhering to the terms and conditions identified in the CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and CDFG 1602 Streambed Alteration Agreement. Areas defined with the current jurisdictional delineation report as being regulated pursuant to Section 1600 et seq. of the Fish and Game Code will be evaluated (including mitigation ratios and effected acreages) at the time the project applicant formally submits a streambed notification package to the Stream Alteration Team of the Department.</p>

\* Revisions noted in this column have been made in underline-strikeout within the MND.



CITY OF ESCONDIDO  
 Planning Division  
 201 North Broadway  
 Escondido, CA 92025-2798  
 (760) 839-4671  
[www.ci.escondido.ca.us](http://www.ci.escondido.ca.us)

**Environmental Checklist Form**

1. Project Title and Case File Number: Benton Burn Site Remediation Project, Case No. ENV 10-0005
2. Lead agency name and address: City of Escondido  
Planning Division  
201 N. Broadway  
Escondido, CA 92025
3. Lead Agency contact person name, phone number and email: Rozanne Cherry, Principal Planner  
760-839-4536, rcherry@ci.escondido.ca.us
4. Project location: Ravine east of Still Water Glen and David Glen
5. Project applicant's name, address, phone number and email: Edward Domingue, Engineering Services  
City of Escondido, 201 N. Broadway, Escondido, CA 92025  
760-839-4813  
edomingue@ci.escondido.ca.us
6. General Plan designation: City-Estate 1, County-Rural Residential Zoning: City-PD-R1.0, County-RR1
8. Description of project: (Describe the whole action involved, including, but not limited to, later phases of the project and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)  
Implementation of the Remedial Action Plan (RAP) prepared for the California Integrated Waste Management Board, October 5, 2009, by URS Corporation. The RAP entails the consolidation of waste by excavating burn ash-containing waste present near or at the ground surface on the steep side slopes of the ravine and spreading it thinly across the floor of the ravine where it will be capped by 2-feet of clean soil. Vegetation in the areas of excavation and capping will be removed. The excavated areas of the sides of the ravine will be backfilled with clean soil at no more than 2:1 slope, compacted & seeded. The drainage area will be backfilled with 2-feet of rock and gravel for erosion control. The affected area is less than 1 acre. As 0.05 acre of Coastal Sage Scrub habitat will be removed, mitigation will be implemented.
9. Surrounding land uses and setting (briefly describe the project's surroundings):  
To the west & south is a single-family residential development & to the northwest is an associated undeveloped open space lot owned by the Country Club Woods Homeowner Association, within the City of Escondido.  
To the east and northeast are single-family homes located in the County.
10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement).

County of San Diego and possibly the United States Army Corps of Engineers, the California Department  
of Fish and Game, and the Regional Water Quality Control Board.

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

The environmental factors checked below potentially would be affected by this project involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

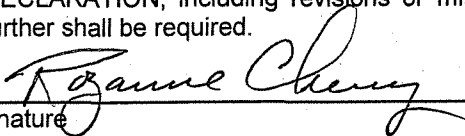
- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Aesthetics                      | <input type="checkbox"/> Agriculture Resources         | <input type="checkbox"/> Air Quality                        |
| <input checked="" type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources            | <input type="checkbox"/> Greenhouse Gas Emissions           |
| <input type="checkbox"/> Geology/Soils                   | <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology/Water Quality            |
| <input type="checkbox"/> Land Use/Planning               | <input type="checkbox"/> Mineral Resources             | <input type="checkbox"/> Noise                              |
| <input type="checkbox"/> Population/Housing              | <input type="checkbox"/> Public Services               | <input type="checkbox"/> Recreation                         |
| <input type="checkbox"/> Transportation/Traffic          | <input type="checkbox"/> Utilities/Service Systems     | <input type="checkbox"/> Mandatory Findings of Significance |

**DETERMINATION:** (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION shall be prepared.
- I find that, although the proposed project might have a significant effect on the environment, there would not be a significant effect in this case because revisions in the project have been made by, or agreed to, the project proponent. A MITIGATED NEGATIVE DECLARATION shall be prepared.
- I find that the proposed project might have a significant effect on the environment and/or deficiencies exist relative to the city's General Plan Quality of Life standards, and the extent of the deficiency exceeds the levels identified in the City's Environmental Quality Regulations pursuant to Zoning Code Article 47, Section 33-924 (b), and an ENVIRONMENTAL IMPACT REPORT shall be required.
- I find that the proposed project might have a "potentially significant impact" or "potentially significant unless mitigated impact" on the environment, but at least one effect: 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT shall be required, but it shall analyze only the effects that remain to be addressed.
- I find that, although the proposed project might have a significant effect on the environment, because all potentially significant effects: (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further shall be required.

Signature



Date

8-15-11

Rozanne Cherry, Principal Planner  
Printed Name and Title



## EVALUATION OF ENVIRONMENTAL IMPACTS:

1. This section evaluates the potential environmental effects of the proposed project, generally using the environmental checklist from the State CEQA Guidelines as amended and the City of Escondido Environmental Quality Regulations (Zoning Code Article 47). A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. All answers must take into account the whole action involved, including off-site, on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts. Once the lead agency has determined that a particular physical impact might occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. The definitions of the response column headings include the following:
  - A. "Potentially Significant Impact" applies if there is substantial evidence that an effect might be significant. If there are one or more "Potentially Significant Impact" entries once the determination is made, an EIR shall be required.
  - B. "Less Than Significant with Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section 2 below, "Earlier Analyses," may be cross-referenced).
  - C. "Less Than Significant Impact" applies where the project creates no significant impacts, only less than significant impacts.
  - D. "No Impact" applies where a project does not create an impact in that category. "No Impact" answers do not require an explanation if they are adequately supported by the information sources cited by the lead agency which show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project would not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
2. Earlier Analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or Negative Declaration, pursuant to the tiering, program EIR, or other CEQA. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:
  - A. Earlier Analysis Used. Identify and state where it is available for review.
  - B. Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of an adequately analyzed earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
  - C. Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
3. Lead agencies are encouraged to incorporate references to information sources for potential impacts into the checklist (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
4. Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
5. The explanation of each issue should identify:
  - A. The significance of criteria or threshold, if any, used to evaluate each question; and
  - B. The mitigation measure identified, if any, to reduce the impact to less than significant.

**ISSUES:**

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
--------------------------------	--	------------------------------	-----------

**I. LAND USE PLANNING AND AESTHETICS (1, 2, 3, 6, 10, 13, 17, 21)**

Would the project:

- |  |                          |                          |                                     |                                     |
|--|--------------------------|--------------------------|-------------------------------------|-------------------------------------|
| a. Physically divide an established community?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| b. Conflict with any applicable land-use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c. Conflict with any applicable habitat conservation plan or natural community conservation plan?  | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| d. Have a substantial adverse effect on a scenic vista?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| e. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| f. Substantially degrade the existing visual character or quality of the site and its surroundings?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| g. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

**II. AGRICULTURE RESOURCES (1, 2, 3, 10, 17, 21)**

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:

- |  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency or (for annexations only) as defined by the adopted policies of the Local Agency Formation Commission, to non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**III. TRANSPORTATION/TRAFFIC (1, 2, 4, 6, 7, 8, 17, 21)**

Would the project:

a. Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**IV. AIR QUALITY AND GREENHOUSE GAS EMISSIONS (1, 2, 4, 6, 7, 8, 16, 17, 21)**

Where applicable, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

a. Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gasses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

V. **BIOLOGICAL RESOURCES** (1, 2, 10, 11, 12, 13, 14, 18, 17, 20, 21, 22)

Would the project:

a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Conflict with any local policies or ordinances protecting biological resources such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**VI. CULTURAL RESOURCES (1, 2, 5, 10, 17, 19, 21)**

Would the project:

a. Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VII. GEOLOGY AND SOILS (1, 2, 6, 14, 17, 21)**

Would the project:

a. Expose people or structures to potentially substantial adverse effects, including the risk of loss, injury, or death involving:				
i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii. Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii. Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv. Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VIII. HAZARDS AND HAZARDOUS MATERIALS (1, 2, 15, 17, 21)**

Would the project:

a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. For a project located within an airport land-use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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IX. **HYDROLOGY AND WATER QUALITY (1, 2, 6, 11, 12, 14, 17, 20, 21)**

Would the project:

- |   |                          |                          |                                     |                                     |
|---|--------------------------|--------------------------|-------------------------------------|-------------------------------------|
| a. Violate any water quality standards or waste discharge requirements, including but not limited to increasing pollutant discharges to receiving waters (Consider temperature, dissolved oxygen, turbidity and other typical storm water pollutants)?  | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| b. Have potentially significant adverse impacts on ground water quality, including but not limited to, substantially depleting groundwater supplies or substantially interfering with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river in a manner which would result in substantial/increased erosion or siltation on- or off-site?   | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site and/or significant adverse environmental impacts?  | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| e. Cause significant alteration of receiving water quality during or following construction?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| f. Cause an increase of impervious surfaces and associated run-off?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| g. Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| h. Cause potentially significant adverse impact on ground water quality?  | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| i. Cause or contribute to an exceedance of applicable surface or ground water receiving water quality objectives or degradation of beneficial uses?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| j. Is the project tributary to an already impaired water body, as listed on the Clean Water Act Section 303(d) list? If so, can it result in an increase in any pollutant for which the water body is already impaired?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| k. Create or exacerbate already existing environmentally sensitive areas?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
l. Create potentially significant environmental impact on surface water quality, to either marine, fresh, or wetland waters?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m. Impact aquatic, wetland or riparian habitat?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n. Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
p. Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
q. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
r. Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**X. MINERAL RESOURCES (1, 2, 6, 10, 17, 21)**

Would the project:

a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land-use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XI. NOISE (1, 2, 6, 17, 21)**

Would the project result in:

a. Exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Exposure of persons to, or generation of, excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e. For a project located within an airport land-use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XII. POPULATION AND HOUSING (1, 2, 10, 17, 21)**

Would the project:

a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XIII. PUBLIC SERVICES (1, 2, 8, 9, 17, 21)**

Would the project:

a. Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Libraries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gas/Electricity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XIV. UTILITIES AND SERVICE SYSTEMS (1, 2, 17, 21)**

Would the project:

a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Require, or result in, the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Result in a determination by the wastewater treatment provider which serves, or may serve, the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XV. MANDATORY FINDINGS OF SIGNIFICANCE**

a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number, or restrict the range, of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b. Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Does the project have environmental effects which would cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## **Source of Information/Material Used in Preparation of this Analysis**

1. Escondido General Plan and Environmental Impact Report, 1990
2. Escondido General Plan Update and Environmental Impact Report, 2000
3. Escondido Zoning Code and Land Use Maps
4. SANDAG Summary of Trip Generation Rates
5. Escondido Historic Sites Survey
6. City of Escondido – Engineering Services Public Works Department
7. City of Escondido – Traffic Division
8. City of Escondido – Fire Department
9. City of Escondido – Police Department
10. City of Escondido – Planning Division
11. Escondido Drainage Master Plan, 1995
12. Flood Insurance Rate Maps (FIRM)
13. Draft Multiple Habitat Conservation Program (MHCP) maps
14. United States Geological Survey Topographic Map for San Diego (Escondido) area
15. County of San Diego Health Department, Hazardous Material Management Division (HMMD) Hazardous Sites List
16. Recommendations by the Association of Environmental Professionals (AEP) on How to Analyze Greenhouse Gas Emissions and Global Climate Change in CEQA Documents (Comment Draft, March 5, 2007)
17. Project Description and Preliminary Information
18. Biological Resources Technical Memorandum, prepared by URS Corporation, dated October 2010
19. Confidential Cultural Resources Technical Memorandum, prepared by URS Corporation, dated October 2010
20. Hydrology and Hydraulic Report, prepared by URS Corporation, dated March 2009
21. Remedial Action Plan, prepared by URS Corporation, dated October 2009
22. 45-Day Report for California Gnatcatcher Surveys, prepared by URS Corporation, dated May 2011



CITY OF ESCONDIDO  
PLANNING DIVISION  
201 NORTH BROADWAY  
ESCONDIDO, CA 92025-2798  
(760) 839-4671

## MITIGATED NEGATIVE DECLARATION

(Case No.: ENV10-0005)

### ENVIRONMENTAL CHECKLIST SUPPLEMENTAL COMMENTS

#### INTRODUCTION

This Mitigated Negative Declaration (MND<sup>1</sup>) assesses the environmental effects of the proposed project involving consolidating burn ash waste and surface capping the former Benton Burn Site on approximately one acre of land, located near the intersection of Still Water Glen and David Glen (Assessor's Parcel Number [APN]: 224-163-42, 224-190-36, and 224-190-52).

An Initial Study Environmental Checklist was prepared for this project and is included as a separate attachment to the Supplemental Comments within this report. The information contained in the Initial Study Environmental Checklist and the Supplemental Comments will be used by the City of Escondido (City) to determine potential impacts associated with the proposed development.

The detailed Supplemental Comments included in this document identify and evaluate physical impacts to the environment associated with developing or implementing the proposed project based on preliminary review of a variety of environmental factors identified in the attached Environmental Checklist. In analyzing the project, it has been determined that impacts related to biological resources would occur. Based on information and documentation incorporated in the analysis, it has been concluded that this Initial Study warrants issuing a MND. The MND acknowledges that certain aspects of the project would cause significant impact(s) on the environment, but those impacts would be reduced to an acceptable level by incorporating Mitigation Measures. As provided by the California Environmental Quality Act (CEQA), the City will act as a responsible agency because of its role in reviewing and potentially approving or issuing permits for the project.

As mandated by CEQA Guidelines Section 15105, affected public agencies and the interested public may submit comments on the MND in writing before the end of the 30-day public review period starting on August 18<sup>th</sup>, 2011 and ending on September 19<sup>th</sup>, 2011.

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<sup>1</sup> For a list of acronyms and abbreviations used within this document, please refer to pages 32 and 33.

Written comments on this environmental document shall be submitted to the following address by 5:00 p.m. **September 19th, 2011.**

City of Escondido  
Planning Division  
201 North Broadway  
Escondido, CA 92025-2798

Contact: Rozanne Cherry, Principal Planner  
Telephone: (760) 839-4536  
Fax: (760) 839-4313  
e-mail: rcherry@escondido.org

Following the close of the public comment review period, the City will consider this MND and all received comments in determining the approval of this project. A hard copy of this document and any associated plans and/or documentation are available for review during normal operation hours for the duration of the public review period at the City of Escondido Planning Division.

#### **DETAILED PROJECT DESCRIPTION / LOCATION / BACKGROUND**

The City is proposing to consolidate burn ash waste and surface cap the former Benton Burn Site (herein termed Project), located near the intersection of Still Water Glen and David Glen in Escondido, California (see Figures 1 through 4).

Background / Location - Based on reports provided by the California Department of Resources Recycling and Recovery (CalRecycle, formerly the Integrated Waste Management Board), the Project site was operated as a burn site from 1948 through 1953. Municipal and commercial refuse was accepted at the facility, where it was burned and placed in a canyon. The San Diego County Solid Waste Local Enforcement Agency (LEA) has been inspecting the site for compliance with applicable regulatory state minimum standards (SMS), in accordance with California Code of Regulations (CCR), Title 27, Division 2, Chapter 3, Subchapter 4, Articles 1 and 6, et. seq. Inspections of the burn dump revealed the presence of conditions that were cited as violations of the SMS. These violations included site security, drainage and erosion control, grading of fill surfaces, and site maintenance. In 2006, the LEA requested CalRecycle to conduct an investigation of the site to assess its conditions with respect to the SMS.

An investigation was conducted by CalRecycle in 2007 to evaluate the condition of the site and identify whether further action is needed to comply with the SMS for former landfill sites. Samples of fill, native soil, and burn ash-containing materials were analyzed for the chemicals of potential concern (COPCs) associated with burn ash. These included lead and other metals and organic compounds such as polynuclear aromatic hydrocarbons (PNAs), organochlorine pesticides (OCPs), polychlorinated biphenyls (PCBs), dioxins, and furans. The majority of the samples were analyzed for metals and a smaller subset was analyzed for the organic compounds. In general, lead was found to be present at concentrations that would characterize the materials as California hazardous. In addition, lead concentrations were present in some samples above the residential California Human Health Screening Level (CHHSL). Select samples were also subjected to the Waste Extraction Test (WET), the Toxicity Characteristic Leaching Procedure (TCLP), and the Deionized Water (DI) WET for lead and other metals. Copper was found to exceed regulatory limits in one sample to characterize the materials as California Hazardous. None of the TCLP results indicated that the burn ash-containing waste is a Resource Conservation and Recovery Act (RCRA) hazardous waste. The DI WET results indicate the lead present in the

soil does not exceed the Soluble Threshold Limit Concentration (STLC) of 5 milligrams per liter (mg/l). As such, this indicates that the lead present in the soil/waste is of low solubility and does not pose a significant threat to groundwater quality. This is supported by similar results at other burn sites investigated throughout California, according to the Remedial Action Plan (RAP) prepared by URS Corporation Americas (URS).

To support preparation of the RAP, CalRecycle conducted additional sampling and analyses in May 2009 in the western portion of the burn site footprint to refine the extent of the area where burn ash is present at depths shallower than two feet below the ground surface. Five samples collected from four of the 11 borings contained lead above the CHHSL of 150 mg/kg. None of the samples analyzed contained lead above the Total Threshold Limit Concentration (TTLC) regulatory limit, but eight samples contained lead at concentrations above 10 times its STLC regulatory limit (50 mg/kg). Of the eight samples subjected to the DI WET, none contained lead above the STLC regulatory limit of 5 mg/l.

In October 2009, URS prepared a RAP at the request of CalRecycle and evaluated remedial action alternatives. The recommended alternative in the RAP was consolidation and capping. The City is currently proceeding with implementing the recommended alternative. The Project would address burn ash-containing waste present within the burn site footprint by consolidating waste and capping the surface with an engineered soil cover, in order to meet SMS and to minimize the potential for human exposure to burn ash-containing waste present on the ground surface and in shallow soil (less than two feet). No burn ash-containing soil will be exported and disposed off site.

The Project is located approximately two miles northwest of downtown Escondido, west of Interstate 15 (I-15), partly within the limits of the City and partly within an unincorporated area of the County of San Diego (County), California (see Figure 1). The Project site lies primarily in a ravine where the surrounding areas have been developed with residences. On the southwest, the Project site is surrounded by single-family dwellings along Still Water Glen, David Glen, and Larkhaven Glen, while the northeastern portion is located on two residential parcels located west of Sleepy Hill Road. Based on the investigation results, the Project site occupies approximately one acre and is located on three parcels. One parcel is undeveloped and part of a subdivision belonging to the Country Club Homeowners Association (HOA; APN 224-163-42). The two other parcels are residential properties owned by Jesse and Charlene Longacre (APN 224-190-36) and Joel and Kathie Phillips (APN 224-190-52). The Longacre and Phillips properties are located at 2346 and 2374 Sleepy Hill Lane, respectively.

The proposed Project site contains land under jurisdiction of both the City and the County. The City of Escondido General Plan designates the western half of the proposed Project site (APN 224-163-42) as Estate 1, and is zoned PD-R1.0 (Planned Development Residential). The eastern half of the proposed Project site (APN 224-190-36 and 224-190-52) is considered by the County as Rural Residential and is zoned as RR1. The Project would not conflict with either of these zoning designations and does not propose a zoning change.

Access to the site is limited to passing through private residential property. The closest access points to the site are from the west at a cul-de-sac at the end of Still Water Glen, or from the east along Sleepy Hill Road. While the site is hidden in a ravine behind residential properties, it is not fenced and access by trespassers is unrestricted.

The overall protection of human health and the environment for containment treatments is good, provided that long-term monitoring and maintenance is conducted. Because the site is a former solid waste facility, it must

comply with CCR Title 27, which requires regular monitoring, maintenance, and reporting by the County Solid Waste Local Enforcement Agency (LEA) or Regional Water Quality Control Board (RWQCB). Such monitoring and maintenance oversight is expected to continue and be provided by the LEA. Institutional controls are currently in place for the Longacre and Phillips properties. The existing institutional controls include provisions to limit the potential for future breaching of the cap and potential exposure of receptors to COPCs in burn ash-containing materials/waste. Use of the areas within the HOA affected by burn ash-containing waste would be limited to open space; however, some type of institutional control (land use restriction) is needed by the City for the HOA property. In accordance with CCR Title 27, future activities that could involve breaching of the cap and exposure to burn ash-containing waste would require LEA notification and oversight. A Post-closure Monitoring and Maintenance Plan will be prepared to address long-term monitoring and maintenance of the site to ensure that the cap remains in good condition, limits the potential for human exposure, and is protective of the environment.

Proposed Project - The proposed Project would consist of consolidating waste and capping the surface with an engineered soil cover. The cap would include clean soil to meet the SMS and minimize the potential for human exposure to burn ash-containing waste present on the ground surface and in shallow soil (less than two feet). In the areas where burn ash-containing waste is present, a suitable cap consisting of at least two feet of clean soil would be constructed. The area of the Project site that does not meet the SMS and would be included in the consolidation and capping covers less than one acre.

Burn ash-containing waste present near or at the ground surface on the steep side slopes of the ravine will be excavated so that the grade will be similar to existing conditions, once a two-foot soil cap is placed in these areas. The excavated material will be spread thinly across the floor of the ravine, where it will be capped with clean soil. Prior to excavation and placement of burn ash-containing materials, vegetation present in the areas where the remedial action will be conducted will be removed. Confirmation samples will be collected on the perimeter of the footprint to ensure that surface soil remaining in place does not contain lead above the cleanup objective. Other areas along the eastern portion of the burn site on the Longacre property may be spot excavated or covered with two feet of clean soil to meet the SMS. Excavated materials will be spread thinly on the floor of the ravine. Once the areas of burn ash have been excavated where it is shallower than two feet and placed in the ravine, the sides of the ravine will be backfilled with clean soil at no more than a 2:1 slope and compacted. The burn ash-containing waste on the floor of the ravine will be covered with a geotextile within the approximate area of the 100-year flood plain. Two feet of clean soil will be placed above the waste placed on the floor of the ravine, with the exception of the width of the former stream channel and its floodplain. This area will instead be backfilled with two feet of rock and gravel, so that future storm flows will not result in the mobilization of sediment that could be carried downstream of the Project site.

As a result of these earthmoving activities, the site would be regraded using track hoes and other relatively small construction equipment. Excavation would occur up to a concrete brow ditch located on the northwestern portion of the Project footprint, but the structure would not be removed. Excavation would be conducted only that distance from the brow ditch where there is little or no vegetation in the footprint. No confirmation sampling is anticipated following excavation since the existing site footprint will be capped with a minimum of two feet of clean soil. There are no areas that will remain uncapped following excavation. The cap will consist of clean soil that would contain lead at concentrations below 150 mg/kg and other regulated chemicals at concentrations below their respective residential CHHSLs or Preliminary Remediation Goals (PRGs, currently Regional Screening Levels [RSLs]). This will be confirmed by analytical testing that will be conducted in accordance with Department of Toxic Substances Control's (DTSC) guidance on analyzing imported fill soil. It is estimated that approximately 500 cubic yards of burn ash-containing soil will be removed and placed elsewhere within the



former burn site footprint. Approximately 2,000 cubic yards (2,600 tons assuming 1.3 tons/cubic yard) of imported clean fill (soil and gravel) will be needed for the cap.

Construction of the proposed Project is expected to take approximately four weeks. Construction activities will be limited between the hours of 8 A.M. and 5 P.M. in order to have the least effect on neighboring residences. Street parking for workers along Still Water Glen and David Glen is expected to be adequate given the small number of workers necessary and the short time frame of construction. A temporary six-foot high chain-link fence will be placed along the western site perimeter during Project implementation, as this would be the area most readily accessible to trespassers. Other areas of the site that are not clearly accessible will not require fencing. Appropriate signage will be placed on the fencing to discourage entry and inform the public of the hazard associated with the site and remedial activities.

Upon completion of construction, the Project site would return to the relative appearance of existing conditions. The Project would not construct any buildings and does not include lighting components. Existing non-native vegetation would be replaced by native seed mix over the soil cap. Permanent signage will be placed at the site for purpose of discouraging access by trespassers. The Project operation is passive and does not require on-site employees; however, it is expected that inspectors would periodically observe site conditions to ensure erosion control is maintained and the SMS are being met.

Project Objectives - Remedial action objectives (RAOs) are established to protect human health and the environment. RAOs focus on site-specific characteristics and may include site-specific media of concern, COPCs, exposure routes and receptors, acceptable contaminant level for each exposure route, and/or range of contaminant levels for each exposure route. Based on the results of the investigation conducted by CalRecycle, groundwater is not included in the RAOs as it is an incomplete exposure pathway; however, surface water is a potential exposure pathway resulting in possible off site migration of burn ash-containing waste through sediment transport during storm events, when it intermittently flows in the bottom of the ravine. There are no aquatic habitats on site as the drainage is dry except during short periods following occasional major rain events. Therefore, as concluded in the RAP for the Project site, the media of concern is limited to soil and the COPCs associated with burn ash-containing waste.

Lead is typically the primary COPC in burn ash-containing waste that has the greatest potential to pose an adverse human health risk. Lead concentrations were present in the waste at the Project site at levels that would indicate that it could be considered a California hazardous waste, according to the RAP. Lead and burn ash are of low solubility and are not likely to be bioavailable; thus, the potential ecological risk at the site is relatively low. The primary exposure pathways are through direct exposure by ingestion or inhalation. Other COPCs, such as other metals (arsenic, antimony, cadmium, and copper) and organic constituents (PNAs and dioxins and furans), are collocated with lead such that receptors can be exposed to these through the same exposure pathways as lead. Eliminating complete exposure pathways between COPC-containing burn ash and site occupants, users and workers, and the surrounding community can mitigate the level of risk. Response actions that accomplish this include constructing a barrier, such as physical controls or removal.

The primary objectives of the Project are to implement remedial action in order to meet the SMS for former landfill sites to comply with CCR Title 27 and to reduce the potential for human exposure and health risk related to burn ash-containing waste.

Responsible Agency Permits – The proposed Project is a remedial action occurring on private lands and will be permitted using the process detailed in CEQA, with the City as the designated Lead Agency with discretionary authority over the primary Project proposal.

A drainage feature passes through the Project site and may be considered jurisdictional waters by the United States Army Corps of Engineers (USACE) and/or the California Department of Fish & Game (CDFG). If these agencies take jurisdiction over this feature, then a permit(s) to modify the affected 0.06 acre of the feature would be required. The feature is dominated by upland vegetation and does not support riparian habitat or other sensitive natural communities. Accordingly, the Project site does not support a wetland that is regulated by Section 404 of the Clean Water Act (CWA). However, the drainage feature may be unvegetated jurisdictional waters that would be subject to CWA 404 Wetlands Nationwide Permit (Nationwide Permit Number 38), CWA 401 Water Quality Certification, and/or CDFG 1602 Streambed Alteration Agreement permit requirements for impacts to 0.06 acre.

The Project will conform to appropriate City, County, and other local laws and regulations. At a minimum, the discretionary local permits/approvals that may be necessary for development of the Project include a City and/or County Grading Permit, with possible inclusion of a Drainage and Grading Plan and an Erosion Control Plan.

## **PUBLIC MEETINGS/HEARINGS**

### ***Meeting***

On March 19, 2009, the LEA and CalRecycle held a public meeting with the property owners and the HOA to discuss the RAP.

***No other meetings/hearings are anticipated.***

## **PROJECT ENVIRONMENTAL SETTING**

The proposed Project site is located approximately two miles northwest of downtown Escondido, California, at 33.16532° North latitude, 117.11882° West longitude. The Project site occupies approximately one acre near the intersection of Still Water Glen and David Glen. The site has remained relatively undeveloped as part of two residential properties and a portion of open space associated with residential development.

From 1948 to 1953, the Project site was used as a garbage burn dump owned and operated by Mr. Jesse Benton. The site reportedly accepted residential and commercial waste; however, the volume of waste accepted at the dump is not known. Information appearing in a Garbage and Trash Disposal Survey for the City indicated that approximately 84 tons of trash and rubbish was collected on a weekly basis. The waste was disposed in the ravine, where it was burned. The dump was ordered closed by a judgment through an injunction of the State Superior Court (*County of San Diego*, Case 165725), which considered the smoke and odors from burning refuse to be a public nuisance. The former burn dump operated in the eastern 300 feet of Lot 1, Section 6 and part of Lot 4, Section 5 of Township 12 South, Range 2, San Bernardino Base Meridian (SBBM).

The proposed Project site contains land under jurisdiction of both the City and the County. The City of Escondido General Plan designates the western half of the proposed Project site (APN 224-163-42) as Estate 1, and is zoned PD-R1.0 (Planned Development Residential). The eastern half of the proposed Project site (APN 224-190-36 and 224-190-52) is considered by the County as Rural Residential and is zoned as RR1. The Project is surrounded by residential uses in the northeast, southeast, and southwest quadrants, while the

northwest quadrant is undeveloped. The area to the south of the Project was developed with a residential development in the 1980s.

The proposed Project lies within a ravine and topography of the site footprint generally slopes from northeast to southwest, with elevations of approximately 870 feet above Mean Sea Level (MSL) datum at its northeasterly end and 820 feet MSL at its southwesterly end. The Project site encompasses portions of an ephemeral stream near the base of granitic hills that serves as a drainage for a very small regional watershed of approximately 60 acres. The average stream slope along the lower end of the Project site varies from approximately 2% to 7%, while the slopes along the upper end of the site vary from approximately 5% to 30%. Storm runoff conveyed by the ephemeral stream enters into a 42-inch reinforced concrete pipe (RCP) that is located under David Glen. The entrance to the 42-inch RCP culvert is located on the easterly side of David Glen, and storm runoff is then conveyed to the west.

The drainage supports upland (non-hydrophytic) vegetation and is characterized by sandy to rocky soil that has been eroded to a channel width that varies from 0.5 to 2 feet. The ordinary high water mark (OHWM) is not easily discerned in many locations where the cut channel is surrounded by a relatively flat gradient. The detection of flotsam along drift lines is also confounded by dumping of yard waste in some areas and landscape maintenance clearing activities in other areas. The estimated OHWM along the channel ranges from 3 to 10 feet wide, with the average width being about 5.8 feet.

Vegetation on the site currently consists of ornamental plantings, non-native vegetation, and fruit orchards. Coastal sage scrub (CSS) vegetation is present on the slopes that rise to the northwest of the site, a small portion (0.05 acre) of which is included within the Project area. The intention is not to disturb this area. There are a couple of scrub oaks present on site, but there are no oak trees present. Ornamental vegetation on the site is represented by Eucalyptus trees (*Eucalyptus* sp.), pepper trees (*Schinus molle*), cotoneaster shrubs (*cotoneaster* sp.), and African daisy groundcover (*gazania* sp.). Overhead sprinkler irrigation is present in these areas. The orchards are present in the upstream section of the drainage on the Phillips property and are characterized by citrus trees, with bare ground and rip rap (12- to 24-inch diameter) within the channel. Residential ornamental landscaping and avocado orchards are found upstream of the site. The stream channel remains bare in the upstream area, with sandy and rocky soil that does not support hydrophytic vegetation. Weedy species present (primarily where orchards transition to ornamental vegetation) include tree tobacco (*Nicotiana glauca*), ice plant (*Carpobrotus edulis*), mustard (*Brassica* sp.), and horehound (*Marubium vulgare*). The perimeter of the ravine has been used for dumping of residential green waste (brush and other debris).

Soils on the site consist primarily of decomposed granite. The hydrologic soil group types consist of B, C and D, with the C hydrologic soil type being the most prevalent. Group B soils are defined as having moderate characteristics: a moderate infiltration rate when thoroughly wetted, moderately deep to deep, moderately well drained to well drained, moderately coarse textured, and a moderate rate of water transmission. Group C soils have a slow infiltration rate when thoroughly wetted and a slow rate of water transmission, and are chiefly soils that have a layer impeding downward movement of water, or are moderately fine to fine textured soils that have a slow infiltration rate. Group D soils are characterized as having a very slow infiltration rate when thoroughly wetted and a very slow rate of water transmission, and consist chiefly of clays that have a high shrink-swell potential, soils that have a high permanent water table, soils that have a claypan or clay layer at or near the surface, or soils that are shallow over nearly impervious material.

## I. LAND USE AND PLANNING (1, 2, 3, 6, 10, 13, 17, 21)

### **Significance Criteria and Impact Analysis**

*The effects of a project on existing or planned land uses are considered significant if the proposed project would:*

- a. Physically divide an established community;*
- b. Conflict with any applicable land-use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect;*

The proposed Project site contains land under jurisdiction of both the City and the County. The City of Escondido General Plan designates the western half of the proposed Project site (APN 224-163-42) as Estate 1, and is zoned PD-R1.0 (Planned Development Residential). The eastern half of the proposed Project site (APN 224-190-36 and 224-190-52) is considered by the County as Rural Residential and is zoned as RR1. The Project is surrounded by residential uses in the northeast, southeast, and southwest quadrants, while the northwest quadrant is undeveloped and part of open space. From a land use perspective, no adverse impacts from the Project are anticipated because the Project does not conflict with current zoning and does not propose to build any structures. The proposed Project would not disrupt or divide the physical arrangement of the area because it would simply make limited surface improvements to existing conditions within a ravine. Access to the Project site is only provided through private land, and the City is currently in the process of obtaining a right of entry from the cul-de-sac at the end of Still Water Glen. The street is not identified on the City's Circulation Element, as it is a dead-end residential street. Development of the Project and proposed improvements would not adversely alter or impact the existing circulation pattern throughout the surrounding neighborhood, nor preclude the development of surrounding parcels because Project traffic would be limited to approximately four weeks during construction, after which all circulation elements would return to levels prior to the Project. The Project's construction would not create any new land use barriers, or otherwise divide or disrupt the physical arrangement of the surrounding community, because the Project only involves remediation of existing conditions within a ravine and does not develop any new land use barriers or structures. Further, the configuration of the area's existing street network and sidewalks would not be affected by the Project because they can currently serve the Project construction without conflicts to Levels of Service, and because the Project does not involve any operational traffic. Adequate public facilities are available and water and sewer service do not need to be provided for the Project.

- c. Conflict with any applicable habitat conservation plan or natural community conservation plan;*

Implementation of the proposed Project would not conflict with the provisions of an adopted or proposed Habitat Conservation Plan or natural community conservation plan. A review of the City's draft Multiple Habitat Conservation Program (MHCP) planning efforts indicates that the Project site is not considered biologically significant or strategically located to warrant being included in a regional or local natural open space preserve. Mitigation measures that have been proposed, as detailed in the Biological Resources section, are consistent with the MHCP and will mitigate effects to less than significant.

- d. Have a substantial adverse effect on a scenic vista;*
- e. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway;*

- f. *Substantially degrade the existing visual character or quality of the site and its surroundings;*

The property generally slopes from northeast to southwest with an elevation change of approximately 50 feet across the site. There are no significant visual resources or any significantly prominent topographical features as identified in the City's General Plan or Area Plans. The property is not located on a ridgeline identified in the Community Open Space/Conservation Element of the General Plan. Development of the proposed Project would not significantly alter the undeveloped character of the site nor adversely impact any scenic views through and across the property. Existing vegetation would be replaced by native seed mix. The Project would not damage any significant scenic resources within a designated State scenic highway or create an aesthetically offensive site open to the public since the site is not located along a State scenic highway and the Project improvements are all at or below current elevations. A moderate amount of grading is proposed for the site and any grading and subsequent compaction of the site, as necessary, will be per City standards (Article 55, Escondido Zoning Code) to the satisfaction of the City Engineer.

Cumulative Impacts: Existing and planned developments have altered and would continue to alter the existing landforms and visual setting throughout the general Project area. However, given that the Project would not alter current landforms or the visual setting of the area, the Project would not produce a significant individual or cumulatively significant impact.

- g. *Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area.*

Development of the subject site would not create additional sources of light and glare in the area. The Project would not produce a source of light and no new lighting structures are proposed. The Project would not be expected to have an effect to any light or glare in the area.

## **II. AGRICULTURE RESOURCES (1, 2, 3, 10, 17, 21)**

### **Significance Criteria and Impact Analysis**

*In determining whether impacts to agricultural resources are significant environmental effects, the City has referred to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. The effects of a project on agricultural resources are considered significant if the proposed project would:*

- a. *Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use;*
- b. *Conflict with existing zoning for agricultural use, or a Williamson Act contract; or,*
- c. *Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use?*

The Project site is within a residential area. The site is not listed as Farmland as identified in the General Plan Final Environmental Impact Report (EIR), which was prepared for the City's most recent General Plan revisions in 2000. The site does not appear to have been used for agricultural purposes, and it is not involved in a Williamson Act Contract or other agricultural land contract. Therefore, the proposed Project would not result in significant individual or cumulative impacts to agricultural resources.

### III. TRANSPORTATION/TRAFFIC (1, 2, 4, 6, 7, 8, 17, 21)

#### **Significance Criteria and Impact Analysis**

*Impacts are considered significant if the project would:*

- a. *Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths and mass transit?*
- b. *Conflict with an applicable congestion management program, including, but not limited to level of service (LOS) standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?*
- c. *Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?*
- d. *Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?*
- e. *Result in inadequate emergency access?*
- f. *Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?*

**Project Impacts** - The property would be accessed from the cul-de-sac at the east end of Still Water Glen, which is a 24-foot wide residential street, and is anticipated to operate at a LOS "C or better" under current conditions. The street would continue to operate at LOS "C or better" with all Project components/phases, based on engineering judgment for a typical residential street. Since Project operation would not be a traffic generator, future traffic analyses are not necessary as part of the traffic study for this Project.

However, traffic operations are studied during the construction of the proposed Project. Due to low traffic volume and off-peak travel times, deficiencies and impacts are not expected. Under the City's adopted standards, a direct significant impact would occur on a street if Project implementation degrades the LOS to worse than mid-level "D" and increases the rate of flow/capacity (v/c) ratio by more than 0.02. If the segment already operates at mid-LOS D or worse in the baseline condition, a significant cumulative impact would result if the Project increases v/c by more than 0.02. Based on the San Diego Association of Governments (SANDAG) Traffic Generation Rates for the San Diego region, the proposed Project is not anticipated to generate any Average Daily Trips (ADT). The current land uses on the site are residential and open space; no ADT are generated from the land uses currently operating on the site. Because the Project will not generate new ADT, and will not change the current land uses or ADT, there would be no significant impact to the existing traffic.

The proposed Project would not result in a significant direct impact to the existing levels of service on the adjacent streets since a stable flow of traffic is maintained along the street segments. Also, the proposed Project is not anticipated to have any significant individual or cumulative impacts to the circulation system or degrade the levels of service on any of the adjacent roadways or intersections since the Project would not add 200 additional trips to a circulation element street with a service level below the mid-range of LOS D, and the v/c ratio would not increase more than 0.02.

Design Features/Hazards/Emergency Access – The proposed Project would not result in inadequate emergency access. Emergency and non-emergency response times of the Escondido Fire Department would remain the same with the proposed Project.

Cumulative Impacts – The above traffic data indicated the Project would not result in any significant direct or cumulative impact to the LOS of the adjacent road segments and intersections.

Temporary Construction Traffic – Temporary construction-related traffic impacts would occur during grading and construction activities. Moderate grading is anticipated to prepare the site, and equipment used for grading and excavation generally would remain on site and would not contribute to a substantial increase in traffic. Approximately 130 truck loads (260 truck trips) would be anticipated over the course of the grading operations to bring in the fill material to the site. Implementation of the Project is anticipated to take about four weeks to complete. If the haul only occurs during three weeks and five days each week, then total days of operation is 15 days and the average daily trucks is 18. Assuming each truck accounts for three passenger cars equivalents, then ADT is 52 vehicles per day, which is less than the threshold of 200 trips. Additional traffic would be associated with employee trips to and from the site, equipment delivery and removal, and other related activities. An increase of 52 vehicles per day on roads would not be enough to exceed service capacity. Given that the increased volume of traffic would be limited compared to the capacity on the roads proposed for use, and that the additional traffic would be temporary, this impact would be less than significant. Potential impacts from hauling and construction operations would be avoided by requiring the Project proponent to coordinate and implement safety/traffic control measures with the City that minimize potential conflicts. The hours of operation would be limited to 8 AM to 5 PM. All measures would be implemented prior to the onset of construction activities. The tentative truck route to the site will be as follows:

- Exit I-15 and travel west approximately ½-mile on El Norte Parkway;
- Right (north) on Nutmeg Street;
- Left (west) on Country Club Lane;
- Right (north) on Gary Lane;
- Left on David Drive to David Glen; and
- Right on Still Water Glen and proceed to cul-de-sac.

The total distance from I-15 is approximately 2.5 miles. The impacts to other regionally significant arterial system segments and intersections, including freeway on/off ramp intersections, would be less than significant, where the threshold is 50 or more peak hour trips in either direction to adjacent street traffic. Similarly, the impacts to mainline freeway locations would also be less than significant, where the threshold is 150 peak hour trips in either direction.

Parking – The remediation project would not require on-site parking. Appropriate parking would be provided for each phase of the Project. On street parking along David Glen, David Drive, and Gary Lane would continue to be provided. Parking along the Still Water Glen easterly cul-de-sac would be limited during the construction activities and would have to be coordinated with the residents.

Airport Impacts – The Project is not located within the vicinity of a public or private airstrip and would not result in a change in air traffic patterns, increase in traffic levels, or a change in location that results in substantial safety risks.

Adopted Plans/Policies – The Project would not conflict with adopted policies, plans, or programs supporting alternative transportation. There are no bus stops along the Project frontage; therefore, the proposed Project would not impact any proposed bus routes or stops, or require the development of new or relocated bus stops.

#### IV. AIR QUALITY (1, 2, 4, 6, 7, 8, 16, 17, 21)

##### Significance Criteria and Impact Analysis

Where applicable, the significance criteria established by the applicable air quality management or Air Pollution Control District (APCD) may be relied upon to make the following determinations. Impacts would be significant if the project:

- a. Conflicts with or obstruct implementation of the applicable air quality plan;
- b. Violates any air quality standard or contribute substantially to an existing or projected air quality violation;
- c. Results in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors);
- d. Exposes sensitive receptors to substantial pollutant concentrations; or,
- e. Creates objectionable odors affecting a substantial number of people.
- f. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?
- g. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gasses?

##### City of Escondido Significance Criteria:

Project related impacts exceeding any of the following South Coast Air Quality Management District (SCAQMD) daily emissions criteria can be considered significant:

- |                                |         |
|--------------------------------|---------|
| • Carbon Monoxide (CO)         | 550 lbs |
| • Reactive Organic Gases (ROG) | 55 lbs  |
| • Oxides of Nitrogen (NOx)     | 55 lbs  |
| • Fine Particulate Matter (PM) | 150 lbs |

The Project area is within the San Diego Air Basin (SDAB). Air quality at a particular location is a function of the kinds and amounts of pollutants being emitted into the air locally, and throughout the basin, and the dispersal rates of pollutants within the region. The major factors affecting pollutant dispersion are wind speed and direction, the vertical dispersion of pollutants (which is affected by inversions), and the local topography. The air basin currently is designated a state and federal non-attainment area for ozone and PM. However, in the SDAB, part of the ozone contamination is derived from the South Coast Air Basin (SCAB, located in the Los Angeles area). This occurs during periods of westerly winds (Santa Ana condition) when air pollutants are windborne over the ocean, drift to the south and then, when the westerly winds cease, are blown easterly into the SDAB. Local agencies can control neither the source nor transportation of pollutants from outside the basin. The APCD policy, therefore, has been to control local sources effectively enough to reduce locally produced contamination to clean air standards.

For long-term emissions, the direct impacts of a project can be measured by the project's consistency with regional plans to improve and maintain air quality. Local air-quality impacts are directly related to the number of vehicle trips and operation levels on adjacent streets and intersections. According to CEQA Guidelines, a project normally is considered



to have a significant air quality impact if it violates any ambient air quality standard, contributes substantially to an existing or projected air-quality violation, or exposes sensitive receptors to substantial pollution concentrations.

Project-Related Impacts – Long-term emissions are related to the amount of vehicular traffic generated by a project. As noted in the Transportation/Traffic section herein, the anticipated additional trips generated from the Project would not significantly impact the existing LOS on the adjacent streets or intersections. Therefore, the anticipated daily emissions would not exceed local or South Coast Air Quality Management District (SCAQMD) daily emissions criteria. Since the Project would not deteriorate the LOS on adjacent streets and intersections, and is not anticipated to exceed SCAQMD thresholds of significance, the Project would not result in a significant impact to local or regional air quality. The proposed Project would have an incremental impact to basin-wide air-quality on a short-term basis, but the individual impacts attributed to the Project are immeasurably small on a regional scale and would not cause ambient air-quality standards to be exceeded on a regional scale. Therefore, the Project will not have a significant impact on air quality and no mitigation measures are required.

#### Construction-Related Emissions

Air emissions from the proposed Project will only be generated from activities usually associated with construction. Construction-related activities are temporary, short-term sources of air emissions. Sources of the proposed Project air emission include:

- Fugitive dust from grading activities;
- Construction equipment exhaust;
- Construction-related trips by worker, delivery trucks, and material-hauling trucks; and
- Construction-related power consumption.

Proposed grading consists of approximately 500 cubic yards of cut and approximately 2,500 cubic yards of fill, with import of approximately 2,000 cubic yards of material. Construction equipment primarily would be utilized in an incremental fashion over the course of construction. Due to the relatively small amount of grading anticipated and the small size of the Project, no significant earthwork or diesel truck impacts are anticipated. Approximately 130 truck loads (260 truck trips) would be anticipated over 15 work days of the grading operations to bring in the fill material to the site. Maximum daily emissions of NO<sub>x</sub> during construction periods are not projected to exceed City thresholds or APCD standards based on similar studies performed for similar size grading operations.

Earthmoving activities also are a source of fugitive dust emissions that may be a substantial, but temporary impact on local air quality. Dust from grading and other site preparation would generate PM emission. With appropriate use of grading and operation procedures (in conformance with APCD Best Management Practice [BMP] for dust control), the Project would not generate significant PM or dust. The City of Escondido Grading Ordinance and erosion control requirements include provisions for dust control to reduce impacts to air quality during grading and construction activities. At a minimum, these ordinances and provisions require projects to perform regular watering and timely re-vegetation of disturbed areas to minimize the dust and airborne nuisance impacts to off-site receptors.

Fugitive dust can be generated during the handling of soil and burn ash-containing materials after it has been excavated or disturbed. Fugitive dust control measures will be implemented at the site to mitigate dust migration outside of the work area (exclusion zone) and off-site, so that there is limited potential for exposure to site

workers, visitors, and residents in the neighborhood. Potable water will be lightly sprayed at the time of excavation and grading to control dust. The volume of water sprayed will not be such that it results in surface water runoff or standing water. Airborne dust monitoring will be conducted by a contractor to verify and document dust suppression efforts.

Emissions from construction equipment, worker, delivery and material-hauling trucks, and construction-related power consumption would be temporary and would result in an extremely small contribution to the SDAB, and therefore would not result in a significant impact. The proposed Project would not significantly increase traffic volumes on local streets and intersections, as indicated in the Transportation/Traffic section above, and the proposed Project would not result in a substantial increase in the number of vehicles operating in cold start mode or substantially increase the number of vehicles on local roadways. Therefore, the Project would not cause an unacceptable concentration of CO at any Project-affected intersection.

Since the Project would not adversely impact area roadways and intersections, the development of the Project would not violate any air quality standard or contribute substantially to an existing or projected air quality violation and would have a less than significant impact on local and regional air quality. Individual impacts attributed to the proposed Project are small on a regional scale and would not cause ambient air-quality standards to be exceeded, nor contribute to any adverse cumulative impacts.

Consistency with the Regional Air Quality Standards (RAQS) - Consistency with the RAQS assumptions is determined by analyzing the Project with the assumptions in the RAQS. Forecasts used in the RAQS are developed by SANDAG. The SANDAG forecasts are based on local general plans and other related documents that are used to develop population projections and traffic projections. The existing residential development on the lots underlying the project site is consistent with the current general plan and zoning. The remediation project would not increase density or traffic. Therefore, the Project would not exceed the assumptions used to develop the RAQS and would not obstruct or conflict with the San Diego Air Pollution Control District's (SDAPCD) RAQS.

Odors - During construction, diesel equipment operating at the site may generate some nuisance odors. However, due to the temporary nature of construction, odors associated with Project construction would not be considered significant.

Global Climate Change - Global climate change alleged to be caused by greenhouse gases (GHG) is currently one of the important and widely debated scientific, economic, and political issues in the United States. Global climate change is a change in the average weather of the earth, which can be measured by wind patterns, storms, precipitation, and temperature. With the adoption of AB 32, the California Global Warming Solutions Act of 2006, the State of California has determined that global warming proposes a serious threat to the State's economy, public health, and environment. As such, actions that may contribute to global warming are beginning to be addressed in CEQA documents. The adopted legislation defines the greenhouse gasses to be considered and regulated as follows: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

An individual project of this scale and nature would not generate enough GHG to significantly influence global climate change. GHG occur in a worldwide system and the Project does participate in this potential impact through its incremental contribution, which is combined with the cumulative increase of all other sources of GHGs. The State of California currently is working to define the GHG inventory that existed in 1990 to provide a

statewide benchmark against which to measure progress. Once that inventory is determined, AB 32 measures future acceptable emissions against that standard over a period of several years. Although the incremental contribution to GHG is not considered significant due to the relatively small size and potential impact from the Project, newer projects throughout the City continue to implement certain California Air Resources Board (CARB) Greenhouse Gas Emission Reduction Strategies.

## V. BIOLOGICAL RESOURCES (1, 2, 10, 11, 12, 13, 14, 18, 17, 20, 21, 22)

### **Significance Criteria and Impact Analysis**

*The effects of a project on biological resources are considered to be significant if the proposed project would:*

- a. *Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFG or U.S. Fish and Wildlife Service (USFWS);*
- b. *Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFG or USFWS;*
- c. *Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (CWA) (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;*
- d. *Interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;*
- e. *Conflict with any local policies/ ordinance that protect biological resources (e.g. tree preservation policy or ordinance); or,*
- f. *Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.*

The approximately one-acre Project site has been disturbed and the majority of native plant cover has been removed through past uses. The Project site is now dominated by ornamental vegetation, and surrounding fruit orchards extend into the site. Mature trees on the site consist of eucalyptus and pepper trees, which will be retained where practicable. A couple of scrub oaks were observed during a biological survey performed by URS in October, 2010, but no oak trees are present on the site (URS, Biological Resources Technical Memorandum, 2010). Approximately 0.05 acre of CSS is present in the northwestern edge of the Project site within the City limits and would be removed during grading. This CSS is located within the City's Focus Planning Area, which is designated for 100 percent preservation. CSS on one parcel within the County will be avoided.

The CSS habitat is a sensitive natural community that may support coastal California gnatcatcher (CAGN; *Poliotila californica californica*), a state- and federally-threatened species. Although not observed during URS survey activities, the presence of CCS vegetation infers the potential for CAGN to inhabit the area. United States Fish and Wildlife Service (USFWS) protocol surveys were performed in April 2011. CAGN was absent from the site, and no brown-headed cowbird was detected during the surveys. The 45-Day Report for California Gnatcatcher Surveys at the Benton Burn Site was submitted to USFWS on May 25, 2011. Impacts to CSS would be minimized to less than significant through BMPs, which include avoiding construction during the breeding season, installing temporary construction fencing and biological monitoring during vegetation grubbing, and restoring habitat within the site with a native seed mix, as well as mitigating at a ratio of 2:1 for loss of 0.05 acre of CSS habitat.

A drainage feature passes through the Project site and may be considered jurisdictional waters by the USACE or the CDFG. If these agencies take jurisdiction over this feature, then a permit(s) to modify the affected 0.06 acre of this feature would be required. The feature is dominated by upland vegetation and does not support riparian habitat or other sensitive natural communities. Accordingly, the Project site does not support a wetland that is regulated by Section 404 of the CWA. However, the drainage feature may be unvegetated jurisdictional waters that would be subject to a CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and/or CDFG 1602 Streambed Alteration Agreement for impacts to 0.06 acre. The design of the Project includes placing two feet of rock and gravel within the channel and the floodplain, which will minimize the potential for future storm flows to cause the mobilization of contaminated sediment that could be carried downstream of the Project site.

The Project area is surrounded by developed land uses (residential and orchards) and would not interfere significantly with the movement of any native resident species, wildlife corridors, or nursery sites. The property is not listed as an open space corridor or animal migration corridor on any City open space planning maps, nor is the site listed on the City's Parks, Trails, and Open Space Plan.

Implementation of the proposed Project would not conflict with the provisions of an adopted or proposed Habitat Conservation Plan. A review of the City's draft MHCP planning efforts indicates that the Project site is not considered biologically significant or strategically located to warrant being included in a regional or local natural open space preserve. Mitigation measures that have been proposed are consistent with the MHCP and will mitigate the impacts to the 0.05 acre of CSS and the 0.06 acre of potentially jurisdictional waters on the site to less than significant.

#### MITIGATION MEASURES:

1. The project shall mitigate the removal of 0.05 acres of CSS by purchasing 0.10 acre of CSS conservation credits at a ratio of 2:1 and restoring the habitat within the Project site with a native seed mix consistent with adjacent CSS species composition.
2. Prior to commencing work, the Project will install temporary construction fencing along the boundary between the burn ash footprint and adjacent CSS located outside of the Project site, and provide biological monitoring during vegetation grubbing.
3. To avoid take of active bird nests, the Project will avoid construction in California gnatcatcher and other avian nesting habitat during the California gnatcatcher and other avian species breeding season (approximately February 15 through ~~September 15~~ August 31, as early as January for some raptors). If vegetation clearing or other construction work will occur during the California gnatcatcher and other avian species breeding season, a qualified biologist will survey the area within 500 feet of construction, no more than 10 days prior to the beginning of project activities, to identify active nests. If active nests are found within the Project area, construction activities shall not occur within 300 ~~400~~ feet of an active gnatcatcher or other avian species nest (500 feet for raptors), or a sound barrier will be erected in conjunction with biological monitoring to avoid take. ~~A 50-foot buffer will be provided for common bird species detected during the nest survey.~~
4. The drainage feature located onsite may be unvegetated jurisdictional waters that would be subject to a CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and/or CDFG 1602 Streambed Alteration Agreement for impacts to 0.06 acre. Assuming the USACE, RWQCB, and CDFG take jurisdiction, impacts to the 0.06 acre of potentially jurisdictional waters on the site will be mitigated by adhering to the terms and conditions identified in the CWA 404 Wetlands Nationwide Permit, CWA

401 Water Quality Certification, and CDFG 1602 Streambed Alteration Agreement. Areas defined with the current jurisdictional delineation report as being regulated pursuant to Section 1600 et seq. of the Fish and Game Code will be evaluated (including mitigation ratios and effected acreages) at the time the project applicant formally submits a streambed notification package to the Stream Alteration Team of the Department.

## VI. CULTURAL RESOURCES (1, 2, 5, 10, 17, 19, 21)

### **Significance Criteria and Impact Analysis**

*The effects of a project on cultural resources are considered to be significant if the proposed project would:*

- a. *Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5;*
- b. *Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5;*
- c. *Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature; or,*
- d. *Disturb any human remains, including those interred outside of formal cemeteries.*

The proposed Project would not cause an adverse change in the significance of a historical resource or archaeological resource as defined in CEQA Section 15064.5. As detailed below, although there is one newly discovered cultural resource identified in the Project area, it is recommended not eligible; therefore, no effect to a significant resource is anticipated as a result of this Project.

On September 1, 2010, a records search was requested with the South Coastal Information Center (SCIC) at the California State University, San Diego, by URS. The record search included the Project area and a quarter-mile search radius surrounding the Project. Information reviewed included location maps for all previously recorded prehistoric and historic sites and isolates, site record forms and updates for all cultural resources previously identified, previous investigation boundaries, and National Archaeological Database (NADB) citations for associated reports, historic maps, and historic addresses. The SCIC records search results found that seven cultural resource studies have been conducted within the quarter-mile search radius. Of these previously conducted investigations, one was completed within the Project area: SD-1130432 in 2006 by ASM Affiliates, Inc., which consisted of a Cultural Resources Sensitivity Analysis for the carryover storage and San Vicente Dam Raise Project (CSP) Alternatives Analysis, with the boundary of that investigation covering the northeastern portion of the Project site. No previously documented cultural resources have occurred within the Project area; however, one cultural resource (P37-030889) has been previously recorded within a quarter-mile search area from the Project. The cultural resource was recorded in 2009 by Stephen R. Van Wormer and was described as being part of the Vista Irrigation District Bench Flumes, which was constructed between 1924 and 1926. It did not appear that the site was evaluated for significance to the National Register of Historic Places (NRHP), California Register of Historical Resources (CRHR), or for purposes of CEQA.

In order to provide a specific understanding of the archaeological potential of the Project area, on October 14, 2010, URS performed an archaeological survey (URS, Confidential Cultural Resources Technical Memorandum, 2010). The survey included a "walkover" archaeological inspection of the Project area, overview photographs of the site and survey conditions and notes/observations. As expected, the results of the cultural resource survey were positive for archaeological resources as a result of the former dump site. An historic 1940s-1950s dump is located within the ravine of the Project area. The purpose and function of this cultural site was an historic dump, in which refuse was discarded and burned between 1948 and 1953. As stated in the

letter report documenting the survey (URS, Confidential Cultural Resources Technical Memorandum, 2010), the dumping activities cannot be linked to a single person, event, or household, as there have been multiple dumping episodes by residents of the community at that time. Thus, the debris lacks context and no clear association with any particular residence. Further, the refuse contains ubiquitous data in that it is consistent with known consumer behavior of the period. Therefore, the newly identified cultural resources site lacks the potential to provide additional data to contribute to history, and as a result the site was recommended as not eligible for the CRHR. Because there are no eligible archaeological resources within the Project site, no effect to a significant resource is expected as a result of the Project.

In addition, URS completed a review to determine potential effects on any historical resources in the Project area. The National Register Inventory System (NRIS), the electronic database for NRHP-listed properties and the California Historical Landmarks electronic database were examined. Each of these databases indicates that there are no historic properties within the Project area. According to the Office of Historic Preservation (OHP), the Archaeological Determinations of Eligibility (ADOE) and Historic Property Directory (HPD) databases show no listed properties located within the boundaries of the Project. The site also does not contain any resources listed on the City's Historic Sites.

While there are no structures over 50 years old located on the Project site, some of the surrounding residences were built during that approximate time period. Nevertheless, the Project would have a less than significant effect on these surrounding properties due to the lack of visual changes as a result of the Project as well as the existing intrusions between the Project site and the residences. The Project consists of capping the burn footprint with two feet of soil, so no substantial changes would occur to the height or landform of the site. Additionally, ornamental vegetation and fruit orchards are present between the Project site and surrounding properties, obstructing views of the site from these residences. Further, because the Project site is within a ravine, residences located on surrounding bluffs have limited views of the site as a result of elevation differences. Therefore, surrounding residences were not further evaluated and the Project is expected to have a less than significant impact on historical resources.

The Project site was also assessed for potential to disturb paleontological resources or unique geological features. On September 13, 2010, a records search of the Project area was conducted by the San Diego Natural History Museum (SDNHM). According to the SDNHM, no fossil localities have been recorded within a one-mile radius of the Project. The only rock unit exposed in the Project area is the Merriam Mountains monzogranite of Cretaceous age. These plutonic rocks are part of the Peninsular Ranges Batholith of San Diego County and they range in age from late Jurassic to late Cretaceous, approximately 90-140 Ma. These plutonic rocks formed from molten magma at a depth of several miles in the earth's crust and no fossils are known to exist in this type of material. Based on the records search and the plutonic nature of the underlying rocks, SDNHM rated the paleontological sensitivity for the Project site as zero. Additionally, the City of Escondido General Plan (EIR) (1990a) does not include the Project site in areas identified as having potential paleontological resources. Surface soil on the Project site consists primarily of decomposed granite, which is not likely to produce significant paleontological resources. Finally, no unique geologic features were identified on the Project site. Therefore, the Project would not result in a significant impact to these resources.

The Project is not expected to disturb any human remains, including those interred outside of formal cemeteries. There are no formal cemeteries or evidence of human remains within the Project area. A review of historic maps and images at the SCIC indicated that the Project area environs were not previously associated with funerary activities and the area lacks evidence of historic habitation. Therefore, the Project is not expected to

impact human remains, including those interred outside of formal cemeteries.

## VII. GEOLOGY AND SOILS (1, 2, 6, 14, 17, 21)

### **Significance Criteria and Impact Analysis**

*The effects of a project on geology and soils are considered to be significant if the proposed project would:*

- a. *Expose people or structures to potentially substantial adverse effects, including the risk of loss, injury, or death involving:*
  - i. *Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault; (Refer to Division of Mines and Geology Special Publication 42).*
  - ii. *Strong seismic ground shaking;*
  - iii. *Seismic-related ground failure, including liquefaction; or,*
  - iv. *Landslides.*

Although the City is located within a Seismic Zone 4, the Project site is not located within proximity to active faults as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map. The closest known active faults are the Rose Canyon Fault and the Elsinore Fault. The Rose Canyon Fault is located approximately 15.4 miles southwest of the Project site. The Julian segment of the Elsinore Fault is approximately 17.8 miles northeast of the Project site. Accordingly, fault surface rupture is not likely at this Project. In the event of a major earthquake on these faults or other faults within the Southern California region, the site could be subjected to moderate to severe ground shaking. However, the site is not considered to possess a significantly greater seismic risk than that of the surrounding area in general.

- b. *Result in substantial soil erosion or the loss of topsoil;*
- c. *Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse; or,*
- d. *Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property.*

The Project lies within a ravine and topography of the site generally slopes and drains from northeast to southwest with elevations of approximately 870 feet above MSL datum at its northeasterly end and 820 feet MSL at its southwesterly end. The average stream slope along the lower end of the Project site varies from approximately 2% to 7%, while the slopes along the upper end of the site vary from approximately 5% to 30%. The soil in this Project area falls into Soil Groups B, C, and D, with the C hydrologic soil type being the most prevalent, according to the San Diego County Hydrology Manual Appendix A. Group B soils are defined as having moderate characteristics: a moderate infiltration rate when thoroughly wetted, moderately deep to deep, moderately well drained to well drained, moderately coarse textured, and a moderate rate of water transmission. Group C soils have a slow infiltration rate when thoroughly wetted and a slow rate of water transmission, and are chiefly soils that have a layer impeding downward movement of water, or are moderately fine to fine textured soils that have a slow infiltration rate. Group D soils are characterized as having a very slow infiltration rate when thoroughly wetted and a very slow rate of water transmission, and consist chiefly of clays that have a high shrink-swell potential, soils that have a high permanent water table, soils that have a claypan or clay layer at or

near the surface, or soils that are shallow over nearly impervious material. Proposed grading consists of approximately 500 cubic yards of cut and approximately 2,500 cubic yards of fill, with import of approximately 2,000 cubic yards of material.

Based on the results of an investigation conducted by CalRecycle in 2007, the site does not contain high groundwater. If any potential groundwater or drainage issues are encountered they are effectively addressed through appropriate grading and drainage techniques/improvements. Due to the geologic characteristics of the site and the proposed grading, it is anticipated that blasting will not be required; however, any blasting that would occur would comply with the City's Blasting Ordinance. The proposed Project would not result in any substantial soil erosion or the loss of topsoil because BMPs would be implemented, including but not limited to placement of fiber rolls, straw bales, and/or silt fencing, as well as stabilizing the soil slopes with a tackifier. Bare soil would also be hydroseeded with a native seed mix. Appropriate compaction of the site would be required to stabilize the cap material. Appropriate on site drainage facilities would be constructed in conformance with the City's grading and storm water provisions. Other potential geologic hazards such as tsunamis, seiches, liquefaction or collapse are considered to be negligible or nonexistent.

- e. *Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater.*

No septic tanks or alternative wastewater disposal system would be utilized as part of the Project. Construction activities, including excavation, are not anticipated to affect existing adjacent septic systems, leach fields, or reserve areas.

## **VIII. HAZARDS AND HAZARDOUS MATERIALS (1, 2, 15, 17, 21)**

### **Significance Criteria and Impact Analysis**

*The effects of a project on hazards and hazardous materials are considered to be significant if the proposed project would:*

- a. *Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials;*
- b. *Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment;*
- c. *Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school; or,*
- d. *Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment*

The proposed Project consists of consolidating waste and capping the surface of the Project site with an engineered soil cover. The cap of clean soil would minimize the potential for human exposure to burn ash-containing waste currently present on the ground surface and in shallow soils of the Project site. The proposed Project requires the use of earthmoving equipment and activities during the excavation of burn ash-containing waste on the steep side slopes of the ravine. As part of the proposed Project, excavated material would be spread thinly across the floor of the ravine, where it would be capped with clean soil. The use of construction equipment would require limited and temporary use of hazardous materials (e.g., batteries, diesel or gasoline, and oil for



use in equipment). Small amounts of hazardous wastes generated from construction equipment may include used equipment oil and oily rags. Hazardous materials would be used, handled, stored, transported and disposed of in accordance with applicable Certified Unified Program Agency (CUPA), City, County, State, and Federal requirements. As a result, the routine hazardous materials (including hazardous waste) use, handling, storage, transportation, and disposal would be anticipated to result in less than significant impacts during the proposed Project.

The proposed Project does not involve the use or storage of hazardous materials that would result in a reasonably foreseeable upset from hazardous materials or accident conditions involving the release of hazardous materials into the environment. The Project would be required to comply with all applicable Fire and Health and Safety Codes, which would eliminate hazards to the public or environment.

Based on a review of land use in the area, no schools or proposed schools are known to be located within 500 feet of the Project site. The Project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.

The Benton Burn Site has been identified as a hazardous materials site on regulatory databases pursuant to Government Code Section 65962.5. The site was operated as a burn site from approximately 1948 through 1953. Municipal and commercial refuse was accepted at the facility, where it was burned and placed in a canyon. The LEA conducted inspections of the site for compliance with applicable regulatory SMS. Violations reported during inspections included site security, drainage and erosion control, grading of fill surfaces, and site maintenance. In 2006, the LEA requested CalRecycle to conduct an investigation of the site to assess its conditions with respect to the SMS. An investigation was conducted by CalRecycle in 2007, and supplemental soil sampling and analyses were conducted in 2009 to support the preparation of a RAP. Findings from these studies concluded that COPCs associated with burn ash were present. Lead was reported to be the primary COPC in ash-burning waste that has the greatest potential to pose an adverse human health risk. The primary exposure pathways were reported to be by ingestion or inhalation. In October 2009, URS prepared a RAP at the request of CalRecycle and evaluated remedial action alternatives. The recommended alternative in the RAP was consolidation and capping. The proposed Project would address burn ash-containing waste present within the burn site footprint by consolidating waste and capping the surface with an engineered soil cover, in order to meet SMS and to minimize the potential for human exposure to burn ash-containing waste present on the ground surface and in shallow soil (less than two feet). According to the RAP, the remediation work would be conducted under a Health & Safety Plan that complies with Occupational Safety and Health Administration (OSHA) guidelines in order to protect Project workers. In addition, a Community Health and Safety Plan to protect the health and safety of the community would be implemented. The RAP also includes fugitive dust control measures to limit the potential for exposure to site workers, visitors, and residents in the neighborhoods. These measures include light spraying of soil with water during excavation and grading activities. Airborne dust monitoring would be conducted to verify and document dust suppression efforts. Based on this information, the proposed Project would not create a significant hazard to the public or the environment.

- e. For a project located within an airport land-use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, impacts would occur if the project results in safety hazard for people residing or working in the project area; or,*
- f. For a project within the vicinity of a private airstrip, the project results in a safety hazard for people residing or working in the project area; or,*

- g. Impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan; or,*
- h. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.*

The Project is not located within an airport land-use plan, an airport land-use plan that is to be adopted, or within two miles of a public airport. The Project is not located within the vicinity of a private airstrip and would not result in a safety hazard for people residing or working in the Project area. The nearest airport is the private Lake Wohlford Resort Airport, located approximately 11.6 miles east of the Project site.

The Project does not include activities or structures that would impair implementation of, or physically interfere with, an emergency response plan. The proposed Project is not expected to result in the need for additional emergency and fire facilities. The Project would be required to comply with all applicable Fire, Building and Health and Safety Code and would not result in a significant impact to emergency services.

The Project would not expose people or structures to a significant risk of loss, injury, or death involving wild fires as the project involves only minor excavation and capping of the former dump site. No structures are proposed.

#### **IX. HYDROLOGY AND WATER QUALITY (1, 2, 6, 11, 12, 14, 17, 20, 21)**

##### **Significance Criteria and Impact Analysis**

*The effects of a project on hydrology and water quality are considered to be significant if the proposed project would:*

- a. Violate any water quality standards or waste discharge requirements, including but not limited to increasing pollutant discharges to receiving waters (Consider temperature, dissolved oxygen, turbidity and other typical storm water pollutants);*
- b. Have potentially significant adverse impacts on ground water quality, including but not limited to, substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted);*
- c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river in a manner which would result in substantial/increased erosion or siltation on- or off-site;*
- d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site and/or significant adverse environmental impacts;*
- e. Cause significant alteration of receiving water quality during or following construction;*
- f. Cause an increase of impervious surfaces and associated runoff;*
- g. Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff;*
- h. Cause potentially significant adverse impact on ground water quality;*

- i. Cause or contribute to an exceedance of applicable surface or ground water receiving water quality objectives or degradation of beneficial uses;*
- j. Is the project tributary to an already impaired water body, as listed on the CWA Section 303(d) list? If so, can it result in an increase in any pollutant for which the water body is already impaired;*
- k. Create or exacerbate already existing environmentally sensitive areas;*
- l. Create potentially significant environmental impact on surface water quality, to either marine, fresh, or wetland waters; or,*
- m. Impact aquatic, wetland or riparian habitat.*
- n. Otherwise substantially degrade water quality;*

The Project lies within a ravine and topography of the site footprint generally slopes from northeast to southwest with elevations of approximately 870 feet above MSL datum at its northeasterly end and 820 feet MSL at its southwesterly end. The Project site encompasses portions of an ephemeral stream near the base of granitic hills that serves as a drainage for a very small regional watershed of approximately 60 acres. The average stream slope along the lower end of the Project site varies from approximately 2% to 7%, while the slopes along the upper end of the site vary from approximately 5% to 30%. Storm runoff conveyed by the ephemeral stream enters into a 42-inch RCP that is located under David Glen. The entrance to the 42-inch RCP culvert is located on the easterly side of David Glen, and storm runoff is then conveyed to the west. Based on a Hydrology Report prepared by URS in March, 2009, the total runoff from the existing conditions during a 50-year storm is 88 cubic feet per second (cf/s).

Upon implementation of the Project, the amount of runoff from the site would be expected to remain the same due to the amount of impervious surfaces associated with the Project remaining unchanged. The proposed Project would not construct any structures or establish any impervious surfaces. A site-specific Stormwater Pollution Prevention Plan (SWPPP) will not be necessary for the Project since the affected area is less than one acre.

Implementation of the proposed Project would result in the placement of approximately two feet of fill over those areas where burn ash-containing waste is within two feet of the ground surface at the site. Within the areas of the 100-year floodplain and included in the area to be capped, filter fabric will be placed and covered with two feet of rock designed to withstand 100-year flood hydraulic shear stresses to prevent mobilization of the rock during flood events. According to the RAP, the recommended minimum rock diameter is one to two inches. Larger rock (a minimum of 12-inch diameter) is recommended for the steeper area of the drainage near the center of the burn site footprint. While implementation of the Project would result in local increases in water surface elevations due to rock fill placement within the 100-year floodplain, the water surface elevations would be well below the existing top of bank and house pad elevations and will not result in increased flooding, erosion, or sedimentation downstream of the site.

The Project would not withdraw groundwater or interfere with groundwater recharge and groundwater table level. Grading operations associated with the Project are not expected to impact groundwater or be a factor during removal and any recompaction on site. Standard BMPs would be implemented during construction to adequately control erosion and siltation impacts to a less than significant level. The Project would not cause any diversion to or from the existing watershed. Proper use of erosion and sediment control measures as well as BMPs (which are standard requirements as part of the grading permit) would reduce potential water quality impacts to less than significant. The Project does not include activities that would discharge pollutants into groundwater aquifers.

As indicated in the Biological Resources section, above, the drainage feature that passes through the Project site may be considered jurisdictional waters by the USACE or the CDFG. If these agencies take jurisdiction over this channel, then a permit(s) to modify the affected 0.06 acre of the channel would be required. The drainage feature may be unvegetated jurisdictional waters that would be subject to a CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and/or CDFG 1602 Streambed Alteration Agreement for impacts to 0.06 acre. The design of the Project includes placing two feet of rock and gravel within the channel and the floodplain, which will minimize the potential for future storm flows to cause the mobilization of contaminated sediment that could be carried downstream of the Project site.

- o. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map;*
- p. Place project within a 100-year flood hazard area structures which would impede or redirect flood flows;*
- q. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam; or,*
- r. Inundate the site by seiche, tsunami, or mudflow.*

Although part of the Project site is located within a 100-year flood zone, as noted above, no impervious surfaces are being constructed as part of the Project, and Project design and BMPs have been developed under the premise that the proposed Project maintain the existing conditions such as land use and grading. Therefore, the effects from the Project on flooding and erosion as a result of a 100-year storm would be less than significant. The Project does not propose to construct a levee or dam and would not otherwise expose people or structures to a significant risk of flooding. The Project does not include activities that would increase the risk of inundation by seiche, tsunami, or mudflow.

## **X. MINERAL RESOURCES (1, 2, 6, 10, 17, 21)**

### **Significance Criteria and Impact Analysis**

*The effects of a project on mineral resources are considered to be significant if the proposed project would:*

- a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state; or,*
- b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land-use plan.*

No known locally important mineral resource recovery site is located on the Project site or within the vicinity of the Project site. The Project would not change the existing availability of mineral resources that would be of value to the region and residents of the state.

## **XI. NOISE (1, 2, 6, 17, 21)**

### **Significance Criteria and Impact Analysis**

*The effects of a project on noise are considered to be significant if the proposed project would result in:*

- a. Exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies;*
- b. Exposure of persons to, or generation of, excessive groundborne vibration or groundborne noise levels;*

- c. *A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project; or,*
- d. *A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.*

Noise generally is defined as loud, unpleasant, unexpected, or undesired sound that is typically associated with human activity and that interferes with or disrupts normal activities. The human environment is characterized by a certain consistent noise level which varies by location and is termed ambient noise. The City's General Plan Noise Element contains policies which outline acceptable noise levels associated with each type of land use. The City requires that noise levels be presented in terms of Community Noise Equivalent Level (CNEL). CNEL is a weighted sound level during a 24-hour period, after the addition of 5 decibels (dB) to average sound levels at evening hours (7 PM to 10 PM) and 10 dB to the average night hours (10 PM to 7AM) is applied to account for noise sensitivity during evening and nighttime hours. A 60 dBA CNEL exposure is considered normally acceptable for exterior residential land uses and 45 dBA CNEL for interior levels based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.

The Project is not located adjacent to a projected 1990 noise contour of 60 dB or greater. Therefore, exterior noise measures would not be required for the proposed Project. General Plan Noise Policy E1.2 states the following: In accordance with Table IV-2, the goal for outdoor noise levels in residential areas is a CNEL of 60 dB or less. However, a CNEL of 60 dB or less is a goal that may not necessarily be achievable in all residential areas within the realm of economic or aesthetic feasibility. This goal should be applied where outdoor use is a major consideration (e.g., schools, churches and recreation areas). The proposed Project does not include outdoor/recreation areas or structures and upon completion of the remediation of the site, no noise will be generated. The project would therefore conform to General Plan policies.

Construction Noise – Noise impacts from construction are a function of the noise generated by the construction equipment, the location and sensitivity of nearby land uses, and the timing and duration of the noise-generating activities. Noise levels within and adjacent to the specific construction sites would increase during the construction period. Construction would not cause long-term impacts since it would be temporary and daily construction activities would be limited by the City's Noise Ordinance (Sections 17-234 and 17-238) to hours of less noise sensitivity. Upon completion of the Project, all construction noise would cease. No pile driving or explosives blasting is anticipated as a result of the Project and, thus, no significant vibrations or groundborne noise would be associated with construction of the proposed Project.

Operational Noise – Development of the Project would not increase noise levels within the immediate area. Operation of the Project does not require on site staff, and the site is expected to remain vacant after construction. Post-construction monitoring of the site conditions would result in an increase in vehicle trips along the area roadways, which could incrementally add to the noise level. However, these trips would be minimal and disbursed throughout a period of months, so the incremental increase would not be considered significant nor require any mitigation.

- e. *For a project located within an airport land-use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, significant impact would occur if the project exposed people residing or working in the project area to excessive noise levels; or ,*

- f. For a project within the vicinity of a private airstrip, if the project exposed people residing or working in the project area to excessive noise levels.

No private or public airstrips are located within two miles of the proposed Project site; thus, people working in the Project area would not be exposed to excessive noise levels due to airport operations.

## **XII. POPULATION AND HOUSING (1, 2, 10, 17, 21)**

### **Significance Criteria and Impact Analysis**

*The effects of a project on population and housing are considered to be significant if the proposed project would:*

- a. *Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?*
- b. *Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?*
- c. *Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?*

Population within the surrounding area and city would not incrementally increase as a result of the Project, as the Project does not consist of any new housing elements, does not require operational staffing, and does not alter existing infrastructure. The site does not contain any existing housing or rental units that would be displaced. The proposed Project would not add units to the existing housing stock and would not create a demand for additional housing. The Project would not be considered growth inducing, since the Project site is within an existing residential area and adequate public facilities are available within the area to serve the Project.

## **XIII. PUBLIC SERVICES (1, 2, 8, 9, 17, 21)**

### **Significance Criteria and Impact Analysis**

*The effects of a project on public services are considered to be significant if the proposed project would:*

- a. *Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:*

- i. *Fire protection*

Fire services for the proposed Project site are provided by both the City Fire Department and the County Fire Department, since the Project site lies in both jurisdictions. The area currently is served by City Fire Station Number 3, located approximately two miles southeast of the Project at 1808 North Nutmeg Street, and by North County Dispatch Joint Powers Authority (JPA).

The Project site is located within the Very High Fire Severity Zone, as indicated on City Fire Maps. The proposed Project is located in a ravine, with open space bordering the northwest side and residential back yards abutting the remaining borders. A Fire Protection Plan (FPP) was not prepared for the proposed Project because the Project would not introduce new wildland fire hazards or risks that may threaten life and property. The Project would not

construct any structures. Existing vegetation over the burn area footprint would be removed at the start of the Project, and native seed mix would be planted upon completion to cover the soil cap and return the ravine to a natural state. The Project is therefore expected to have a less than significant effect on fire protection in the area; and in fact may improve fire protection in the short term because potential vegetative fuel would be removed from the majority of the site.

*ii. Police protection*

Development of the Project is not expected to result in an incremental increase in demand for Police Services. The Escondido Police Department and County Sheriff serve the proposed Project site. Impacts to police services are anticipated to be less than significant because construction of the Project would involve a very short time period, would include a temporary six-foot high chain-link fence along the most readily accessible western site perimeter, and would utilize appropriate signage on the fencing to discourage entry and inform the public of the hazard associated with the site and remedial activities. Additionally, operational staff is not associated with the Project, and there would not be any facilities constructed that require security; so there would not be an effect on police services after completion of the project.

*iii. Schools*

Development of the Project would not result in additional elementary or high school students as no new housing is being proposed and no staffing of the site is required after completion of the project.

*iv. Parks*

The Project would not result in an incremental increase in demand on the City's recreational facilities; and the site would not contain its own recreational amenities. The Project would not affect existing recreational opportunities since the site currently is not used for recreational activities and is not listed as a potential park site in the City's Master Plan of Parks, Trails and Open Space. Therefore, no significant impact to recreational resources would occur as a result of the Project.

*v. Libraries*

The Project would not result in substantial adverse physical impacts associated with the provision of new or physically altered library facilities or staff. The Project would not result in a significant increase in demand on library services, or the development of additional library spaces, books or other related items, as no new housing is proposed.

*vi. Gas/Electric*

San Diego Gas & Electric (SDG&E) provides gas and electric services to the Project area; however, the Project would not result in substantial adverse physical impacts associated with the provision of new or physically altered SDG&E facilities. The Project does not require power and would not have a significant effect on gas or electric services.

- b. *Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?*
- c. *Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?*

The Project would not result in an increase of existing neighborhood and regional parks or recreational facilities. The Project does not include recreational facilities or require the construction or expansion of recreational facilities. No significant impact to recreational resources would occur as a result of the Project.

#### **XIV. UTILITIES AND SERVICE SYSTEMS (1, 2, 17, 21)**

##### **Significance Criteria and Impact Analysis**

*The effects of a project on utilities and service systems are considered to be significant if the proposed project would:*

- a. *Exceed wastewater treatment requirements of the applicable RWQCB;*
- b. *Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects;*
- c. *Require, or result in, the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects;*
- d. *Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed;*
- e. *Result in a determination by the wastewater treatment provider which serves, or may serve, the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments;*
- f. *Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs;*
- g. *Comply with federal, state, and local statutes and regulations related to solid waste;*

**Solid Waste** – During construction, brush and existing vegetation within the area included in the remedial action will be cleared and grubbed. The removed materials would then be disposed at a municipal landfill as green waste, provided that no burn ash-containing waste materials are commingled with the green waste. Conventional construction equipment would be used to excavate the burn ash-containing waste on the margins of the burn site footprint, and these materials would be placed on the floor of the ravine, where it will be thinly spread. If temporary soil stockpiling is deemed necessary, excavated soil would be placed in stockpiles on the floor of the ravine within the footprint of the burn site and covered with plastic sheeting. The stockpiles would be managed in a manner to avoid any conditions of pollution or nuisance, and wastes will be managed in compliance with applicable State requirements in 23 CCR, Chapter 15. After construction, the Project site will be revegetated as an undeveloped natural area and will not generate any significant amount of solid waste that could not be accommodated by existing landfill sites.

**Sewer Service** – The Project does not require sewer service as no structures will be constructed and no operational staff will be present on the site. During construction, portable toilets will be provided and maintained for construction personnel.



Water Service – Water service for the Project is not required. Dust suppression will be provided by potable water during construction, and the Project does not require water after completion of the project.

Drainage Facilities – See analysis contained within Hydrology & Water Quality section, above.

## MANDATORY FINDINGS OF SIGNIFICANCE

Potential impacts to the environment as a result of this project are in the area of Biological Resources. With the implementation of the mitigation measures and conditions of approval, the project is not expected to have any significant impacts, either short- or long-term, nor will it cause substantial adverse effects on human beings, either directly or indirectly. The project will not degrade the quality of the environment for plant or animal communities since the project will not cause fish and wildlife populations to drop below self-sustaining levels nor reduce the number or restrict the range of endangered plants or animals. The project will not materially degrade levels of service of the adjacent streets, intersection, or utilities. Therefore, in staff's opinion, the proposed project would not have a significant individual or cumulative impact to the environment.

## SUMMARY OF MITIGATION MEASURES

No mitigation measures are proposed for environmental factors other than Biological Resources, as potential project effects in other areas have been determined to be less than significant without the need for mitigation.

### Mitigation Measure BIO-1

Approximately 0.05 acre of CSS is present in the northwestern edge of the Project site. This CSS is located within the City's Focus Planning Area, which is designated for 100 percent preservation. The project shall mitigate the removal of 0.05 acres of CSS by purchasing 0.10 acre of CSS conservation credits at a ratio of 2:1 and restoring the habitat within the Project site with a native seed mix consistent with adjacent CSS species composition.

### Mitigation Measure BIO-2

Prior to commencing work, the Project will install temporary construction fencing along the boundary between the burn ash footprint and adjacent CSS located outside of the Project site, and provide biological monitoring during vegetation grubbing.

### Mitigation Measure BIO-3

To avoid take of active bird nests, the Project will avoid construction in California gnatcatcher and other avian nesting habitat during the California gnatcatcher and other avian species breeding season (approximately February 15 through ~~September 15~~ August 31, as early as January for some raptors). If vegetation clearing or other construction work will occur during the California gnatcatcher and other avian species breeding season, a qualified biologist will survey the area within 500 feet of construction, no more than 10 days prior to the beginning of project activities, to identify active nests. If active nests are found within the Project area, construction activities shall not occur within ~~300~~ 400 feet of an active gnatcatcher or other avian species nest (500 feet for raptors), or a sound barrier will be erected in conjunction with biological monitoring to avoid take. ~~A 50-foot buffer will be provided for common bird species detected during the nest survey.~~

### Mitigation Measure BIO-4

The drainage feature located onsite may be unvegetated jurisdictional waters that would be subject to a CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and/or CDFG 1602 Streambed Alteration Agreement for impacts to 0.06 acre. Assuming the USACE, RWQCB, and CDFG take jurisdiction, impacts to the 0.06 acre of potentially jurisdictional waters on the site will be mitigated by adhering to the terms and conditions identified in the CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and CDFG 1602 Streambed Alteration Agreement. Areas defined with the current jurisdictional delineation report as being regulated pursuant to Section 1600 et seq. of the Fish and Game Code will be evaluated (including mitigation ratios and effected acreages) at the time the project applicant formally submits a streambed notification package to the Stream Alteration Team of the Department.

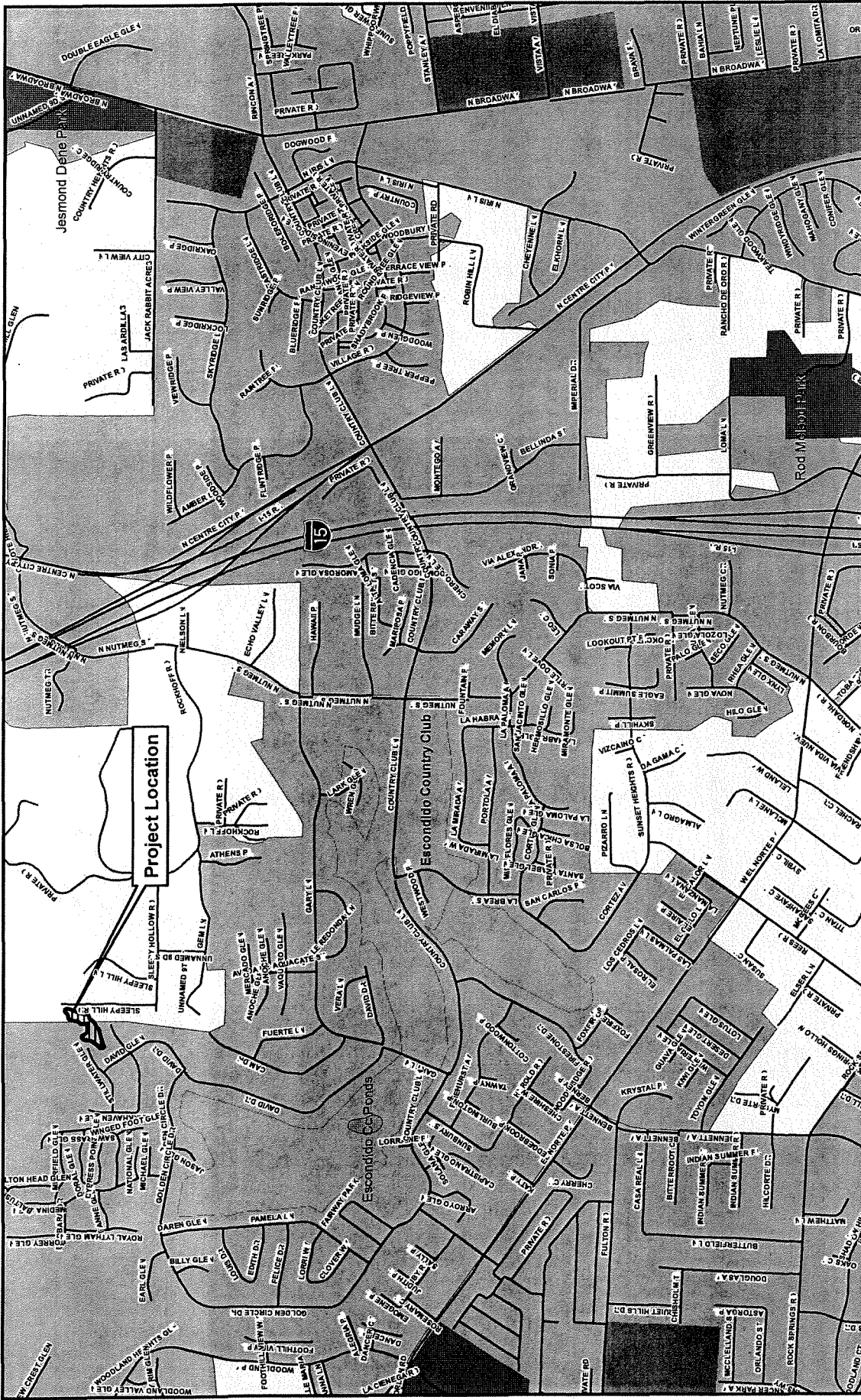
## Materials Used in Preparation of this Analysis

1. Escondido General Plan and Environmental Impact Report, 1990
2. Escondido General Plan Update and Environmental Impact Report, 2000
3. Escondido Zoning Code and Land Use Maps
4. SANDAG Summary of Trip Generation Rates
5. Escondido Historic Sites Survey
6. City of Escondido – Engineering Services Public Works Department
7. City of Escondido – Traffic Division
8. City of Escondido – Fire Department
9. City of Escondido – Police Department
10. City of Escondido – Planning Division
11. Escondido Drainage Master Plan, 1995
12. Flood Insurance Rate Maps (FIRM)
13. Draft Multiple Habitat Conservation Program (MHCP) maps
14. United States Geological Survey Topographic Map for San Diego (Escondido) area
15. County of San Diego Health Department, Hazardous Material Management Division (HMMD) Hazardous Sites List
16. Recommendations by the Association of Environmental Professionals (AEP) on How to Analyze Greenhouse Gas Emissions and Global Climate Change in CEQA Documents (Comment Draft, March 5, 2007)
17. Project Description and Preliminary Information
18. Biological Resources Technical Memorandum, prepared by URS Corporation, dated October 2010
19. Confidential Cultural Resources Technical Memorandum, prepared by URS Corporation, dated October 2010
20. Hydrology and Hydraulic Report, prepared by URS Corporation, dated March 2009
21. Remedial Action Plan, prepared by URS Corporation, dated October 2009
22. 45-Day Report for California Gnatcatcher Surveys, prepared by URS Corporation, dated May 2011

## List of Acronyms and Abbreviations

AB32	California Global Warming Solutions Act of 2006
ADOE	Archaeological Determinations of Eligibility
ADT	Average Daily Trip
AEP	Association of Environmental Professionals
APCD	Air Pollution Control District
APN	Assessor's Parcel Number
BMPs	Best Management Practices
CAGN	Coastal California gnatcatcher
CalRecycle	California Department of Resources Recycling and Recovery (formerly the Integrated Waste Management Board)
CARB	California Air Resources Board
CCR	California Code of Regulations
CDFG	California Department of Fish & Game
CEQA	California Environmental Quality Act
cf/s	Cubic Feet per Second
CHHSL	California Human Health Screening Level
CNEL	Community Noise Equivalent Level
CO	Carbon Monoxide
COPC	Chemical of Potential Concern
CRHR	California Register of Historical Resources
CSS	Coastal Sage Scrub
CUPA	Certified Unified Program Agency
CWA	Clean Water Act
dB	Decibel
DI	Deionized Water
DTSC	Department of Toxic Substances Control
EIR	Environmental Impact Report
FPP	Fire Protection Plan
FRIM	Flood Insurance Rate Maps
GHG	Greenhouse Gases
HMMD	Hazardous Material Management Division
HOA	Homeowners Association
HPD	Historic Property Directory
JPA	Joint Powers Authority
LEA	San Diego County Solid Waste Local Enforcement Agency
LOS	Level of Service
mg/l	Milligrams per Liter
MHCP	Multiple Habitat Conservation Program
MND	Mitigated Negative Declaration
MSL	Mean Sea Level
NADB	National Archaeological Database

NOx	Oxides of Nitrogen
NRHP	National Register of Historic Places
NRIS	National Register Inventory System
OCP	Organochlorine Pesticide
OHP	Office of Historic Preservation
OHWM	Ordinary High Water Mark
OSHA	Occupational Safety and Health Administration
PCB	Polychlorinated Biphenyl
PM	Fine Particulate Matter
PNA	Polynuclear Aromatic Hydrocarbon
PRG	Preliminary Remediation Goal
RAO	Remedial Action Objectives
RAP	Remedial Action Plan
RAQS	Regional Air-Quality Standards
RCP	Reinforced Concrete Pipe
RCRA	Resource Conservation and Recovery Act
ROG	Reactive Organic Gases
RR	Rural Residential Area
RSL	Regional Screening Levels
RWQCB	Regional Water Quality Control Board
SANDAG	San Diego Association of Governments
SCAB	South Coast Air Basin
SCAQMD	South Coast Air Quality Management District
SCIC	South Coastal Information Center
SDAB	San Diego Air Basin
SDAPCD	San Diego Air Pollution Control Board
SDG&E	San Diego Gas & Electric Company
SDNHM	San Diego Natural History Museum
SMS	State Minimum Standards
STLC	Soluble Threshold Limit Concentration
SWPPP	Stormwater Pollution Prevention Plan
TCLP	Toxicity Characteristic Leaching Procedure
TTLC	Total Threshold Limit Concentration
URS	URS Corporation Americas
USACE	United States Army Corps of Engineers
USFWS	United States Fish & Wildlife Service
WET	Waste Extraction Test



**VICINITY MAP  
BENTON BURN DUMP**

SOURCES: ESRI (Base Layers 2008).

625 0 625 1250 Feet

SCALE: 1" = 1250 Feet (1:15,000)

SCALE CORRECT WHEN PRINTED AT 8.5x11


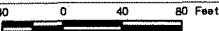

CREATED BY: CL    DATE: 2-18-09    FIG. NO: 1

PM: RKS    PROJ. NO: 17326074.10002





Path: C:\pmp\p\17326074\map\17326074\map\17326074\map.mxd, 02/19/09, cml/rj, jll

	SOURCES: AirPhoto USA (Aerial 2007).		<b>HYDRAULIC MAP</b> <b>BENTON BURN DUMP</b>	
			CREATED BY: CL	DATE: 2-19-09
	SCALE: 1" = 80' (1:560) SCALE CORRECT WHEN PRINTED AT 11X17		PM: RKS	PROJ. NO: 17326074.10002
				FIG. NO:







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**Legend**

- Project site
- Sensitive Species Occurrence
- 1-Mile Buffer of Project Site



SOURCES: Aerial (Aerials Express 2009)  
Sensitive Species (CNDD 09/2010)

**HISTORIC SENSITIVE SPECIES LOCATIONS  
BENTON BURN DUMP**



625 0 625 1250 Feet  
SCALE: 1" = 1250 ft (1:15,000)  
SCALE CORRECT WHEN PRINTED AT 11X17

CREATED BY: RC	DATE: 10-26-10
PM: RKS	PROJ. NO: 2770025.01000

FIG. NO:  
4



CITY OF ESCONDIDO  
 PLANNING DIVISION  
 201 NORTH BROADWAY  
 ESCONDIDO, CA 92025-2798  
 (760) 839-4671

**ATTACHMENT "A"**  
**MITIGATION MONITORING REPORT**  
**CASE NO.: ENV 10-0005**

**PROJECT NAME:** Benton Burn Site Remediation Project  
**PROJECT LOCATION:** Ravine east of Still Water Glen and north of Larkhaven Glen, Escondido, San Diego County, CA 92026  
 (APNs: 224-163-42, 224-190-36, and 224-190-52)  
**PROJECT DESCRIPTION:** Consolidation of burn ash waste and capping the surface with an engineered soil cover on approximately one acre of land, which involves the removal of 0.05 acres of coastal sage scrub and possibly jurisdictional waters.  
**PROJECT MANAGER:** Edward Domingue, Engineering Services  
**CONTACT PERSON:** Rozanne Cherry, Planning Division  
**PHONE NUMBER:** 760-839-4536

Phase at which the Mitigation Measures are to be implemented

NATURE OF IMPACT	MITIGATION MEASURE	IDENTIFICATION NO. LOCATION IN DOC.	RESPONSIBILITY FOR IMPLEMENTING	CERTIFIED INITIAL/DATE	COMMENTS
<b>PRIOR TO APPROVAL OF GRADING PLANS</b>					
Biological	The city shall purchase 0.10 acre of coastal sage scrub conservation credits at a ratio of 2:1.	Mitigation Measure BIO-1	City of Escondido		
<b>PRIOR TO COMMENCING WORK</b>					
Biological	Temporary construction fencing shall be installed along the boundary between the burn ash footprint and adjacent coastal sage scrub located outside of the Project site.	Mitigation measure BIO-2	City of Escondido		
	A biological monitor shall be provided during vegetation grubbing.	Mitigation Measure BIO-2	City of Escondido		

NATURE OF IMPACT	MITIGATION MEASURE	IDENTIFICATION NO. LOCATION IN DOC.	RESPONSIBILITY FOR IMPLEMENT.	CERTIFIED INITIAL/DATE	COMMENTS
<p><b>PRIOR TO COMPLETION OF WORK</b></p> <p>Biological</p>	<p>The habitat shall be restored within the Project site with a native seed mix consistent with adjacent coastal sage scrub species composition.</p>	<p>Mitigation Measure BIO-1</p>	<p>City of Escondido</p>		
<p><b>GENERAL</b></p> <p>Biological</p>	<p>To avoid take of active bird nests, the Project will avoid construction in California gnatcatcher and other avian nesting habitat during the California gnatcatcher and other avian species breeding season (approximately February 15 through September 15 August 31, as early as January for some raptors). If vegetation clearing or other construction work will occur during the California gnatcatcher and other avian species breeding season, a qualified biologist will survey the area within 500 feet of construction, no more than 10 days prior to the beginning of project activities, to identify active nests. If active nests are found within the Project area, construction activities shall not occur within 300-400 feet of an active gnatcatcher or other avian species nest (500 feet for raptors), or a sound barrier will be erected in conjunction with biological monitoring to avoid take. A 50-foot buffer will be provided for common-bird species detected during the nest survey.</p>	<p>Mitigation Measure BIO-3</p>	<p>City of Escondido</p>		
<p>Biological</p>	<p>The drainage feature located onsite may be unvegetated jurisdictional waters that would be subject to a CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and/or CDFG 1602 Streambed Alteration Agreement for impacts to 0.06 acre. Assuming the USACE, RWQCB, and CDFG take jurisdiction, impacts to the 0.06 acre of potentially jurisdictional waters on the site will be mitigated by adhering to the terms and conditions identified in the CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and CDFG 1602 Streambed Alteration Agreement. Areas defined with the current jurisdictional delineation report as being regulated pursuant to Section 1600 et seq. of the Fish and Game Code will be evaluated (including mitigation ratios and effected acreages) at the time the project applicant formally submits a streambed notification package to the Stream Alteration Team of the Department.</p>	<p>Mitigation Measure BIO-4</p>	<p>City of Escondido</p>		



CITY OF ESCONDIDO  
PLANNING DIVISION  
201 NORTH BROADWAY  
ESCONDIDO, CA 92025-2798  
(760) 839-4671

## ACKNOWLEDGEMENT OF ENFORCEABLE COMMITMENT

Case No.: ENV 10-0005

The items listed on the attached Mitigation Monitoring Program constitute an enforceable commitment in conformance with Section 21081.6(b) of the California Environmental Quality Act (Public Resources Code Sections 21000-21178). The applicant shall be required to provide, and comply with, all of the mitigation measures listed herein. These mitigation measures also have been included as conditions of the project approval.

8/5/11

Edward Domingue, Engineering Services

A handwritten signature in black ink, appearing to read "Edward Domingue", written over a horizontal line.

Date

Applicant's Name (printed)

Applicant's Signature



## Department of Toxic Substances Control

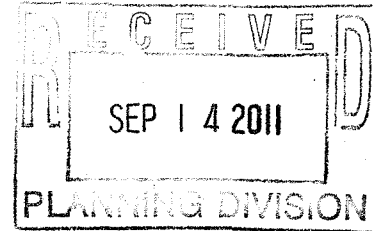
Matthew Rodriguez  
Secretary for  
Environmental Protection

Deborah O. Raphael, Director  
5796 Corporate Avenue  
Cypress, California 90630

Edmund G. Brown Jr.  
Governor

September 12, 2011

Ms. Rozanne Cherry  
City of Escondido Planning Department  
201 N. Broadway  
Escondido, California 92025



TRANSMITTED TO CONSULTANT  
ON 9-14-2011 RC

DRAFT MITIGATED NEGATIVE DECLARATION (ND) FOR BENTON BURN  
SITE REMEDIATION PROJECT (SCH# 2011081061) ENV 10-0005

Dear Ms. Cherry:

The Department of Toxic Substances Control (DTSC) has received your submitted document for the above-mentioned project. As stated in your document: "The proposed project is the remediation of the former Benton Dump site by implementing the Final Remedial Action Plan Benton Burn Site, SWIS No. 37-CR-0008 dated October 5, 2009, prepared by URS for the California Integrated Waste Management Board. The activity involves less than one acre and would consist of consolidating waste and capping the surface with an engineered soil cover. The cap would include clean soil to meet the State Minimum Standards and minimize the potential for human exposure to burn ash-containing waste present on the ground surface and in shallow soil. A small area of unoccupied coastal sage scrub will be removed and mitigated at a 2:1 ratio with the purchase of 0.10 acre conservation credits. The remediation will also affect 0.06 acre of a drainage area, which may be un-vegetated jurisdictional waters that would be subject to permits from US Army Corps of Engineers and the California Department of Fish and Game. Construction activities will be limited to the hours between 8AM and 5PM. Upon completion of construction, the project site would return to the relative appearance of existing conditions. The project would not construct any buildings and does not include lighting components. Existing non-native vegetation would be replaced by native seed mix over the soil cap".

Based on the review of the submitted document DTSC has the following comments:

- 1) The document states that the ND would identify any known or potentially contaminated sites within the proposed project area.
- 2) Appropriate sampling is necessary prior to disposal of the excavated soil.

Ms. Rozanne Cherry  
September 12, 2011  
Page 2

Land Disposal Restrictions (LDRs) may be applicable to these soils. Also, if the project proposes to import soil to backfill the areas excavated, proper sampling should be conducted to make sure that the imported soil is free of contamination.

- 3) Long term monitoring and maintenance will be necessary to ensure the proposed cap is performing as designed and remains protective of human health and the environment. Also, formal land use controls will be necessary to ensure the cap and areas immediately surrounding it are not disturbed. Signage will need to be addressed to prevent trespasser access and to inform persons not to disturb the capped burn ash. Drainage and erosion control measures need be implemented to ensure the proposed cap design is not compromised. Also, confirmation samples should be collected to ensure that any unexcavated soils beyond the limits of the proposed cap footprint do not pose a threat to human health and the environment. It is necessary to ensure that adequate dust monitoring and control measures will be implemented during soil excavation and consolidation activities. All remediation work should be performed under a Health & Safety Plan which is compliant with Occupational Safety and Health Administration (OSHA) guidelines.

If you have any questions regarding this letter, please contact me at [ashami@dtsc.ca.gov](mailto:ashami@dtsc.ca.gov), or by phone at (714) 484-5472.

Sincerely,



Al Shami  
Project Manager  
Brownfields and Environmental Restoration Program

cc: Governor's Office of Planning and Research  
State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812-3044  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

CEQA Tracking Center  
Department of Toxic Substances Control  
Office of Environmental Planning and Analysis  
P.O. Box 806  
Sacramento, California 95812  
[nritter@dtsc.ca.gov](mailto:nritter@dtsc.ca.gov)





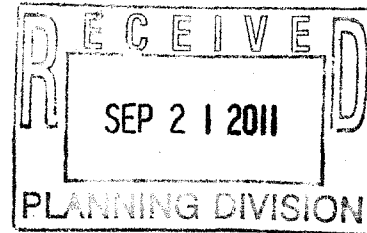
DEPARTMENT OF FISH AND GAME

South Coast Region  
3883 Ruffin Road  
San Diego, CA 92123  
(858) 467-4201  
www.dfg.ca.gov



September 19, 2011

Ms. Rozanne Cherry  
Lead Planner  
Planning Division  
201 N. Broadway  
Escondido, CA 92025  
Fax #: (760) 839-4313



**Subject: Comments on the draft Mitigated Negative Declaration for the Benton Burn Site Remediation Project, City of Escondido, CA, San Diego County, (SCH# 2011081061)**

Dear Ms. Cherry:

The Department of Fish and Game (Department) has reviewed the above-referenced draft Mitigated Negative Declaration (MND) dated August 15, 2011. The comments provided herein are based on information provided in the draft MND and associated documents (including the Biological Resources Review Report, prepared by URS Incorporated, dated May, 2011).

The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; Sections 15386 and 15281, respectively) and is responsible for ensuring appropriate conservation of the state's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (Fish and Game Code Section 2050 et seq.) and other sections of the Fish and Game Code. The Department also administers the Natural Community Conservation Planning (NCCP) Program.

The proposed project is located in northwestern San Diego County in the City. Borders of the City include San Marcos to the west and coastal mountains and hills to the east, north, and south. Escondido is located about 18 miles inland from the Pacific Ocean. The City is located 30 miles northeast of downtown San Diego and is approximately 37 square miles. Plans for the proposed project involve the remediation of the former Benton Landfill site by implementing the Final Remedial Action Plan (Benton Burn Site, SWIS No. 37-CR-0008). This activity involves less than one acre and would consist of consolidating waste and capping the surface with an engineered soil cover. The cap would include clean soil to ensure that the State Minimum Standards are obtained. Additionally soil will serve to minimize the potential for human exposure to burn ash-containing waste present on the ground surface and in shallow (less than two feet) soil. A small area of unoccupied coastal sage scrub (0.05 acre) will be removed and mitigated at a 2:1 ratio with the purchase of 0.10 acre conservation credits. The remediation will also affect 0.06 acre of a drainage area, which may be un-vegetated jurisdictional waters that may be subject to permits from US Army Corps of Engineers and/or the Department. Construction activities will be limited to the hours between 8 A.M. and 5 P.M. Upon completion of construction, the project site



would return to the relative appearance of existing conditions. The project would not construct any buildings and does not include lighting components. Existing non-native vegetation would be replaced by native seed mix over the soil cap.

The Department is generally in agreement with the proposed mitigation measures for the project and analysis provide with the MND. However, we have comments that should be addressed prior to the adoption of the final MND.

1. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). Accordingly, the Department recommends that the final MND reflect that if maintenance work is necessary adjacent to habitat occupied by native nesting birds, that no activity will occur within a buffer of 300 feet (500 feet for raptors) of active nests. Exceptions include implementing measures to minimize noise and disturbances to those adjacent birds during the avian breeding season generally February 15 to September 15, (as early as January for some raptors). Therefore, the Department recommends that section V (subsection Mitigation Measures, page 16) be edited to incorporate the changes indicated below.

#### Biological Resources

#### V. MITIGATION MEASURES

3. To avoid take of active bird nests, the Project will avoid construction in California gnatcatcher and other avian nesting habitat during the California gnatcatcher and other avian species breeding season (approximately February 15 through August 31 September 15, as early as January for some raptors). If vegetation clearing or other construction work will occur during the California gnatcatcher and other avian species breeding season, a qualified biologist will survey the area within 500 feet of construction, no more than 10 days prior to the beginning of project activities, to identify active nests. If active nests are found within the Project area, construction activities shall not occur within ~~400~~ 300 feet of an active gnatcatcher or other avian species nest (500 feet for raptors), or a sound barrier will be erected in conjunction with biological monitoring to avoid take.
2. The fourth mitigation measure located in section V, subsection Mitigation Measures, page 16 of the MND should state that the areas defined with the current jurisdictional delineation report as being regulated pursuant to Section 1600 et seq. of the Fish and Game Code will be evaluated (including mitigation ratios and effected acreage) at the time the project applicant formally submits a streambed notification package to the Lake and Streambed Alteration Program of the Department. During this time the Department will determine if a Streambed Alteration Agreement will be required. Therefore, the Department recommends that this section should be edited to incorporate the changes indicated below.

Biological Resources

V. MITIGATION MEASURES

4. The drainage feature located onsite may be unvegetated jurisdictional waters that would be subject to a CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and/or CDFG 1602 Streambed Alteration Agreement for impacts to 0.06 acre. Assuming the USACE, RWQCB, and CDFG take jurisdiction, impacts to the 0.06 acre of potentially jurisdictional waters on the site will be mitigated by adhering to the terms and conditions identified in the CWA 404 Wetlands Nationwide Permit, CWA 401 Water Quality Certification, and CDFG 1602 Streambed Alteration Agreement. Areas defined with the current jurisdictional delineation report as being regulated pursuant to Section 1600 et seq. of the Fish and Game Code will be evaluated (including mitigation ratios and effected acreage) at the time the project applicant formally submits a streambed notification package to the Stream Alteration Team of the Department.

We appreciate the opportunity to comment on the draft MND for this project and to assist the City in further minimizing and mitigating project impacts to biological resources. If you should have any questions please contact Bryand Duke of the Department by email ([bduke@dfg.ca.gov](mailto:bduke@dfg.ca.gov)) or by phone at (858) 637-5511.

Sincerely,



Edmund Pert  
Regional Manager  
South Coast Region

cc: Janet Stuckrath, U.S. Fish and Wildlife Service, Carlsbad  
Bryand Duke, CA Department of Fish and Game, San Diego  
State Clearinghouse, Sacramento

RESOLUTION NO. 2011-126

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
ADOPTING A FINAL MITIGATED NEGATIVE  
DECLARATION AND MITIGATION  
MONITORING REPORTING PROGRAM FOR  
THE REMEDIATION OF THE BENTON  
DUMP/BURN SITE

Case No. ENV 10-0005

WHEREAS, on September 1, 2010, the City Council of the City of Escondido approved the submission of an application for grant funds from the Solid Waste Cleanup Program administered by the Department of Resources Recycling and Recovery (CalRecycle) for the remediation of the former Benton Dump/Burn site to protect the public health and safety. Remediation involves the consolidation of waste, capping the surface with a clean soil cover, and sowing a native seed mix over the soil cap, in an area of less than one acre located in a ravine between Still Water Glen and Sleepy Hill Lane (portions of APN's 224-163-42, 224-190-36 and 224-190-52); and

WHEREAS, the Remedial Action Plan prepared by URS Corporation for the Benton Dump/Burn site was approved by CalRecycle (formerly the California Integrated Waste Management Board); and

WHEREAS, a Mitigated Negative Declaration was prepared for the remediation project and circulated for public review by the City of Escondido in compliance with the California Environmental Quality Act ("CEQA"); and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to adopt the Final Mitigated Negative Declaration and Mitigation

Monitoring Report Program, as reflected on plans and documents on file in the offices of the City Clerk and Planning Division.

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 has reviewed and considered the Final Mitigated Negative Declaration and Mitigation Monitoring Report Program prepared for the project in conformance with the CEQA, the staff report, and has heard and considered any written comments concerning the Mitigated Negative Declaration, Mitigation Monitoring Report Program and any testimony given at the meeting, and certifies the project would not result in any significant impacts to the environment.
3. That upon consideration of all material in the staff report (a copy of which is on file in the Community Development Department), any public testimony presented at the meeting, and all other oral and written evidence on this Mitigated Negative Declaration, this City Council adopts Final Mitigated Negative Declaration (Case No. ENV 10-0005) and the Mitigation Monitoring Report Program as reflected on plans and documents on file in the offices of the City Clerk and Community Development Department.

## CITY COUNCIL

For City Clerk's Use:

APPROVED  DENIED

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

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

Agenda Item No.: 10

Date: October 5, 2011

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

**FROM:** Richard O'Donnell, Deputy Director of Maintenance and Operations  
Robert Blackburn, Fleet Maintenance Department Specialist

**SUBJECT:** Purchase of Police Patrol Vehicles

RECOMMENDATION:

Staff recommends Council approve the purchase of thirteen (13) 2011 Ford Crown Victoria Police Interceptors to replace current police patrol vehicles. These purchases will be made through a cooperative purchase agreement with the City of Sacramento, pursuant to Escondido Municipal Code section 10-90, which states, "The purchasing officer may make purchases of supplies and equipment with cooperative purchasing programs conducted by the state, county or any public or municipal agency when such agency has processed these cooperative purchases in a competitive manner. These vehicles will be purchased from Downtown Ford who was the lowest bidder on police vehicles that meet our specifications. The cost for all thirteen vehicles is \$305,253 plus shipping, tax, and state tire fee. The vendor offers a 5% discount if paid within 20 days from delivery.

FISCAL ANALYSIS:

Sufficient funds have already been approved in the fiscal year and 2011-2012 budget to pay for eleven of these vehicles as provided for in the vehicle replacement account number 5208-653-715. Additionally, two vehicles will be paid for with grant funds from Escondido Police account number 5208-451-500-OSPG11.

BACKGROUND:

Staff is recommending Council approve the purchase of thirteen (13) 2011 Ford Crown Victoria Police Interceptors from Downtown Ford in Sacramento. Downtown Ford was one of only two Ford dealers in California who still have **new** 2011 Crown Victoria Police Interceptors in stock. Ford is no longer producing the Crown Victoria which is the police vehicle of choice for most departments including ours. Downtown Ford's vehicles exactly meet our vehicles' specifications and they were priced lower than the other dealership.

Respectfully submitted,



Richard O'Donnell  
Deputy Director of Maintenance and Operations



Robert Blackburn  
Fleet Maintenance Dept. Specialist



# CITY OF SACRAMENTO

PROCUREMENT SERVICES DIVISION

**Bid Number: B11131061009**

## INVITATION FOR BID And Contract Specifications

**FOR: Light Duty Ford and Police Pursuit Vehicles**

**Bids Must Be Received Prior To 2:00 P.M. on January 26, 2011**

**Bids Must Be Submitted To:** City Clerk's Office  
P.O. Box 122391  
Sacramento, CA 95812-2391

Pre-Bid Conference: \_\_\_\_\_ N/A  
Mandatory:  Yes  
 No  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### NAME AND ADDRESS OF BIDDER SUBMITTING THIS BID: (Bidder to complete the following information)

Name of Bidder: Downtown Ford Sales  
Address: 525 N. 16TH ST.  
City, State, Zip Code: Sacramento, Ca 95811  
Phone Number: 916-442-6931  
Email Address: dave.fortress@downtownfordsales.com

**CITY OF SACRAMENTO  
PROCUREMENT SERVICES DIVISION**

**Bid No. B11131061009  
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BID NO. B11131061009

# SECTION I REQUIREMENTS

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SECTION I – REQUIREMENTS

**A. "NO BID" RESPONSE FORM**

**NOTE: COMPLETE AND RETURN THIS FORM**

**ONLY IF YOU DO NOT WANT TO SUBMIT A BID**

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If you do not want to submit a bid for this requirement, we are interested in knowing why. Please remove this form, complete the requested information, and **FAX your response to the Procurement Services office at (916) 808-5747**. If you have questions, please call the Procurement Office at (916) 808-6240. Thank you for your cooperation.

**"NO BID" QUESTIONNAIRE**  
(Please complete all items that apply)

- We do not sell the products/services called for in this invitation for bid, but **we want to stay on the City's Bid List**. Please send necessary information so that the products/services we do provide can be updated on the City's Bid List.
- We are not interested in doing business with the City of Sacramento, because \_\_\_\_\_  
\_\_\_\_\_
- Other reasons/comments: \_\_\_\_\_  
\_\_\_\_\_
- Please send application forms for certification as an emerging and/or small business enterprise (E/SBE): **(Note: Application forms and information about becoming certified as an emerging and/or small business can be obtained via the Internet at: <http://www.cityofsacramento.org/esbd>).**

\_\_\_\_\_  
(Business Name)

\_\_\_\_\_  
(Street Address/P.O. Box)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
(E-mail address)

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

Phone: \_\_\_\_\_

Contact: \_\_\_\_\_

**SECTION I – REQUIREMENTS**

**B. BID INSTRUCTIONS AND REQUIREMENTS**

No Bid Is In Legal Form Unless the Following Instructions Are Fully Complied With

1. **VENDORS ARE REQUIRED TO SUBMIT AN ORIGINAL BID AND 0 ADDITIONAL COPIES OF THIS BID, INCLUDING ALL REQUIRED ATTACHMENTS SUCH AS BROCHURES AND CATALOGS, TO THE CITY CLERK ON THE DATE AND AT THE TIME AND LOCATION SPECIFIED ON THE COVER SHEET. FAILURE TO DO SO MAY CAUSE YOUR BID TO BE REJECTED.**
2. **Bid Forms.** Bid must be submitted on these printed forms and sealed in an appropriate envelope or package.

- 
- a) To obtain an electronic version of this bid go to Procurement's website at [www.cityofsacramento.org/generalservices/procurement/bids](http://www.cityofsacramento.org/generalservices/procurement/bids).
  - b) Bidders are invited to be present at the opening of bids. Bids will be opened, in public, in the City Clerk's Hearing Room, 915 "I" Street, Second Floor, Sacramento, CA, at or after 2:00 P.M. on January 26, 2011. After opening, Bids may be inspected in the City Clerk's Office.

**(Note: Bids must be submitted prior to 2:00 P.M. on the above date)**

- c) All bids shall be clearly and distinctly written without erasure or modification, and properly signed by an authorized party, who shall indicate the capacity in which the signature is executed.
3. **Alternate Bids.** Alternate bids are invalid unless invited and covered by the specifications. **Please note all submissions are subject to rejection when unsolicited alternate bids are submitted.**
  4. **Bid Security.** Bid Security is:      Required            Not Required  
  
If required, bid security approved by the City must accompany the bid, in the amount of \_\_\_\_ % of the total amount of the bid. Bid security can be in the form of a cashier's check, certified check, or a bid bond from a surety company authorized to do business in the State of California. Bid securities will be returned to all except the three lowest Bidders within ten days after the opening of bids. The bid security of the two unsuccessful Contractors will be returned after the successful Contractor has executed the contract. Bid security of the successful Contractor will be returned when the contract is signed and all other contract award requirements have been met.
  5. **Interest in More Than One Bid.** No bidder shall be interested in more than one bid (submit more than one bid for this solicitation) as provided by City Code Section 3.56.130(D).
  6. **Rejection of Bids.** The right to reject any and all bids is reserved by the City, in its absolute discretion.
  7. **Right to Waive.** The City reserves the right to waive any informalities or minor irregularities, as determined in its sole discretion, in connection with bids received.
- 7A. **City's Options.** City reserves the following options:
1. The right to award in whole or in part.
  2. The right to reject all partial bids.
  3. The right to reject any or all bids or make no award.
  4. The right to issue subsequent Invitation For Bids (IFB).
  5. The right to approve or disapprove the use of particular subcontractors and/or suppliers.
  6. The right to waive any informality or irregularity in the bidding process and any bids.
  7. The right to accept a bidder's signed offer and issue a purchase order directly to the bidder based on the IFB.

8. **City Code.** All provisions of Chapter 3.56 of the City Code are applicable to any bid submitted or contract awarded.
9. **Equipment.** If equipment is bid, it shall be the newest and latest model in current production. Used, re-manufactured, shopworn, demonstrator, prototype or discontinued models are not acceptable unless otherwise stipulated by the City.
10. **Faithful Performance Bond.** A faithful performance bond is: [ ] Required [ X ] Not Required

If required, the successful bidder must submit a performance bond in a form approved by the City Attorney, in the amount of \_\_\_\_\_.

11. **Payment Discounts.** Payment discounts offered for payment in less than twenty (20) days will not be considered as a basis of award. Payment discounts offered for payment in twenty (20) or more days will be subtracted from the ~~total bid price for the purposes of bid evaluation. Any payment discount offered by the successful bidder will be~~ accepted by the City of Sacramento, whether or not it was considered as a basis of award.
12. **Mandatory Pre-Bid Conference.** If a mandatory Pre-Bid Conference is indicated on the Invitation for Bid, all bidders are required to attend the conference. Failure to attend this conference will result in rejection of your bid. If a mandatory Pre-Bid Conference is indicated on the Invitation for Bid, bid packages will be made available only through the time and date of the conference. Subsequent addenda, if applicable, will be furnished only to those bidders who attended the Mandatory Pre-Bid Conference.

13. **Bid Inquiries.** Questions regarding this bid should be referred to:

Contractual Questions  
Procurement Services Division  
Attention: Marc Robles  
Email: mrobles@cityofsacramento.org  
Phone: (916) 808-6240

Technical Questions  
Fleet Management Division  
Attention: Jonathon Yee  
Email: jjyee@cityofsacramento.org  
Phone: (916) 808-6289

These inquiries must be submitted at least 10 days prior to the bid opening date. Any interpretations by the City will be made in the form of a written amendment. The receipt of such an amendment must be acknowledged in accordance with the directions on the amendment. Oral explanations or instructions given before the award of the contract will not be binding.

14. **Bid Evaluation.** In determining the amount bid by each bidder, the City shall disregard mathematical errors in addition, subtraction, multiplication and division that appear obvious on the face of the Bid. When such a mathematical error appears on the face of the Bid, the City shall have the right to correct such error and to compute the total amount bid by the bidder on the basis of the corrected figure or figures.

When an item price is required to be set forth in the Bid, and the total for the item set forth separately does not agree with a figure which is derived by multiplying the item price times the City's estimate of the quantity to be provided or performed for said item, the item price shall prevail over the sum set forth as the total for the item unless, in the sole discretion of the City, such a procedure would be inconsistent with the Intent of the bid process. The total paid for each such item of work shall be based upon the item price and not the total price.

Should the Bid contain only a total price for the item and the item price is omitted, the City shall determine the item price by dividing the total price for the item by City's estimate of the estimated quantities to be provided or performed.

If the Bid contains neither the item price nor the total price for the item, then it shall be deemed incomplete and the Bid shall be disregarded.

15. **Determination of Lowest Responsible Bidder.** Sacramento City Code 3.56.020 provides that the lowest responsible bidder shall be determined as follows:

- a. In determining whether a bidder is responsible, consideration shall be given to: (i) the quality and performance of the supplies to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the

contract or effectuate the transaction; (iii) the ability of the bidder to perform the contract or effectuate the transaction within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (v) the quality of the bidder's performance on previous purchases by, or contracts with, the City; (vi) the ability of the bidder to provide future maintenance, repair parts and services for the supplies provided.

- b. Based on the information provided in the bids, the City Council or the City Manager, as the case may be, shall identify those bids that are subject at the time of bid opening to the City's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of the City Code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the City is deducted from such bids. This deduction shall be in addition to the application of any bid price preferences authorized by subsection c, below.
- c. The City Council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, ~~including but not limited to, preferences to promote the participation and utilization of small business enterprises, energy conservation and sustainability in the City's contracting for supplies and nonprofessional services.~~ The lowest responsible bidder shall be the responsible bidder whose bid price is the lowest after all bid prices are calculated to include any such preferences. The calculation of such preferences shall be in addition to any deduction of sales or use tax required by subsection b, above.

- 16. **Pre-Award Conference.** The apparent lowest responsible bidder may be required to attend a pre-award conference at a mutually acceptable time at which requirements of the Contract will be reviewed. At that time, samples of forms, reports etc., will be submitted by the Contractor for final approval.
- 17. **Award by Item or Group.** The City reserves the right to increase or decrease quantities listed, make separate awards for any item, line-item or category/group of items to the lowest responsible bidders for such items or category/groups of items.
- 18. **Multiple Awards.** The City reserves the right to make multiple awards in order to provide alternate sources to insure continuity of supply if meeting the City's requirements within an acceptable time period exceeds the capacity or capability of the primary contractor(s).
- 19. **Contract Award.** Within ninety (90) days after the bid opening, a contract will be awarded by the City to the lowest responsible bidder, subject to the right of the City to reject all bids or waive informalities or minor irregularities, as it may deem proper. The time for awarding a contract may be extended in the sole discretion of the City, if required to evaluate bids or for such other purposes as the City may determine, unless the Bidder objects to such extension in writing with his/her bid. The City may accept this bid offer by issuance of a Notice of Award Letter, Contract and/or a Purchase order covering award of said bid to Bidder at any time on or before the 90<sup>th</sup> day following the day of this official bid is opened by the City. This offer shall be irrevocable for 90 days after bid opening or 90 days after City Council awards the bid, whichever comes last, however this period may be extended by mutual agreement of both parties.
- 20. **Emergency/Declared Disaster Requirements.** In the event of an emergency or if a City facility is declared a disaster area by the county, state or federal government, this contract may be subjected to unusual usage. The consultant/vendor/supplier shall service the City during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the consultant/vendor/supplier shall apply to serving the City's needs regardless of the circumstances. If the consultant/vendor/supplier is unable to supply the goods/services under the terms of the contract because of a disruption in its chain of supply or service, then the consultant/vendor/supplier shall provide proof of such disruption which may include, but not be limited to a copy of a letter from the source of supply or service stating reason for the disruption. Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted.
- 21. **Acceptable bid format.** All bids must show the full name of the firm bidding and must be on forms furnished by the City of Sacramento Procurement Division. All responses must be written in ink, printed by typewriter or computer generated. Responses made in pencil will not be considered.

**22. Submission of Bids.** The City is not responsible for misaddressed bids. Please assure that you utilize the address appropriate for the method of delivery. Bid submissions made via commercial express courier (FedEx, United Parcel Svs.) must be addressed as follows:

**City of Sacramento  
City Clerk's Office  
915 I St., Ste. 122391  
Sacramento, CA. 95814-2604**

**Bid submissions made via personal delivery shall be delivered to:**

**City of Sacramento  
City Clerk's Office  
Historic City Hall  
915 I St., Ste. 116  
Sacramento, CA. 95814**

**23. Bid Protest.** Bid protests must be filed and maintained in accordance with the provisions of Sections 3.60.460 through 3.60.560 of the Sacramento City Code. Bid protests that do not comply with Sections 3.60.460 through 3.60.560 of the Sacramento City Code shall be invalid and shall not be considered. A bid protest fee of \$750.00 is required at the time of filing to be considered valid in accordance with City of Sacramento Resolution No. 2003-231 dated April 29, 2003. As used herein, the term "bid protest" includes any bid protest that (1) claims that one or more bidders on this contract should be disqualified or rejected for any reason, or (2) contests a City staff recommendation to award this contract to a particular bidder, or (3) contests a City staff recommendation to disqualify or reject one or more bidders on this contract. Sections 3.60.460 through 3.60.560 of the Sacramento City Code are available at <http://www.qcode.us/codes/sacramento/>

**24. City of Sacramento Boycott of Arizona-Headquartered-Businesses.** On June 15, 2010, the Sacramento City Council adopted Resolution No. 2010-346 opposing two Arizona laws (SB 1070 and HB 2162) that will allow Arizona police to arrest individuals suspected of being unlawfully present in the United States and to charge immigrants with a state crime for not carrying immigration documents. Sacramento City Council Resolution No. 2010-346 also called for a boycott of the State of Arizona and businesses headquartered in Arizona until Arizona repeals or a court nullifies SB 1070 and HB 1262. Resolution No. 2010-346 provides, in pertinent part, that "where practicable and where there is no significant additional cost to the City, the City of Sacramento shall not enter into any new, amended, extended or supplemental contracts to purchase or procure goods or services from any business or entity that is headquartered in Arizona ..."

**SUBJECT TO PARAGRAPH 7 ABOVE, THE CITY CANNOT ACCEPT A  
BID FAILING TO COMPLY WITH ANY OF THE ABOVE REQUIREMENTS.**

SECTION I - REQUIREMENTS

C. BID SIGNATURE PAGE

BID NO. B11131061009

FOR SERVICES/SUPPLIES: Light Duty Ford and Police Pursuit Vehicles

To the City of Sacramento:

The undersigned bidder (hereafter referred to as the "Bidder" or the "Contractor") submits the attached bid, and certifies as follows: that the only persons or parties interested in this bid as principals are those named herein as bidder; that this bid is made without collusion with any other person, firm, or corporation; that in submitting this bid the bidder has ~~examined all of the Contract Documents identified below; that the bidder proposes and agrees that if this bid is accepted,~~ the bidder will execute and fully perform the contract for which bids are called; that the bidder shall perform all the work and/or furnish all the materials specified in the Contract Documents, in the manner and time therein prescribed, and according to the requirements as therein set forth; and that the bidder shall take in full payment therefor, the prices set forth in the attached Pricing Schedule.

CONTRACT DOCUMENTS

Performance of and payment for the contract for which bids are called shall be subject to all terms and conditions of the Invitation for Bid, the Bid Instructions and Requirements, the Bid, the Pricing Schedule(s), the Items Requiring Bidder Response, the Required Submittals, the General Conditions, and any Addenda, Amendments, Special Provisions, Specifications, Plans or other requirements applicable to performance of the work and/or furnishing the materials specified herein. Such documents, referred to herein as the Contract Documents, are fully incorporated herein by this reference and are collectively referred to as the Contract. By submitting this Bid, the Contractor agrees to fully perform each and every provision of the Contract, provided that City awards the Contract to the Contractor, and provided further that City shall have no obligation hereunder unless and until such award is made. Contractor shall not make any changes to this form without City's written approval, and any changes made without such approval shall be void.

To Be Filled Out By Bidder

NAME OF CONTRACTOR: Downtown Ford Sales

ADDRESS: 525 N. 16th St. Sacramento, Ca 95811

PHONE #: 916-440-6931 FAX #: 916-491-3138 E-MAIL: daveforbes@downtownfordsales.com

STATE TAX I.D. #: SKR428-600244 FED. TAX I.D. #: 94-1586562

City of Sacramento Business Operation Tax Certificate #: 2857  
(Contract award will not be processed without a valid and current Certificate Number.)

TYPE OF BUSINESS ENTITY(check one):  Individual/Sole Proprietor  Partnership  
 Corporation  Limited Liability Company  
 Other (please specify: \_\_\_\_\_)

BY: (signature of authorized person) [Signature]

PRINT NAME: Dave Forbes

TITLE: Fleet Manager

Note: All information submitted in or in connection with a bid is submitted under penalty of perjury. The City shall have the right to terminate at any time any contract awarded pursuant to a bid that contains false information.

**FOR CITY USE ONLY**

The Bid was opened on \_\_\_\_\_.

Bid Bond Required:  No;  Yes - Amount: \$ \_\_\_\_\_

Received:  Cashiers or Certified Check drawn on a California bank;  Surety Bond

\_\_\_\_\_  
City Clerk

**CONTRACT AWARD**

Bid Items Included in the Contract: All Items, unless otherwise specified below

Specify:  
\_\_\_\_\_

Contract Not-to-Exceed Amount: \$ \_\_\_\_\_

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

**CONTRACT APPROVAL**

Approved as to Form:

Approved:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Manager  
(Or Authorized Designee)

\_\_\_\_\_  
City Clerk

## **D. EQUAL BENEFITS ORDINANCE (EBO) REQUIREMENTS**

### **REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

#### **INTRODUCTION**

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

#### **APPLICATION**

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

#### **DEFINITIONS**

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.



"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

### **CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION**

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

### **EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

- (a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.
- (b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."
- (c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

ATTACHMENT A



**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

On ..... (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for ..... (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

**You May . . .**

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:  
  
City of Sacramento  
Procurement Services Division  
5730 24th Street, Bldg. 1  
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
  - Reinstatement, injunctive relief, compensatory damages and punitive damages- Reasonable attorney's fees and costs .

**ATTACHMENT B**



**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S  
NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS ORDINANCE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

**You May . . .**

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento  
Procurement Services Division  
5730 24<sup>th</sup> St., Bldg. 1  
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

**Discrimination and Retaliation Prohibited.**

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

**You May Also . . .**

Submit a written complaint to the City of Sacramento, Procurement Services Division, at the same address, containing the details of the alleged violation.

BID NO. B11131061009

# **SECTION II CONTRACT DOCUMENTS**

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**SECTION II – CONTRACT DOCUMENTS**

**A. GENERAL CONDITIONS**

**1. Independent Contractor.**

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole

cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

~~4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.~~

5. **Conflict of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.

6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. **CONTRACTOR Information.**

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for

any unauthorized modification or use of such information for other than its intended purpose by CITY.

- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

~~C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.~~

- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. **Term; Suspension; Termination.**

- A. **Termination for Cause.** If the City determines that the Contractor's performance is not satisfactory, and notifies the Contractor of such determination in writing, the Contractor shall correct the unsatisfactory condition(s) within 5 days after receiving such notification. If the

Contractor fails to correct the unsatisfactory condition(s) within 5 days, the City may declare the Contract terminated upon 30 days written notice and may, in the City's sole discretion, demand performance by the Contractor's surety, if any, or contract for performance of all or part of the remainder of Contract with another contractor. In the event two such notices of unsatisfactory performance are given in any calendar year, and in the event that Contractor shall again fail to satisfactorily perform pursuant to the Contract, City may thereupon terminate the Contract immediately, with no prior notice. In the event of termination hereunder, the Contractor and/or its surety shall be liable and assessed for any and all costs for re-procurement and completion of the Contract.

- B. Termination for Convenience. The City may terminate the Contract, in whole or in part, for its convenience and without cause upon giving written notice to the Contractor. The City shall pay all reasonable costs associated with the Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with such termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned, or any other costs, which have not been incurred, as of the date of termination.
- C. Termination After Completion Date. If the Contractor fails to complete its performance of the Contract within the time specified in the Contract (including any approved extension of such time), if any, the Contract may be terminated and, in the event of such termination, the Contractor shall not be paid or allowed any further compensation for any costs incurred after such termination. The City may thereafter proceed to complete the Contract either by rebidding or otherwise, the Contractor and its surety, if any, shall be liable to the City for all loss or damage that the City may suffer on account of the Contractor's failure to complete the Contract on time. This Agreement shall become effective on the date that it is approved by both parties; set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of



CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. **Insurance Requirements.** During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

~~It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.~~


A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." \_\_\_\_\_ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

 Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." \_\_\_\_\_ (CONTRACTOR initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured's as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

X Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

---

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured's as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be

forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

~~CONTRACTOR shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.~~

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
  - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

(2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** The Contract Documents contain the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this ~~Contract. No alteration to the terms of this Contract shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Sacramento City Code.~~ In the event of any conflict among the provisions of different Contract Documents, the conflict shall be resolved by giving precedence to the Contract Documents in the following order:

- A. Post-Award Amendments.
- B. Pricing Schedule(s), as corrected by City, if applicable.
- C. Pre-Award Addenda
- D. Special Provisions.
- E. Bid Instructions and Requirements
- F. General Conditions
- G. Technical Specifications and/or Plans

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

19. **Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished pursuant to the Contract, including without limitation the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.
20. **Inspection.** Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of the Contract. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for re-inspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.
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21. **Funding Availability.**
- A. The Contract is subject to the budget and fiscal provisions of the Charter and City Code of the City of Sacramento.
  - B. The City's payment obligation under the Contract shall not at any time exceed the amount of funds appropriated and approved for such purpose by the Sacramento City Council.
  - C. The Contract shall terminate without penalty at the end of the fiscal year in the event funds to make payment under the Contract are not appropriated and approved for such purpose by the City Council for the succeeding fiscal year. If such funds are appropriated for only a portion of the fiscal year this Contract shall terminate, without penalty, at the end of the term for which funds have been appropriated. In the event of such termination, the Contractor shall not be entitled to recover any costs incurred after termination, subject, further, to the limitation in subsection 11.B. of these General Conditions.
  - D. Notwithstanding any provision of the Contract Documents to the contrary, this section shall govern over any other provision of the Contract.
22. **Inspection of Facilities.** If requested by the City, the Contractor shall provide City with an inspection tour of Contractor's facilities at the location where the work under the Contract will be accomplished.
23. **Material Safety Data Sheets (MSDS).** It is mandatory for a manufacturer, Contractor or distributor to supply a MSDS with the first shipment of any hazardous material. Also at any time the content of an MSDS is revised, the Contractor shall provide new information relevant to the specific material.
24. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Procurement Services Division reserves the right at its sole discretion to terminate the Contract either for cause or for convenience as provided in Section 9 of these General Conditions.
25. **Payment and Invoicing.** Unless otherwise specified in the Contract Documents, payment for services rendered or materials provided and accepted by City will be made monthly, in arrears, after receipt of a proper invoice.

26. **Protection of Existing Facilities.** Contractor shall take every precaution to protect all public and private property during the performance of the Contract. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.
  
  27. **Guarantee.** By submitting its bid, the Contractor guarantees that all merchandise delivered and/or work or services performed under the Contract shall meet the minimum requirements set forth herein. If it is determined by the City that the merchandise delivered or work or services performed do not meet the minimum requirements of the Contract, the Contractor shall be required to correct the same at Contractor's sole expense.
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## SECTION II – CONTRACT DOCUMENTS

### B. SPECIAL PROVISIONS

#### Manufacturing, Material and Design Practices

It is intended that the manufacturer in the selection of components will use material and design practices that are the best available in the industry for the type of operating conditions to which the vehicle/unit(s) will be subjected. Engine, suspension, wheels, tires and other component parts shall be selected to give maximum performance, service life and safety and not merely meet the minimum requirements of the specification. All parts, equipment and accessories shall conform in strength, quality of material and workmanship to recognized industry standards.

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#### Heavy Duty defined

The term "heavy duty" as used in these specifications shall mean that the item to which the term is applied shall exceed the usual quantity, quality or capacity supplied with standard production vehicle/unit(s); and it shall be able to withstand unusual strain, exposure, temperature, wear and use.

#### Specification Variances

If any of the equipment bid varies from the specifications, such variation(s) must be listed in writing and attached as part of the bid. The City of Sacramento reserves the right to waive minor variations if, in the opinion of the Procurement Services Manager the basic vehicle(s)/unit(s) meets the general intent of these specifications.

#### Manufacturer's Specification

- a. Only new models in current production which are cataloged by the manufacturer and for which printed literature and specifications are available will be accepted.
- b. Complete specifications, published literature and photos or illustrations of unit(s) proposed, shall be furnished with the bid.

#### Manufacturer's Standard Equipment

- a. All equipment and components listed as standard by the manufacturer for model bid shall be furnished whether or not such items are detailed herein, e.g., special wrenches, tool kits, jacks - adequate to safely lift the vehicle when loaded to rated capacity, etc. Optional equipment as necessary to meet the following requirements of this specification shall also be supplied.
- b. Specifications on the following pages are written with intent to meet all applicable documents but the final certification to comply shall rest with the vendor and not the City of Sacramento. Should requirements as specified not comply, the manufacturer is required to refigure and revise the specifications to meet all laws, rules and regulations where it applies to items such as the ratings of axles, tires, wheels, brakes, batteries, cooling capacity, etc., and the City of Sacramento is to be notified thereof.
- c. The City will not accept any part, component or system, which is not an established standard product of the bidding manufacturer except for new engine and fuel technology. By this is meant that any item or assembly, which, relative to the supplying manufacturer's standard line of products, could be described as "first of its kind", "experimental", "only one of its kind to be built",

"especially modified to comply with this specification", "prototype", or synonymous categorical descriptions, shall not be acceptable. All parts and components of the system offered and delivered must conform to the manufacturer's standard production or be off-shelf available as a standard hardware production item.

Applicable Documents and Certifications

- a. Federal Motor Vehicle Safety Standard, Department of Transportation.
- b. State of California Motor Vehicle Code.
- c. State of California General Industrial Safety Orders.
- ~~d. State of California Health and Safety Code, Motor Vehicle Pollution Control.~~
- e. California Occupational Safety and Health Act (O.S.H.A.) and the E.P.A.
- f. Society of Automotive Engineering Standards.
- g. American Society of Mechanical Engineers (A.S.M.E.)
- h. State of California Dealers License.

Equipment Manuals

The following manuals shall be supplied at the time of delivery. Service/repair and parts manuals may be supplied on compact disc.

- a. One (1) owner's manual and warranty manual for each vehicle.
- b. Two (2) copies of the driveability / diagnostic manuals covering the vehicles purchased. Two (2) copies on IBM compatible CD ROM disc are acceptable.
- c. Two (2) copies each of dealer service bulletin applicable to the model year of the vehicle being purchased. The City of Sacramento shall be placed on the manufacturer's mailing list to receive service bulletins each time they are published.
- d. Two (2) copies of the parts list covering the vehicles purchased. The parts list shall provide a description and service part number for each part. Two (2) copies on IBM compatible CD ROM disc are acceptable.
- e. In addition to the regular parts list for the vehicles, two (2) copies of a special parts list giving service part numbers shall be prepared showing the parts and assemblies that are peculiar to the enforcement vehicle purchased. The list shall be broken down by chassis, engine, body, etc., and shall contain a brief description of the part together with its correct service part number.
- f. Two (2) copies of the electrical wiring diagram manual covering the vehicles purchased. Two (2) copies on IBM compatible CD ROM disc are acceptable.
- g. Two (2) copies of the service/repair manuals covering the vehicles purchased. Two (2) copies on IBM compatible CD ROM disc may be acceptable.



Delivery

Delivery shall be made to the City of Sacramento Corporation Yard South, 5730 - 24th Street, Sacramento, California, or other sites as required, within the County of Sacramento, serviced and operable with minimum 1/2 tank fuel. The Department of General Services (Fleet Management Division) shall be given a minimum of twenty-four (24) hours notice of Contractors intent to deliver the vehicles/unit(s).

Conference (Pre-Award)

The apparent lowest responsible Bidder may be required to attend a pre-award conference at a mutually acceptable time at which all requirements of these specifications will be reviewed. At that time, samples of forms, reports etc. will be submitted by the Contractor for final approval.

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Inspection

Vehicle/unit(s) shall be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of this specification. If deficiencies are found, it shall be the responsibility of the dealer to pick up the vehicle(s)/unit(s), make the necessary corrections and redeliver the vehicle/unit(s) for re-inspection and acceptance. Payment and/or commencement of a discount period (if applicable) will not be made until corrective action has been made.

License

The original dealer's Report of Sale, or Certificate of Origin, along with a Certified Weight Certificate, shall be furnished to the City at time of delivery of the vehicle(s) before payment can be made.

Warranty

- a. The vehicle manufacturer shall provide a new vehicle warranty F.O.B. Sacramento regardless of the method of delivery for each unit. Warranty time to start when vehicle(s) are placed in operation, not delivered. The City of Sacramento shall supply the vendor "in-service" dates for each vehicle purchased as a result of this bid.
- b. Vehicle and components shall be guaranteed under standard factory and/or dealer warranty and a copy of manufacturer's warranty policy shall be delivered with each vehicle.
- c. Engine and transmission shall be guaranteed under the longest and most comprehensive standard factory warranty proposed specifically for municipal equipment. Acceptance of the entire unit and the body and appurtenance shall be free from workmanship and material defects. Vendor shall agree to repair or replace all such defects at no cost to the City.
- d. The successful bidder shall guarantee that there will be a factory authorized repair facility with adequate parts inventory to perform warranty repairs and provide product support for the time the cab, chassis, components, and body are covered under warranty.
- e. If the City of Sacramento is required to deliver a unit for warranty work, vendor shall reimburse the City of Sacramento at the rate of \$98.00 per hour for pick up and delivery time involved.
- f. City of Sacramento shall be furnished a "no-charge" copy of the work order(s) describing type of repair and parts replaced.

- g. Bidders shall include in their bid, a factory authorized extended warranty for coverage up to five (5) years and/or 100,000 miles.

#### Payment Terms

Payment terms are net 30 days unless bidder otherwise quotes. All cash discounts if taken shall be computed from the date of delivery or completion and acceptance of material, or from date of receipt of invoice, whichever is latest. Invoices must be submitted as specified at the time of shipping authorization. Partial payments may be made by the City on delivery and acceptance of goods and on receipt of vendor's invoice.

#### Guarantee

~~The manufacturer and/or dealer delivering the vehicle/unit(s) against these specifications shall~~ guarantee that they met the minimum requirements set forth herein. If it is found that the equipment delivered does not meet the minimum requirements of this specification, the manufacturer and/or dealer will be required to correct the same at its expense. Failure of the manufacturer and/or dealer to bring the equipment into full compliance with all the requirements set forth in this specification within their 30 days of delivery shall constitute cause for rejection of the equipment. In case the equipment is rejected, it shall be removed promptly from the City's premises at the manufacturer and/or dealer's expense.

#### Quantities Estimate

The quantities stated in the pricing schedule are annual estimates only of the City's requirements. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period.

#### Environmentally Preferable Procurement

The City has adopted a "Sustainable Procurement Policy (SPP) and program. The goal is to encourage the procurement of products and services that help minimize environmental impact resulting from use and disposal of these products. Contractors are encouraged to offer Energy Star, Green Seal, EcoLogo, EPEAT, or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. City also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this IFB. Contractors will offer products that have minimal virgin materials and maximum use of recycled products. Contractor must work with the City to attain these goals.

Notwithstanding the above, the Contractor agrees to supply the City of Sacramento with environmentally preferable and effective products in compliance with the specifications in this solicitation and provide services that help minimize environmental impact resulting from use and disposal of products specified in this bid.

The Contractor further agrees that its products specified in this bid do not contain any items, ingredients or components prohibited under the City's SPP Policy.

The City may terminate this contract or take other appropriate actions if the contractor fails to comply or provide adequate supporting documentation to substantiate compliance with the City's SP Policy and requirements specified in the bid.

The City's SPP Policy is available on line at:

[http://www.cityofsacramento.org/generalservices/procurement/documents/Sustainable\\_Purchasing\\_Policy\\_SPP.pdf](http://www.cityofsacramento.org/generalservices/procurement/documents/Sustainable_Purchasing_Policy_SPP.pdf) or by contacting the Procurement Services Division at (916) 808-6240.

Quantities Unrestricted

The City is not limited to purchase all of its requirements from any contract resulting from this request.

Contract Period

Any contract(s) resulting from this bid shall be effective for a period of 5 years from the date of award by the City Council.

Pricing

~~Prices quoted to the City shall be as low as or lower than those charged the Contractor's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.~~ Vendors shall also pass along any applicable manufacturer rebates or incentives to the City when available.

Price Adjustments

Price changes will be considered annually upon the anniversary date of contract award. However, adjustment will not exceed a 4% increase in each of the latter years of this contract.

F.O.B./Freight

All items are to be supplied F.O.B., City of Sacramento, California, freight prepaid and allowed.

Cooperative Purchasing

The use of any resulting contract may be extended to other government agencies. It shall be understood that all terms and conditions as specified herein shall apply. The City of Sacramento will not be an agent, partner or representative of any other government agency as it relates to this specification; and is not obligated or liable, including, but not limited to, payment for an order placed by any other government agency.

Modification of Contract

The City may order changes in the work herein required and may order extra work in connection with the performance of the contract and the Contractor may comply with such orders, except that:

- a. If changes in requirements, reports, or materials are of such a nature as to increase or decrease the cost of any part of the work, the price fixed in the contract will be increased or decreased by such amount as the Contractor and the Procurement Services Manager may agree upon as the reasonable and proper allowance for the increase or decrease in the cost of work.
- b. No order for any alteration, modification, or extra work which will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Procurement Services Manager. No oral statement of any person whatsoever shall in any manner or degrees modify or otherwise affect the terms of this contract, including the requirements of the specifications.

Payment & Invoicing

Invoices, in triplicate, shall be mailed or delivered to City of Sacramento, 5730 24th Street, Bldg. 1, Fleet Management Division, Sacramento, CA 95822-3699.

Default by Contractor

In case of default by Contractor, the City reserves the right to procure the articles or services from other sources and to hold the Contractor responsible for any excess costs occasioned to the City thereby.

Notification of Material Changes in Business

Contractor agrees that if it experiences any material changes in its business including, without ~~limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key~~ personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City.

**SECTION II – CONTRACT DOCUMENTS**

**C. TECHNICAL SPECIFICATIONS**

Scope

This specification describes the minimum requirements for various sedans, law enforcement vehicles, sport utility vehicles, and light duty trucks as needed for a variety of applications within the City of Sacramento operating departments. All vehicles offered shall be the latest model available compliant with the specifications contained herein.

All vehicles shall be approved and marketed by the original equipment (vehicle) manufacturer. Full factory literature, parts, service, technical support and warranties shall be available.

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Classification

Vehicle specifications described herein shall be grouped by make and model with minimum required features and options as detailed. A list of all additional published options shall be provided with each bid submission with option pricing as indicated in the pricing sheet.

Emissions Control

All vehicles must meet or exceed the Ultra-Low Emission Vehicle I (ULEV I) requirements for sedans, pickup trucks and sport utility vehicles as established by the California Air Resources Board (CARB) as of the date of bid opening.

Engine

All engines shall be designed to operate on regular (87 octane) unleaded gasoline and E85 ethanol (flex-fuel) as available from any retail pump in California, unless otherwise specified. If a flex-fuel engine option is not available, an exception must be noted in writing with the bid response.

Interior Seating/Upholstery

All seat upholstery shall be cloth, vinyl or a combination of both, and the standard color supplied with the exterior color specified at time of order.

Supplemental Restraint Systems

All vehicles shall include manufacturer's standard system with frontal impact airbags for the driver and passenger.

Exterior Color

The exterior color shall be the manufacturer's standard white unless otherwise specified at time of order and noted on purchase order.

Climate Control Systems

All vehicles shall be equipped with manufacturer's standard cabin climate control to include air conditioning, defrost and heater.

Additional keys/keysets

All vehicles shall be delivered with five (5) complete sets of keys and/or remotes. Exceptions to this requirement may be allowed if the vehicle systems do not allow for programming of all required keys/remotes.

Warranty (Powertrain)

All vehicles shall be offered with a powertrain warranty providing coverage for a minimum of five (5) year and 100,000 miles from the in-service date within the City of Sacramento. In-service date shall be determined when each vehicle has been completely outfitted for use by the City and such date will be recorded in the City's Fleet Management database.

~~If standard powertrain coverage does not meet the minimum requirements, the cost of the extended coverage shall be added to the base price of each vehicle. Vendor shall invoice and back out additional warranty cost as a separate line item on the invoice.~~

Model Descriptions and Specifications

1. Ford Crown Victoria Police Interceptor

Minimum Requirements:

- a) Alternator – high output, approximately 200-amps max output, minimum 130-amps at idle
- b) Radio opening - The dashboard shall be supplied with the radio opening. AM or AM / FM radios shall not be installed, unless specified at the time of order
- c) Brakes – Power 4-wheel disc with Anti-Lock Brake System (ABS)
- d) Door Locks – Power
- e) Engine – 4.6-L SOHC V8 FFV w/idle meter
- f) Floor Covering – Heavy duty rubber
- g) Mirrors – Power, fold-away dual remote
- h) Oil-to-air transmission oil cooler
- i) Power-adjustable pedals
- j) Power Driver's seat
- k) Tire pressure monitoring system
- l) Suspension – Heavy Duty
- m) Transmission - 4-speed Automatic O/D Transmission
- n) Differential – 3.27:1 gear ratio, non-limited slip
- o) Battery Saver feature
- p) Brake/Shift interlock isolation from tail lights
- q) Side-intrusion door beams
- r) Decklid release on driver's door only
- s) Lighting – dual spot-lamp assembly (Unity Model 225),

- t) Keys – Keyed alike codes (key code to be supplied at the time of order)
- u) Seating – Cloth bucket / cloth rear (manual drive/passenger)
- v) Paint – Two-tone paint (white front doors and roof)
- w) Interior color shall be specified at the time of order
- x) Side molding on both front doors shall be removed for placement of department insignia
- y) Speedometer - The speedometer shall be calibrated and be accurate within two (2) miles per hour at speeds from 15 to 100 miles per hour of the true vehicle speed. The design of the speedometer shall be such to insure accuracy throughout the life of the vehicle. The face markings shall not be in increments greater than two (2) miles per hour. The face shall contain the wording "Certified Speedometer," or other wording to indicate that speedometer accuracy is certified, or a letter of certification of accuracy shall be provided with each unit. The vendor shall specify the size, brand and model of tires for which the speedometer is certified. The pointer shall not cover more than a two mile per hour section of the scale.
- z) Light in trunk with trunk lid actuated switch.
- aa) Push bumper, 16-inch, aluminum, Setina Manufacturing Inc. Model number PB100 shall be installed securely on the front of the vehicle. **City representative shall approve mounting procedures and location.**
- bb) Full-size spare tire. Space saver type spare tire is not acceptable.
- cc) Base Police Prep Package - 65A
- dd) Courtesy Lamps shall be disabled
- ee) Delete – 5-inch dome lamp

## 2. Ford Fusion

### Minimum Requirements:

- a) Engine – Gasoline powered, 3.0L Flex Fuel
- b) Transmission – Front Wheel Drive - 6-speed SelectShift Automatic
- c) Brakes – 4-Wheel Disc with Anti-Lock Brake System
- d) Windows – Power all windows, drive side 1-touch up/down
- e) Door Locks – Power with key-less remote entry for the doors and trunk, with hand held transmitters
- f) Steering – Tilt, telescoping, cruise, redundant controls
- g) Floor Mats – Front and rear matching interior color
- h) Defroster – Rear Window
- i) Mirrors – Power sideview with integrated blind spot mirrors
- j) Security System – SecurLock Passive Anti-Theft System

3. Ford Taurus

Minimum Requirements:

- a) Engine – Gasoline powered, 3.5L 24-valve Duratec V6
- b) Transmission – Front Wheel Drive, 6-speed automatic
- c) Brakes – 4-Wheel Disc with Anti-Lock Brake System
- d) Windows – Power all windows, driver side 1-touch up/down
- e) Door Locks – Power Steering – Tilt, telescoping, cruise, redundant controls
- f) Floor Mats – Front and rear matching interior color
- ~~g) Defroster – Rear Window~~
- h) Mirrors – Power sideview

4. Ford Escape

Minimum Requirements:

- a) Engine – Gasoline powered, 3.0L FFV
- b) Transmission – 6 Speed Automatic
- c) Tires and Wheels – 16" Aluminum, tire pressure monitoring system
- d) Brakes – Front Disc/Rear Drum – Anti-Lock Brake System (ABS)
- e) Windows – Power all windows, driver side 1-touch up/down, privacy glass on rear doors, quarter windows and rear liftgate
- f) Door Locks – Power
- g) Steering – Tilt with cruise control
- h) Floor Mats – All weather floor mats
- i) Defroster – Rear Window
- j) Mirrors – Power sideview with integrated blind spot mirrors
- k) Lights – Daytime running lamps

5. Ford F150

Minimum Requirements:

- a) Extended Cab
- b) Brakes – Power 4-Wheel Disc vented disc with Anti-lock Brake System (ABS)
- c) Cargo box tie-downs hooks (4)
- d) Engine – Flex Fuel 5.4L 3-valve EFI V8 FFV with 6-speed automatic transmission with tow/haul mode
- e) Transmission – 4-speed automatic transmission



- f) Power points, front
- g) Spare tire/wheel lock
- h) Tailgate – removable with key lock and lift assist
- i) Trailer Sway Control
- j) Airbags – Dual stage front seat-mounted side airbags
- k) SecurILock passive anti-theft Ignition system
- l) Tire Pressure Monitoring System

6. Dodge Charger 4-door Police Sedan

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~~Minimum Requirements:~~

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- a) 3.6L V6 VVT Engine
- b) 5-Speed automatic transmission
- c) Engine hour meter
- d) 2.65 axle ratio
- e) Severe duty engine cooling
- f) Engine oil cooler
- g) 800 CCA maintenance-free battery
- h) 220-amp alternator
- i) Heavy-duty suspension
- j) Power rack and pinion steering
- k) 4-wheel anti-lock Heavy-duty disc brakes
- l) Power Windows
- m) Body-color mirrors
- n) Variable-intermittent windshield wipers
- o) Body-color door handles
- p) 6-way power driver seat
- q) Heavy-duty cloth front bucket seats and rear bench seat
- r) Center console 12V power outlet
- s) Tilt & limited telescopic steering column
- t) Column mounted shift lever
- u) Speed-sensitive power door locks
- v) Power trunk lid release
- w) Rear window defroster
- x) All-speed traction control
- y) Electronic stability control
- z) Front height adjustable shoulder belts

- aa) Tire pressure monitor display
- bb) Emergency trunk lid release

7. 7. Chevrolet Caprice Police Patrol Vehicle

Minimum Requirements:

- a) Alternator – 170-amp high-output
  - b) Battery – 700 CCA battery with rundown protection
  - c) Brakes – Heavy duty power 4-wheel disc with Anti-Lock Brake System (ABS)
  - d) Engine – 6.0L V8 with 355 hp, Active Fuel Management and E85 Flex Fuel capable
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- e) Mirrors – Power review mirrors (manually folding)
  - f) Seats – Front cloth bucket seats sculpted for equipment belts, 8-way power driver seat/4-way passenger seat, rear cloth bench seat
  - g) Steering – Power rack-and-pinion
  - h) Steering Column - Tilt/telescoping adjustable steering column, with cruise control
  - i) Suspension – Heavy duty police
  - j) Transmission - 6-speed automatic transmission with sport shift mode
  - k) Windows – power with rear window lockout
  - l) Heavy duty vinyl flooring
  - m) Spot lamp – left hand
  - n) Headlamp and tail lamp flashing system
  - o) Auxillary battery
  - p) Hole in roof for wiring
  - q) Horn/siren circuit wiring
  - r) Grille lamps and siren speaker wiring
  - s) Full-size spare tire
  - t) Common Fleet keyed alike
  - u) Speed limiter (130 mph)
  - v) Daytime running lamps/auto lamp control delete
  - w) Inoperative inside rear door handles, locks and window switches

BID NO. B11131061009

# **SECTION III**

# **BIDDER RESPONSE DOCUMENTS**

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**SECTION III – BIDDER RESPONSE DOCUMENTS**

**A. ITEMS REQUIRING BIDDER RESPONSE**

**NOTE: Bidders must provide responses where indicated to the following items. Failure to provide a response to each of the items in this section may be grounds for rejection of bid.**

**1. SBE/EBE FIVE PERCENT (5%) BID EVALUATION PREFERENCE**

On February 9, 1999, the Sacramento City Council adopted an Emerging and Small Business Development program to provide enhanced opportunities for the participation of small business enterprises (SBEs) and emerging business enterprises (EBEs) in the City's contracting and procurement activities. Any bid or quotation submitted by a firm that is certified as a SBE by the City of Sacramento, or that is certified as an EBE by the City of Sacramento, will receive a ~~five percent (5%) bid evaluation preference for the purpose of determining the lowest responsible bidder. If, after~~ applying the 5% bid evaluation preference, the bid of an SBE/EBE firm receiving such preference is determined to be the lowest responsible bid, the award will be made for the actual amount bid. To receive this bid evaluation preference, a firm must be certified as a SBE or EBE at the time of bid opening. Questions regarding eligibility for SBE/EBE certification should be addressed to the City of Sacramento Procurement Division, at (916) 808-6747.

**A. SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION**

Is the firm submitting the bid certified by the City of Sacramento as a small business enterprise? Check the appropriate block below:

- YES – Our firm is certified by the City of Sacramento as a small business enterprise.
- NO -Our firm submitting is not certified by the City of Sacramento as a small business enterprise.

If the response to the above is YES, provide the City of Sacramento Certification Number \_\_\_\_\_

**B. EMERGING BUSINESS ENTERPRISE (EBE) CERTIFICATION**

Is the firm submitting the bid certified by the City of Sacramento as an *emerging* business enterprise? Check the appropriate block below:

- YES - Our firm is certified by the City of Sacramento as an emerging business enterprise.
- NO - Our firm is not certified by the City of Sacramento as an emerging business enterprise.

If the response to the above is YES, provide the City of Sacramento Certification Number: \_\_\_\_\_

**2. LOCAL BUSINESS SALES/USE TAX DEDUCTION**

The Sacramento City Code requires the City to identify those bids that are subject to the City's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of the Sacramento City Code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the City is deducted from such bids. The current rate at which such local sales or use tax is received by the City is one percent (1%). Therefore, in evaluating bids to determine the lowest responsible bidder, bids that are subject to this tax at the time of bid opening shall have an amount equal to one percent (1%) of the taxable total deducted from the bids. This deduction shall be in addition to the application of any bid price preferences or other deductions authorized by the City Code. Such deductions shall be made for bid evaluation purposes only. Contract awards shall be made at the actual bid amount.

In order to identify those bids that are subject to the City's local sales or use tax, all bidders shall respond to the following:

Does the bidder have fixed offices or locally taxable distribution points within the boundaries of the City of Sacramento? X Yes; or \_\_\_ No

If the answer to Question above is "Yes":

a) Provide the address of the bidder's fixed offices or locally taxable distribution point(s):

525 N 16th St  
Sacramento, Ca 95811

Specify: fixed office location or distribution point(s): Fixed office location

b) Provide the bidder's current, valid City of Sacramento Business Operations Tax Certificate Number: 2857

**3. PAYMENT DISCOUNT**

Will you offer a prompt payment discount? Yes  or No  (Net 30 days)

If Yes, the Payment Discount is 5 % for payment within 20 calendar days, which will be computed from the date delivery is made and is accepted by the City, or the date a proper invoice is received, whichever is later.

PAYMENT DISCOUNTS SHALL BE CONSIDERED IN AWARDING THE CONTRACT AS SET FORTH IN THE "BID INSTRUCTIONS AND REQUIREMENTS", PARAGRAPH 11 (ENTITLED "PAYMENT DISCOUNTS").

**4. ELECTRONIC FUNDS TRANSFER (EFT) (informational only):**

Do you have the ability to accept electronic payments (EFT)? Yes  or No

If Yes, what percentage discount would you offer the City to be paid through EFT? \_\_\_ %

**5. CITY OF SACRAMENTO BOYCOTT OF ARIZONA-HEADQUARTERED BUSINESSES:**

Pursuant to the provisions of Resolution No. 2010-346, the City may determine that a bid from a business or entity that is headquartered in Arizona is nonresponsive and the City may reject the bid on that basis.

Bidders that are headquartered in the United States shall certify in the space below the state where the bidder is headquartered:

California  
State Where Bidder is Headquartered

**6. PUBLISHED OPTIONS**

Bidders shall provide a price list for all published options offered per model (upgrades and deletions) as manufacturers invoice pricing plus 10 %. Price list shall state invoice price, mark-up percentage and offered price.

**SECTION III – BIDDER RESPONSE DOCUMENTS**

**B. ITEMS THAT MUST BE SUBMITTED BY SUCCESSFUL  
BIDDER PRIOR TO START OF CONTRACT**

The following documents are required to be completed and submitted by the successful bidder prior to the award of contract of the contract:

**1. CERTIFICATE OF INSURANCE**

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Successful bidders are **REQUIRED** to submit the necessary Certificate(s) of Insurance as called for in the General Conditions prior to award of the contract.

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**2. BUSINESS OPERATIONS TAX CERTIFICATE**

Chapter 3.08 of the Sacramento City Code requires that anyone conducting business in the City of Sacramento obtain a **Business Operations Tax Certificate** and pay the applicable tax if necessary. Successful bidders will be **REQUIRED** to show compliance with this requirement prior to award of the contract.

To obtain information about the Business Operations Tax Certificate, contact the City of Sacramento, Revenue Division, 915 I Street, Room 1214, Sacramento, CA 95814, or telephone (916) 808-8500.

**SECTION III – BIDDER RESPONSE DOCUMENTS**

**C. DECLARATION OF COMPLIANCE**  
**Equal Benefits Ordinance**

Name of Contractor: Downtown Ford Sales

Address: 525 N. 16th St Sacramento CA 95811

The above-named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit F.
2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
  - a. Bereavement Leave
  - b. Disability, life, and other types of insurance
  - c. Family medical leave
  - d. Health benefits
  - e. Membership or membership discounts
  - f. Moving expenses
  - g. Pension and retirement benefits
  - h. Vacation
  - i. Travel benefits
  - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

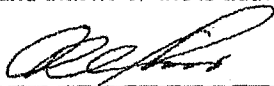
4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
  - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
  - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
  - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
  - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
  - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1)

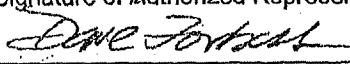
year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

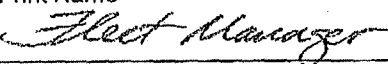
- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
- g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
- h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
- i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits, are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Contract is executed by the City.

- 5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
- 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
- 7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Contract award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
- 8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

  
 \_\_\_\_\_  
 Signature of Authorized Representative

  
 \_\_\_\_\_  
 Print Name

  
 \_\_\_\_\_  
 Title

1-25-11  
 \_\_\_\_\_  
 Date



**SECTION III – BIDDER RESPONSE DOCUMENTS**

**E. PRICING SCHEDULE**

For furnishing to the City of Sacramento, new and latest model vehicles as required, in accordance with the provisions and specifications contained herein. Quantities are annual estimates only (based on forecasts for upcoming fiscal years) and the City will purchase more or less as necessary during the term of this contract. If it is in the best interest of the City, **multiple awards may be made**, one for each Schedule below. **Prices are to be all inclusive (i.e. tax, freight, shipping charges, handling, special fees or any other related costs, etc.)**. Pricing for additional contract years will not increase more than 4% over the previous year contract price.

**Schedule I**

<u>Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extended</u>
33 each	Ford Police Interceptor per attached specifications	\$ <u>23,559</u>	\$ <u>777,447.00</u> <sup>78511</sup>
	5% 8.75% Sales Tax	<u>22381</u>	\$ <u>68,026.61</u>
	CA Tire Fee		\$ <u>2,887.75</u>
	<b>Total Schedule I</b>		\$ <u>848,361.36</u>

Contractor guarantees delivery in 14 days After Receipt of Order (ARO)

**Schedule II**

<u>Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extended</u>
38 each	Ford Fusion per attached specifications	\$ <u>19,275</u>	\$ <u>732,450</u> <sup>81</sup>
	8.75% Sales Tax	<u>18511</u>	\$ <u>64,089.37</u>
	CA Tire Fee		\$ <u>332.50</u>
	<b>Total Schedule II</b>		\$ <u>796,871.87</u>

Contractor guarantees delivery in 90 days After Receipt of Order (ARO)

Optional hybrid engine: Additional cost for hybrid Ford Escape \$ 8593.  
Fusion

**Schedule III**

Quantity	Description	Unit Price	Extended
10 each	Ford Taurus per attached specifications	\$ <u>21400-</u>	\$ <u>214,000-</u>
	8.75% Sales Tax	20730-	\$ <u>18,725-</u>
	CA Tire Fee		\$ <u>87.50</u>
Total Schedule III			\$ <u>232,812.50</u>

Contractor guarantees delivery in 90 days After Receipt of Order (ARO)

**Schedule IV**

Quantity	Description	Unit Price	Extended
20 each	Ford Escape per attached specifications	\$ <u>20506-</u>	\$ <u>411,320-</u>
	8.75% Sales Tax	19,537	\$ <u>35,990.50</u>
	CA Tire Fee		\$ <u>175.10</u>
Total Schedule IV			\$ <u>447,485.50</u>

Contractor guarantees delivery in 90 days After Receipt of Order (ARO)

Optional hybrid engine: Additional cost for hybrid Ford Escape

~~19,537~~ 9244-  
*BB*

**Schedule V**

Quantity	Description	Unit Price	Extended
5 each	Ford F150 truck per attached specifications	\$ <u>18,600</u>	\$ <u>93,000-</u>
	8.75% Sales Tax	17,620	\$ <u>8137.50</u>
	CA Tire Fee		\$ <u>43.75</u>
Total Schedule V			\$ <u>101,181.25</u>

*2011 5.0L V-8 Engine Bid,  
 Largest engine available*

Contractor guarantees delivery in 90 days After Receipt of Order (ARO)

**Schedule VI**

<u>Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extended</u>
5 each	Dodge Charger Police Sedan per attached specifications	\$ <u>No Bid</u>	\$ _____
	8.75% Sales Tax		\$ _____
	CA Tire Fee		\$ _____
<b>Total Schedule VI</b>			<b>\$ _____</b>

Contractor guarantees delivery in \_\_\_\_\_ days After Receipt of Order (ARO)

**Schedule VII**

<u>Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extended</u>
5 each	Chevrolet Caprice Police Patrol Vehicle per attached specifications	\$ <u>No Bid</u>	\$ _____
	8.75% Sales Tax		\$ _____
	CA Tire Fee		\$ _____
<b>Total Schedule VII</b>			<b>\$ _____</b>

Contractor guarantees delivery in \_\_\_\_\_ days After Receipt of Order (ARO)

**Optional Diagnostic Items for Chevrolet and Dodge**

<u>Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extended</u>
5 each	OEM Diagnostic Scan tool w/current Software	\$ <u>No Bid</u>	\$ _____
5 each	OEM Diagnostic Scan tool model year software/hardware updates	\$ _____	\$ _____
	Subtotal		\$ _____
	8.75% Sales Tax		\$ _____
<b>Total Diagnostic Items</b>			<b>\$ _____</b>

# CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

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

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

**Agenda Item No.: 11**  
**Date: October 5, 2011**

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

**FROM:** Jim Maher, Chief of Police

**SUBJECT:** Asset Forfeiture Fund Budget Adjustment

**RECOMMENDATION:**

It is requested that Council authorize staff to establish a budget in the amount of \$151,595 with Asset Forfeiture Funds to purchase equipment, services and training for front-line law enforcement operations.

**FISCAL ANALYSIS:**

The Asset Forfeiture Fund will be reduced by \$151,595 leaving an available fund balance of \$214,275.

**PREVIOUS ACTION:**

City Council approved an Asset Forfeiture budget adjustment on February 16, 2011, to purchase training and equipment for police officers.

**BACKGROUND:**

The U.S. Department of Justice (DOJ) transfers a percentage of seized assets to the City of Escondido which have been confiscated during local DOJ seizure or forfeiture efforts. These assets or funds are deposited into the City's Asset Forfeiture Account and must be used to purchase equipment or services to support law enforcement purposes. They may not be used to supplant items in the City's operating budget.

The Police Department requests your approval to set up a budget to spend \$151,595 to purchase the following equipment, training and services:

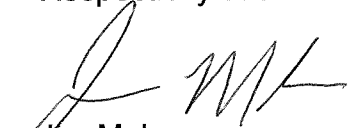
Item	Estimated Cost
AR15 Weapons (5)	\$10,000
Background Investigator School (2 Officers)	\$1,800

Asset Forfeiture Fund Budget Adjustment  
Page 2

GPS Devices for Crimes of Property Detectives (2)	\$400
Heat Alert and Paging Systems for Canine Cars (5)	\$10,000
Laptop and Licensing (Public Information Officer)	\$3,300
Lexipol Policy Guidance Subscription and Training	\$11,900
Mapping Server and Licenses	\$10,000
Officer Transport Van	\$30,000
Plotter for Crime Analysis Mapping	\$7,800
Portable Truck Scales	\$10,000
Property Room Cameras (2)	\$12,000
ProQA (Dispatcher EMS) Training Costs	\$5,445
Vehicle Trunk Locks for Weapons (33)	\$4,950
Vertex VHF Radios for the Special Investigation Unit (8)	\$2,000
Video Presentation Equipment for SIU Conference Room	\$1,000
Whiteboards	\$1,000

If approved by your action today, purchases will enhance law enforcement efforts.

Respectfully submitted,



Jim Maher  
Chief of Police



## CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

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

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

**Agenda Item No.: 12**  
**Date: October 5, 2011**

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

**FROM:** Michael Lowry, Fire Chief

**SUBJECT:** Award Design and Construction Contract to Erickson-Hall Construction Co. as the Design-build Entity for the Reconstruction and Remodel of Fire Station No. 4 (the "Project")

RECOMMENDATION:

It is requested that Council adopt Resolution 2011-130 authorizing the Mayor and City Clerk to execute a design-build contract with Erickson-Hall Construction Co. ("Agreement") for an amount not to exceed \$2.1 million dollars (\$2,100,000) for the Project.

FISCAL ANALYSIS:

The Agreement will be funded from an already established Capital Improvement Project fund ("CIP"), which Council approved on March 9, 2011.

PREVIOUS ACTION:

None

BACKGROUND:

In May, 2010, severe mold was discovered throughout Fire Station No. 4 rendering the building unsafe for Fire Department personnel. As a result, in July 2010, City Council authorized staff to enter into an agreement with Jeff Katz Architecture to prepare a schematic design and preliminary design phase for the necessary remodel and reconstruction of the station.

In March, 2011, City Council authorized the Fire Department to explore the design-build process for the Project because of expedited project completion and reduced project costs associated with this method of public construction. City Council then allocated approximately \$2.4 million dollars (\$2,400,000) into a CIP to fund the Project.

On July 18, 2011, the City sent pre-qualification questionnaires to eight (8) design-build entities ("DBE") that had previously expressed interest in the Project. After reviewing the completed pre-qualification questionnaires, staff determined that seven (7) DBE's were qualified to receive and submit a request for proposal ("RFP") for the Project. On August 15, 2011, staff delivered RFP's to the seven (7) pre-qualified DBE's.

On August 24, 2011, City Council authorized the Fire Department to contract with Jeff Katz Architecture a second time to prepare the secondary design phase for the Project, including but not limited to, completing construction documents, RFP evaluation, construction administrative services and any and all remaining architectural support needed for Project completion.

On September 8, 2011, the deadline for proposal submittal, the City received sealed proposals from four (4) of the seven (7) pre-qualified DBE's: Erickson-Hall Construction Co., Edge Development Inc., Soltek Pacific Construction Company and the Ledcor Group. City staff evaluated the proposals based on a "best value" analysis. As opposed to the more traditional design-bid-build approach where bids are awarded to the lowest responsive and responsible bidder, the "best-value" framework evaluates weighted objectives relative to price, features, functions and life-cycle costs, allowing a city to contract with the "most advantageous" DBE. In conducting the "best-value" analysis, City staff evaluated and scored the proposals based on responses to the following selection criteria:

1. Experience and Technical Competence

- DBE's described their experience in completing similar projects and were asked to list two (2) successfully completed fire station projects of similar nature and one (1) successfully completed remodel/expansion project within the last five (5) years.
- DBE's were asked to describe their experience with two (2) successfully completed design-build projects of similar nature completed within the last five (5) years.

2. Strength of Key Personnel

- DBE's detailed their proposed Project organization and provided an organizational chart, including identification and responsibilities of key personnel.



- DBE's indicated how local firms were to be utilized to ensure a strong understanding of local laws, ordinances, regulations, policies, requirements and permitting.
- DBE's described their capacity to perform the work within the City's time limitations, considering the DBE's current and planned workload and workforce.

### 3. Rates and Fees

- DBE's provided a fee for pre-construction services, including cost estimating, constructability review, site surveys, subcontractor bidding, submittal review and procurement of long lead items.
- DBE's provided detailed spreadsheets outlining the Project's general conditions, including quantities, units, unit costs and billing rates for all proposed team members.
- DBE's proposed an overhead and profit percentage rate and any other multipliers, such as, liability insurance, to be applied to the cost of the work.
- DBE's provided a comprehensive cost estimate taking into account all pre-construction design and support services and construction costs.

### 4. Proposed Method to Accomplish the Work

- DBE's described their technical and management approach to the design and construction effort and described lines of communications necessary to maintain design schedules, construction schedules and software availability for both schedule and management reporting.

### 5. Miscellaneous Factors Considered

- Knowledge and understanding of the State and local environment;
- Preliminary construction schedule;
- Conformance to the specified RFP requirements and format;
- Financial resources and stability of the principal consultant and/or DBE team;
- Ability to meet insurance requirements.

Upon reviewing the proposals from all four (4) DBE's, City staff scored (on a scale of 1-10) each category listed above for each DBE as follows:

<u>Item</u>	<u>Multiplier</u>	<u>Ledcor</u>	<u>Edge</u>	<u>Erickson Hall</u>	<u>Soltec Pacific</u>
Experience and Technical Competence	40%	8	9	10	9
Strength of Key Personnel	20%	7	9	10	8
Rates and Fees	10%	7	9	9	8
Proposed Method to Accomplish the Work	15%	6	10	10	7
Misc. Factors as noted in the RFP	15%	7	8	10	8
<b>Total Weighted Score</b>		<b>7.25</b>	<b>9</b>	<b>9.9</b>	<b>8.25</b>

Based on a total weighted score of 9.9, City staff recommends that Council consider the proposal submitted by Erickson-Hall Construction Co. to be the most advantageous "best-value" proposal for the Project. As such, City staff recommends awarding the design-build contract to Erickson-Hall Construction Co. in an amount not to exceed \$2.1 million dollars (\$2,100,000) for the Project.

Respectfully submitted,



Michael Lowry  
Fire Chief

RESOLUTION NO. 2011-130

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND CITY CLERK, TO EXECUTE, ON BEHALF OF THE CITY, A DESIGN-BUILD CONTRACT WITH ERICKSON-HALL CONSTRUCTION CO. FOR THE RECONSTRUCTION AND REMODEL OF FIRE STATION NO. 4

WHEREAS, in May of 2010, severe mold was discovered throughout Fire Station No. 4 requiring a remodel and reconstruction of the existing structure; and

WHEREAS, in July of 2010, City Council authorized the Fire Department to hire Jeff Katz Architecture to prepare a schematic design, cost estimate and financing plan for the remodel and reconstruction of Fire Station No. 4 (the "Project"); and

WHEREAS, pursuant to California Public Contract Code ("PCC") Section 20175.2(a)(1), a City, with City Council approval, may utilize the "design-build" method as an alternative to the traditional design-bid-build process, for bidding on building construction projects in excess of one million dollars (\$1,000,000); and

WHEREAS, pursuant to PCC Section 20175.2(b)(4), the design-build method is ideal when a City anticipates that design-build will reduce project cost and expedite project completion, two objectives that are integral to the Project; and

WHEREAS, on March 9, 2011, City Council directed the Fire Department to explore the design-build method for the Project and allocated approximately \$2.4 million dollars (\$2,400,000) into a Capital Improvement Project fund earmarked for the Project; and

WHEREAS, on July 18, 2011, the City sent out eight (8) design-build entity (“DBE”) pre-qualification questionnaires to interested DBE’s, of which seven (7) were determined qualified to submit a request for proposal (“RFP”) for the Project; and

WHEREAS, on August 15, 2011, the City delivered RFP’s to the seven (7) pre-qualified DBE’s; and

WHEREAS, on September 8, 2011, the City received four (4) sealed proposals from the following DBE’s: Erickson-Hall Construction Co., the Ledcor Group, EDGE Development, Inc. and Soltek Pacific Construction Company; and

WHEREAS, City staff evaluated all four (4) proposals utilizing a “best-value” weighted evaluation scale wherein City staff scored each proposal (on a scale of 1-10) based on responses to the following selection criteria: (1) Experience and Technical Competence; (2) Strength of Key Personnel; (3) Rates and Fees; (4) Proposed Method to Accomplish the Work; and (5) Miscellaneous Factors, including but not limited to, knowledge of the local environment, conformance to the RFP requirements, financial stability of the DBE and preliminary construction schedule; and

WHEREAS, after calculating the aggregate scores of each DBE under the “best-value” analysis, City staff ranked the DBE’s from most advantageous to least advantageous in accordance with PCC Section 20175.2(d)(4)(iv), as follows:

1. Erickson-Hall Construction Co.
2. EDGE Development, Inc.
3. Soltek Pacific Construction Company
4. The Ledcor Group; and

WHEREAS, as a result of scoring the highest on the City's "best-value" analysis, Erickson-Hall Construction Co. was deemed to be the most advantageous DBE for the Project; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the design-build contract with Erickson-Hall Construction Co. for the Project ("Agreement") in an amount not to exceed \$2.1 million dollars (\$2,100,000).

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 Mayor and City Clerk are authorized to execute, on behalf of the City, the Agreement with Erickson-Hall Construction Co. in substantially the same form, subject to final review and approval by the City Attorney's Office, that is attached hereto as Exhibit "A" and incorporated by this reference.

## **DESIGN-BUILD AGREEMENT – FIRE STATION NO. 4**

This Design-Build Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between THE CITY OF ESCONDIDO ("City"), a municipal corporation, and ERICKSON-HALL CONSTRUCTION CO. ("Design-Builder" or "D/B").

### **RECITALS**

WHEREAS, Fire Station No. 4 is an existing fire station located at 3301 Bear Valley Parkway, Escondido, CA 92025 within the City; and

WHEREAS, as a result of a severe mold infestation of Fire Station No. 4, City planned a major remodel and reconstruction of the station (the "Project"); and

WHEREAS, City elected to utilize the design-build process for the Project, pursuant to California Public Contract Code § 20175.2, because of reduced Project costs and expedited Project completion that are expected with this method of public construction; and

WHEREAS, on August 15, 2011, City issued a Request for Proposal ("RFP") for the Project to seven (7) pre-qualified design-build entities; and

WHEREAS, four (4) design-build entities submitted proposals on or before September 8, 2011, and based upon the review of each proposal under a "best value" evaluation, City selected Design-Builder as the most advantageous respondent to complete the Project.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, it is mutually agreed by and between the Parties as follows:

### **AGREEMENT**

#### **Section 1: General Scope of Work to Be Performed by D/B**

1.1 In accordance with the terms set forth in this Agreement, D/B shall provide limited pre-construction design support services to the extent necessary to assist the project architect, Jeff Katz Architecture ("Architect"), to design the renovation of Fire Station No. 4. In addition, D/B shall provide the construction services necessary to provide a fully functional fire station. The fire station shall include, but not be limited to, all components shown on the plans. The Project is located on City-owned property at 3301 Bear Valley Parkway, Escondido, CA 92025.

1.2 The services to be provided by D/B are generally to be performed in four (4) "Phases"; the services to be provided in each Phase are specified elsewhere in this Agreement. The services provided by the D/B shall include, but not be limited to, all

services outlined and described in this Agreement and pursuant to the Conceptual Plan in Exhibit 1.

1.3 The D/B shall:

1.3.1 Perform all services, work and obligations as described herein for the not to exceed amount of \$ 2,100,000, which includes Design Support Services and General Conditions necessary to provide a fully completed and functional Project. D/B shall perform all Design Support Services and General Conditions for the not to exceed amount of \$ 25,000 as outlined in the Design Build Fee Structure (Exhibit 2). The Guaranteed Maximum Price ("GMP") of \$ 2,100,000 includes, but is not limited to, the cost for all labor, equipment, and material to design and build a fully functional fire station and ancillary facilities, site work and handicap accessibility improvements in accordance with all applicable rules, regulations, and laws. The D/B fee shall be six percent (**6%**) of the cost of construction defined as the total sum of trade contracts (subcontractors), materials (purchase orders), equipment, self-performed work and general conditions. Any costs incurred by D/B in excess of said GMP shall be the sole responsibility of the D/B, unless a change order is approved by the City pursuant to Sections 9 and 14 of this Agreement. All funds remaining in the GMP at the completion of the project shall belong to the City.

1.3.2 Achieve "Substantial Completion" (as defined in §16.1) no later than \_\_\_\_\_.

1.3.3 Achieve "Final Completion" (as defined in §16.2) No later than \_\_\_\_\_.

Section 2: General Obligations of City

2.1 City shall be obligated as follows:

2.1.1 City shall designate a representative (or representatives) who is/are authorized to act on behalf of City with respect to the Project, except as to those decisions specified herein or by law that require authorization by the Escondido City Council.

2.1.2 City shall make decisions with reasonable promptness to avoid delay in the orderly progress of D/B's services per the schedule in Exhibit 3.

2.1.3 City shall pay for and cause to be completed all necessary environmental studies and obtain environmental approvals and/or permits with reasonable promptness to avoid delay to the orderly progress of D/B's performance per the schedule in Exhibit 3.

2.1.4 At the request of D/B, City shall use its best efforts to provide D/B with any available information about the Project Site geotechnical soil conditions; it will, however, be the responsibility of D/B to take all reasonable steps to verify all such information as it deems necessary to perform its services under this

Agreement. City does not warrant to D/B the accuracy or completeness of any such information.

2.1.5 City shall cooperate with D/B in identifying, processing and securing required permits, licenses and inspections in a timely fashion; however, this duty to cooperate does not relieve D/B of its primary obligations to identify, apply for and secure all necessary permits, licenses and inspections in a timely manner.

2.1.6 City shall make payments to D/B in the amounts and in accordance with the terms set forth below.

2.1.7 City shall issue Certificate of Substantial completion when City reasonably determines the Project has achieved Substantial Completion as defined in Section 16.1.

2.1.8 City shall issue a Notice of Acceptance when City reasonably determines the Project has achieved Final Completion as defined in Section 2.

2.2 City Review Process. City shall review 100% of CD's, which shall allow for construction of the Project in conformity with the approved Conceptual Plan for the Project.

### Section 3: General Obligations of D/B

3.1 D/B shall be obligated as follows:

3.1.1 At all times in performing its services under this Agreement, D/B shall provide limited pre-construction design support services and deliver the best possible Project consistent with standard of care in Section 3.3 that satisfies the time, monetary, quality and design parameters set forth in this Agreement.

3.1.2 D/B shall Construct the Project on time, consistent with time frames set forth in the schedule in Exhibit 3, and in such a manner that the GMP or Contract Time of the Project shall not be exceeded, but if D/B reasonably believes that any action, inaction, decision or direction by City or agent for the City will likely result in the GMP or Contract Time being exceeded or the Project being completed late, D/B will notify City at Project Team meeting and in writing within five (5) calendar days of discovering such action, inaction, decision, or direction. Included in such notice will be an estimate of the cost and time impact resulting from such action, inaction, decision or direction. D/B shall provide complete and accurate pricing within ten (10) calendar days of said discovery.

3.1.3 D/B shall perform, or obtain the prior written consent of City to subcontract all design support services for the Project utilizing qualified, licensed and sufficiently experienced architects, engineers and their professionals (herein



jointly "Design Support Consultants") as identified in Exhibit 4. D/B shall not be permitted to substitute any Design Support Consultant unless authorized by City. The fact that City approves the subcontracting of any such services will in no way relieve the D/B of any of its obligations or responsibilities under this Agreement.

3.1.4 D/B shall perform all construction on the Project utilizing subcontractors appropriately licensed by the California Contractors State License Board or other required agency.

3.1.5 D/B shall perform all services as expeditiously as is consistent with reasonable skill and care and shall complete the services within each and all of the time periods set forth in this Agreement.

3.1.6 D/B shall comply with the California Fair Employment and Housing Act and all other State, Federal and local laws including, but not limited to, those prohibiting discrimination, on account of race, color, national origin, religion, age, sex or handicap.

3.1.7 Pursuant to Section 1770 et seq. of the California Labor Code, D/B agrees that a prevailing rate and scale of wages, in accordance with applicable State and Federal Law, will be paid in the carrying out of this Agreement. D/B shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the 'General Prevailing Wage Rates' approved by the Department of Industrial Relations as of the date of the execution of this Agreement. Said rates and scales are herein referred to and adopted in this Agreement as though fully and completely set forth herein, and said scale as adopted by the Department is made a part of this Agreement by reference. Copies of the prevailing rate of per diem wages are available on the Internet at (<http://www.dir.ca.gov/DLSR>). Neither City, nor any elected nor appointed boards, officers, officials, employees, or agents of City, shall be liable, at law or in equity, as a result of any failure of D/B to comply with this section.

3.1.8 D/B shall study all applicable laws, codes, ordinances, rules, orders, regulations, and statutes affecting the Project, including but not limited to, zoning, environmental, building, fire and safety codes and coverage, density and density ratios and lien laws, and comply with them in performance of its services. D/B shall ensure that within the established GMP that the Project conforms to all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements, (collectively "Governmental Requirements") existing as of the date of this Agreement. However, City recognizes that Governmental Requirements and their interpretations by governmental officials ("Code Authority") are often subject to change at any time, even after issuance of a building permit. If, after the date of this Agreement, modifications to the Project are required because of a change in Governmental Requirements or their interpretation by a Code Authority which had not

previously been given, or which if given, was different than a prior interpretation of a Code Authority, D/B shall make the required modifications to comply with the same. However, in the event of such an occurrence, the GMP and Contract Time may be subject to an adjustment in accordance with Section 14. Nothing contained in this paragraph shall relieve D/B of its obligations to modify the Project at its own expense where D/B has failed to construct the Project in compliance with Governmental Requirements applicable as of the date of this Agreement.

3.1.9 D/B shall take all reasonable steps during the course of the Project so as not to interfere with the ongoing operation of the adjacent residences, businesses and facilities, including but not limited to the following:

3.1.9.1 Pedestrian and vehicular access; and

3.1.9.2 D/B shall control dust and noise in accordance with the provisions in Section 7-8.1 of the 2009 Edition of the Standard Specifications for Public Works Construction, City Ordinances and this Agreement.

3.1.10 D/B shall use reasonable care to avoid damaging existing buildings, equipment and vegetation adjacent to the Project Site, except as set forth in the approved plans. If D/B causes damage to any of this property, D/B shall replace or repair said property at no expense to City and said damage shall not be a basis for seeking an adjustment to the GMP or Contract Time. D/B agrees to indemnify City for any and all fines, penalties, liabilities and costs imposed upon City, its officers, employees and agents as a result of this Project.

3.1.11 D/B shall obtain all permits necessary to complete the Project. City shall pay for cost of said permits. D/B shall be responsible for obtaining and paying for all permits normally obtained by the trades or subcontractors.

3.1.12 D/B shall ensure the Project design conforms to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and the Americans with Disabilities Act ("ADA").

3.1.13 D/B shall provide cost estimating and value engineering services, which take into consideration long-range maintenance costs, energy efficiency, and impact operation of the Project.

3.1.14 D/B shall review soils and geotechnical reports relating to the Project Site and determine and advise City if any further subsurface investigations are warranted. If such further investigations are authorized by City, D/B shall perform said investigations. The costs of said investigations are Reimbursable Costs to be paid by the City without markup, pursuant to Section 13.

3.1.15 D/B shall be fully responsible for all additive costs, damages, and liabilities resulting from errors or omissions beyond the standard of care defined in Section 3.3 by D/B or D/B's agents, employees, design support consultants

and contractors. Such costs, damages and liabilities shall not be chargeable to the City nor shall they be a basis for seeking an adjustment in the GMP or Contract Time.

3.1.16 D/B shall be fully responsible for all additive costs, damages, and liabilities resulting from errors or omissions beyond the standard of care defined in Section 3.3 by D/B or D/B's agents, employees, design support consultants and contractors. Such costs, damages and liabilities shall not be chargeable to the City nor shall they be a basis for seeking an adjustment in the GMP.

3.2 D/B agrees to fully assume all risks, and costs associated with such risks, in performing the services and meeting the obligations under this Agreement.

### 3.2.1 Unanticipated subsurface site conditions

3.2.1.1 City assumes risks for unanticipated subsurface site conditions provided D/B notifies City in writing within five (5) calendar days of discovery if D/B believes it has uncovered or revealed a condition which:

3.2.1.1.1 differs materially from that indicated in the soils and geotechnical reports furnished by City, or

3.2.1.1.2 is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in the work required by this Agreement.

3.2.1.2 Upon receipt of written notice, City shall promptly investigate and if it determines the conditions do materially differ, requiring a change in the Work, City shall commence the processing of a change order pursuant to Section 14. If City determines there is no bona fide Work scope change or if the change in Work is a minor change, which does not impact GMP or Contract Time, City shall notify D/B within ten (10) calendar days;

3.2.1.3 D/B shall not be entitled to an adjustment in the GMP or Contract Time if D/B knew or should have known of the existence of such conditions at the time D/B submitted and agreed to GMP or Contract Time, or if the existence of such condition could reasonably have been discovered as a result of D/B's obligations pursuant to Section 3.1.15.

3.3 D/B shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations. Compliance with this section by D/B shall not in any way excuse or limit D/B's obligations to fully comply with all other terms in this Agreement.

3.3.1 D/B warrants that at least one member of the D/B team shall be licensed by the California Contractor's State License Board as a General Building Contractor. D/B is to provide a list of the responsible people within their organizations performing services, which shall include their qualifications and

their function, for approval by the City prior to start of construction. City and D/B shall establish "key personnel" who shall remain on the Project until Final Completion. If any such "key personnel" leave the employment of D/B, City shall have the right to approve the replacement personnel assigned to this Project. D/B shall comply with all licensing requirements of the State of California, County of San Diego, and City of Escondido.

3.3.2 Throughout all phases of the Project hereunder, the Individual Project Manager shall be as reflected in Exhibit 4. So long as the Individual Project Manager remains in the employ of the General Contractor, such persons shall not be changed or substituted from the Project, or cease to be fully committed to the Project as deemed necessary by the City in its reasonable discretion, without the prior written consent or instruction of the City. Any violation of the terms and provisions of this Section shall constitute a material breach of this Agreement.

3.3.3 Notwithstanding the foregoing provisions of Section 3.3.2 if the Individual Project Manager proves not to be satisfactory to the City, upon written notice from City to the General Contractor, such person or persons shall be promptly replaced by a person who is acceptable to City in accordance with the procedures set forth below.

3.3.4 Within five (5) working days after receipt of a notice from the City requesting the replacement of any Individual Project Manager, or promptly following the discovery by the Design Build Team that any Individual Project Manager is leaving the employ of the General Contractor, as the case may be, the replacement/substitution (together with such person's resume and other information regarding such person's experience and qualifications) shall be submitted for approval by City. The replacement/substitution shall commence work on the Project no later than five (5) calendar days following the City's approval of such replacement, which approval shall not be unreasonably withheld. In the event that the City and Design Build Team cannot agree as to the substitution of replacement of the Individual, the City shall be entitled to terminate this Agreement for cause.

3.4 D/B shall cooperate with City in obtaining Environmental approvals and/or permits.

3.5 D/B agrees and acknowledges that the City Representative is the only person with authority to approve additions or modifications to the Project. Any costs or delays resulting from or associated with additions or modifications implemented without the written authorization of City Representative shall be borne exclusively by D/B and not be grounds for an increase in GMP or Contract Time unless necessary to protect public health, safety or property.

3.6 D/B is to provide progress photographs taken at regular intervals throughout the Project. Photographic documentation shall depict an overview of Project site showing work in progress. Dates and times are to be documented. Copies of

documentation shall be transmitted to the City monthly. The costs are Reimbursable Costs to be paid by City without markup, pursuant to Section 13.3.

3.7 D/B shall fully cooperate with City Representative and any of its agents assigned to this project.

Section 4: Work Restriction and Bidding Requirement

4.1 D/B shall determine how best to package portions of the work for purposes of bidding. D/B shall be responsible for selectively bidding all construction work to others and for entering into subcontracts, in D/B's own name, with the bidder who in D/B's discretion best meets the monetary, time, and performance requirement of the Project. D/B is required to submit a summary of bid results for each bid package. D/B shall be responsible for ensuring that these contracts fully comply with all applicable local, state and federal laws, some but not all of which are listed below.

4.2 D/B shall hear and decide bid protests and shall develop and maintain bid protest procedures for that purpose. City shall be timely informed of all bid protests (prior to resolution) and the outcome of said protests.

Section 5: D/B's Phase I Services and Obligations – Design Support

5.1 D/B's services in Phase I shall include, but are not limited to: utilizing the City required standard specifications, facility program requirements, approved master plans, Federal, State, and City performance and design criteria, concept drawings and reports that will be identified in the Design/Build Contract. D/B shall:

5.1.1 Provide design support and constructability review of construction drawings and specifications suitable for obtaining City approval and issuance of permits and limiting conflicts in the design documents.

5.1.2 Complete design support for all elements of the project, including, but not limited to: architectural, civil, structural, landscape architectural, mechanical, plumbing, electrical, and specialty consulting areas such as for utilities, communication, security, and other specialty consultants that may be needed for the planning and construction of this type of facility.

5.1.3 Evaluate alternative structural and construction approaches for all facilities to ensure economical designs that optimize constructability yet meet all codes, architectural concepts, conceptual designs, and standard specifications of the project. Project Design shall satisfy ADA requirements as required, ADAAG, and the State of California Title 24 Regulations.

5.1.4 Incorporate the requirements of permitting agencies as may become apparent in the course of design. The D/B shall apply for and secure all permits and provide all contractor permit information to obtain the permits. In addition, the D/B shall be aware of all Air Pollution Control District and noise abatement requirements, along with any hazardous materials management

requirements of NFPA, Cal-OSHA and the Escondido Fire Department. The D/B shall become familiar with all appropriate environmental plans, including but not limited to, an air pollution control plan, a noise abatement plan and a hazardous materials management plan. The D/B shall submit, manage and obtain approval of an application for a Stormwater Management Permit to the appropriate authority and update the plan during construction for construction sequencing and modify the plan when required. The D/B shall be responsible for implementing all mitigation measures required by the CEQA documents for the projects.

5.1.5 Review current Construction Cost Estimates and Project Budgets based on project plans at Project inception. D/B shall prepare a revised Cost Estimate based on Construction Documents and Bidding to reflect a final Project Budget.

5.1.6 Perform value engineering ("VE") reviews to reduce cost and/or add value, utilizing all team members and City resources. D/B shall include recommendations to maximize energy efficiency and build a "green" or low-pollution project. D/B shall prepare a VE Report of all considerations, recommendations and decisions. D/B's goal is to maximize the quality of construction at a cost equal to or below the Project Budget.

5.1.7 Perform Quality Control ("QC") Review of the drawings and specifications throughout all Phases in order to correct errors and omissions and reduce the quantity of Change Orders during the course of construction. D/B shall include a detailed review of drawings and designs relative to Code Compliance Laws. D/B shall organize and publish detailed QC Reports based on all findings.

5.1.8 Establish a Critical Path Method Construction Schedule and monitor and update said Schedule to keep the Project on schedule.

5.1.9 Establish a bidding strategy. D/B shall identify, contract, and procure long lead items. D/B shall create early bid packages where applicable.

5.1.10 D/B agrees that any savings at the end of the Project will be deducted from the GMP and returned to City.

5.1.11 During the Bidding of the Project, D/B shall:

5.1.11.1 Recommend appropriate subdivisions of work into discrete Bid Packages.

5.1.11.2 Create detailed Scope of Work Packages for bidding to multiple sub-contractors that will be contracted directly to D/B.

5.1.11.3 Provide competitive bids (minimum 3) for each package and competitively bid each package.

5.1.11.4 Receive and submit to the Architect all Requests for Information ("RFI") and bid questions.

5.1.11.5 Schedule meetings with the City to review bid results and clarify Scopes of Work, exclusions, etc. D/B shall ensure bids match D/B Scope of Work.

5.1.11.6 Make recommendations for selections and award of bids based on best value. D/B shall provide cost spreadsheets that compare bids to cost estimates. If best value bid exceeds cost estimate, D/B shall prepare recommendations to resolve the problems and reduce cost without compromise to the overall goals of the Project, while remaining within budget and on schedule.

5.1.12 Provide constructability review with City participation at all stages of design completion. D/B shall incorporate results of the team's review into the design.

5.1.13 Provide construction cost control estimates during the design to support VE and constructability reviews. D/B shall revise these cost control estimates once accepted VE recommendations and other review comments have been incorporated.

5.1.14 Identify all permit requirements and prepare applications and support documents necessary for obtaining all permits. Permit fees will be borne by the City.

5.1.15 Prepare draft Operations Manual Index to serve as the basis for preparing the final Operations Manual during the construction phase.

## Section 6: D/B's Phase II Services and Obligations – Construction Documents

6.1 D/B's services in Phase II shall include but are not limited to the following:

6.1.1 D/B shall continue to develop and refine Project requirements and review such requirements with City.

6.1.1.1 D/B shall evaluate alternative structural and construction approaches to ensure economical designs, which optimize constructability yet meet all codes, architectural concepts, schematic designs, and standard specifications of the Project. Design and construction shall also meet all ADA requirements.

6.1.1.2 D/B shall provide additional site surveys and geotechnical investigations to the extent the D/B determines they are necessary for final design. The survey information provided by City is preliminary in nature and may not have sufficient accuracy or scope to support final design.

6.1.1.3 D/B shall furnish support to a City constructability review team. D/B shall incorporate the results of this review into the design.

6.1.1.4 D/B shall provide updated construction cost estimates at durations specified in this Agreement to support VE and constructability reviews.

6.2 D/B shall determine and establish the sequence of construction, and if appropriate, identify separate bid packages to accomplish phased construction of the Project.

6.3 D/B shall prepare a detailed Critical Path Method Schedule for all construction components of the Project Schedule showing all major milestones, bid dates for the major bid packages, commencement of construction, sequence of construction, completion of structural elements, completion of the fire facility, all of which shall conform with the dates of Substantial Completion and Final Completion of the Project.

6.4 D/B shall notify City within seven (7) days in writing whenever D/B reasonably believes that the cost of the Project is likely to exceed the GMP or Contract Time and include in said notice:

6.4.1 An itemized cost breakdown estimate; and

6.4.2 A list of recommended revisions which D/B believes will bring Project within the GMP.

6.5 D/B shall assist City in reviewing the itemized cost breakdown and recommend revisions so that City can revise the scope of the Project so that the GMP is not exceeded.

6.6 D/B shall provide accounting system data that will be updated, expanded and provided to City monthly as the Project develops.

6.7 D/B shall develop and implement Project Management Plan and Procedures including:

6.7.1 Project status reports

6.7.2 Coordination/interface with City and its other consultants/contractors

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6.7.4 Biweekly Design and Construction meetings

6.7.5 Interface and communicate with other agencies

6.7.6 Vendors and subcontractors management



6.7.7 Document control

6.7.8 Schedule and budget control

6.7.9 Quality assurance and quality control

6.7.10 Throughout the design phase, the D/B shall provide scheduling and cost control reports monthly.

6.8 D/B shall submit and obtain approval from City of Phase II items. D/B shall provide written confirmation that the project is still within the GMP and can be built in accordance with the DCS. Said written confirmation shall include an accounting of all costs and expenses incurred to date against the GMP. D/B shall obtain written approval from City to proceed to Phase IV.

6.9 City and D/B may mutually agree in writing that D/B may contract for or perform certain limited Phase III services during earlier phases to expedite completion of the Project, for such tasks as, for example, demolition of the buildings and relocation of utilities, and other critical path activities to meet the Project Construction Schedule. However, absent such written agreement, D/B shall not proceed with any Phase III services until the City issues a written Notice to Proceed with Phase III.

6.10 D/B shall present to the City for approval the following: Management and Implementation Plan and Construction Schedule.

6.10.1 Upon presentation by D/B to the City of the items specified in Section 6.8, the City may:

6.10.1.1 Approve the Management and Implementation Plan and DCS and authorize D/B to proceed with Phase III services; or

6.10.1.2 Determine not to proceed with the Project and terminate this Agreement in accordance with Section 26.3 of this Agreement; or

6.10.1.3 Direct D/B to revise and resubmit documentation submitted to City pursuant to Section 6.10 which does not conform to previously approved direction of City any delay or additional costs resulting from the resubmittal shall be borne exclusively by D/B and are not to be grounds for an increase in the GMP or Contract Time.

## Section 7: D/B's Phase III Services: Construction Services

7.1 After City formally approves any required cost estimates, 100% Construction Documents and Construction Schedule, City shall issue to D/B a written Notice to Proceed with Phase III Services. The D/B shall construct the Project in accordance with City-approved plans and specifications prepared by the D/B to meet or exceed all requirements of the City provided program, schematic design and the performance criteria. The D/B's Phase III Services shall include but are not limited to:

7.1.1 Prepare and submit to City for review separate bid packages as D/B determines appropriate to enable the construction of the Project to proceed in an efficient and cost effective manner;

7.1.2 Conduct competitive bidding for the respective bid packages;

7.1.3 Schedule and conduct pre-bid conferences to answer questions posed by bidders; said answers and any other information required to provide clarification to the Construction Documents during the bidding process shall be issued as written addenda and provided to all prospective bidders;

7.1.4 Execute subcontracts, in D/B's own name, with the bidder best meeting the monetary, time, and performance requirements of the Project in the professional opinion of the D/B;

7.1.5 Perform construction management and administration services during the construction of the Project;

7.1.6 Coordinate all construction means, methods, techniques, sequences and procedures;

7.1.7 Coordinate scheduling of bid packages, submittals, and all design and construction of the Project to ensure the efficient and orderly sequence of the construction of the Project. D/B shall Monitor and report to the City on actual performance compared to schedule;

7.1.8 Give all notices and comply with laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project;

7.1.9 Prepare all change orders, including zero dollar change orders which require the use of D/B Contingency Fund, irrespective of impact on GMP and Contract Time, which shall require City approval;

7.1.10 Establish and maintain a quality control program with appropriate reviews and independent testing procedures to ensure compliance with the Construction Documents;

7.1.11 Coordinate all required inspections in such a manner that the progress of construction is not affected or impacted;

7.1.12 Correct any work which does not conform to the Construction Documents;

7.1.13 Keep City informed of the progress and quality of the design and construction of the Project;

7.1.14 Pay royalties and license fees, if applicable. D/B shall defend suits or claims for infringement of patent rights and shall defend and hold City and

City's agents harmless from loss on account thereof; except that City shall be responsible for such loss when a particular design, process or product of a particular manufacturer is required by City. However, if D/B has reason to believe the use of a required design, process or product is an infringement of a patent, D/B shall be responsible for such loss unless such information is promptly given to the City in writing;

7.1.15 Ensure the Project site is maintained in a clean, neat, sanitary and safe condition free from accumulation of waste materials or rubbish. Prior to Final Completion, D/B shall cause to be removed from and about the Project site all tools, construction equipment, machinery, surplus materials, waste materials and rubbish;

7.1.16 Develop a mutually agreed upon program to abate and minimize noise, dust, and disruption to access for parking and services at all times for adjacent business entities and residences;

7.1.17 Provide City with a Construction Schedule on an approved software within fourteen (14) working days after receiving Notice to Proceed with Phase III, provide updated versions of Construction Schedule on a monthly basis and provide immediate notice of any impact on critical path items;

7.1.18 Conduct and prepare minutes for bi-weekly Project team meetings with City and appropriate design and construction members;

7.1.19 Maintain a complete and up-to-date set of Construction Documents in the Project's field office at all times during construction which reflect all changes and modifications, and at the end of construction prepare for City a complete set of Project documents, along with four reproducible, and one electronic set of drawings depicting As-Built conditions for the Project;

7.1.20 Notify City in writing when D/B believes that the Project has achieved Substantial Completion, participate with City in inspecting the completed construction, prepare a punchlist and cause the punchlist items to be performed and/or corrected in accordance with the Construction Documents;

7.1.21 Notify City in writing when D/B believes that the Project has achieved Final Completion. D/B shall assemble and deliver to City upon Final Completion all records, documents, warranties, bonds, guarantees, maintenance/ service contracts, and maintenance and operating manuals;

7.1.22 Inspect the Project during the one-year general building warranty period, identify items requiring repair, and oversee those repairs. D/B shall inspect each component at 180 and 360 days after Final Completion of Project and prepare reports to City, develop budgets and direct all repairs;

7.1.23 Conduct contractor meetings, as necessary, to provide technical input;

7.1.24 Assist during final acceptance process by furnishing final walk-through(s) and comments;

7.1.25 Be responsible for complete management, supervision, and reporting of all aspects of the construction of this Project;

7.1.26 Provide resident management and contract administration, including specialists necessary for the functional, safe, on-budget and on-schedule completion of the Project, starting with the issuance of a Notice to Proceed, upon receipt of final construction drawings, from the City and extending through issuance of Notice of Completion and Acceptance. D/B shall be responsible for contracting for and scheduling specialty inspections to verify compliance with the plans, specifications and contract documents. City staff will perform standard building code inspections;

7.1.27 Ensure construction compliance with applicable local, state, and federal codes, building and environmental permit requirements, construction mitigation documents and enforcement of the Contract Documents;

7.1.28 Be responsible for the construction and all contract administration services during the construction of the Project in accordance with all applicable laws, regulations, and codes, including, but not limited to, the 1990 Americans with Disabilities Act (ADA) and Title 24 California Code of Regulations ("Building Code") as defined in Section 18910 of California Health and Safety Code. The D/B is responsible as an employer and City representative to comply with all portions of Title 24 and the ADA;

7.1.29 Provide surveying, and other contracted services as required to complete project construction inspection and testing tasks. The D/B will be responsible for contracting for special inspection services and City will be responsible for periodic building inspections. D/B is responsible for scheduling and coordinating all inspections and paying for all re-inspections;

7.1.30 Develop a project-specific Plan for defining, tracking and reporting cash flow activity requirements and submit such plan to the City for review and approval prior to implementation;

7.1.31 Implement and maintain an internal records management and document control system as required to support project operations. The D/B shall provide records management and document control information in a manner consistent with the City's reporting system; process and shall resolve any warranty provision issues. The D/B shall report progress of project contract closeout to the City in a manner consistent with the City's reporting system;

7.1.33 Administer and enforce the Environmental Mitigation Monitoring and Reporting Plan for the Project, if any. The D/B shall report a record of environmental issues to the City in a manner consistent with the City's reporting system;

7.1.34 Prepare an Operations Manual.

7.2 Unless the D/B receives the City's prior approval to substitute equal or better quality materials, the D/B warrants to City that materials and equipment incorporated in the Project will be new, unless otherwise specified, and that the Project will be of good quality, free from faults and defects, and in strict conformance with the Construction Documents and in accordance with Section 22.

Section 8: D/B's Phase IV Services and Obligations: Operation/Startup Phase

8.1.1 The D/B shall prepare, submit for City review and written approval, and implement a Project Startup and Testing Plan for the Project.

8.1.2 The D/B shall conduct Operator Training Sessions for facilities.

8.1.3 The D/B shall supervise, manage, and coordinate all project startup and testing activities for mechanical systems within the provisions of the project Contract Documents.

8.1.4 The D/B shall report progress of project startup and testing to the City in a manner consistent with the City's reporting system.

8.1.5 The D/B shall report to the City all guarantee/warranty disputes. The D/B shall proceed to resolve such disputes after having submitted to the City for review and approval the D/B's approach for obtaining resolution for the dispute.

Section 9: Additional Services

9.1 City will have the right to direct D/B to perform Additional Services beyond those specified in this Agreement. D/B may provide Additional Services only if authorized in writing, in advance, by City and after complying with Section 9.4. The City may propose changes to the Work of a subcontractor after the bid has been awarded. In the event of a change of this nature, D/B will estimate the cost of the Change Order, assist City in developing drawings and specifications as necessary, solicit a revised bid, negotiate with the subcontractor, present a recommendation for a Change Order to City, and implement construction as approved by City.

9.2 For Additional Services which increase the Hard Construction Costs, design costs, or other reasonably necessary costs of the Project, D/B shall be paid a seven percent (7%) fee on the total additional services cost.

9.3 For additional services, which result in an extension of the Substantial Completion date, D/B shall be paid a fee equal to the number of working days the Substantial Completion date is extended multiplied by the daily proration of the general conditions fee included within the GMP.

9.4 If at any time D/B contends that it is being asked to perform Additional Services, it shall give City written notice five (5) days prior to performing said

services indicating that D/B intends to seek additional compensation beyond the D/B Fixed Fee. Furnishing advance written notice shall be a condition precedent to being able to seek additional compensation from City.

#### Section 10: Bonds

10.1 D/B shall furnish performance and payment bonds with the names of the obligees designated as the City in the amount set forth below, as security for the faithful performance and payment of all D/B's obligations under the Agreement. These bonds shall remain in effect at least until thirty (30) days after the filing date of Notice of Completion, except as otherwise provided by law or regulation or by this Agreement. D/B shall also furnish such other bonds as are required by this Agreement.

10.1.1 The performance bond shall be in the amount of 100% of Hard Construction Costs.

10.1.2 The payment bond shall be in the amount of 100% of the Hard Construction Costs.

10.2 All bonds shall be in the form prescribed by City and by such sureties which are authorized to transact such business in the State of California, listed as approved by the United States Department of Treasury Circular 570, and whose underwriting limitation is sufficient to issue bonds in the amount required by this Agreement and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure, except as provided otherwise by laws or regulations. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Surety companies must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits so required.

10.3 If the surety on any bond furnished by D/B is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, D/B shall within seven (7) days thereafter substitute another bond and surety, which must be acceptable to City.

#### Section 11: Insurance

11.1 The insurance provisions herein shall not be construed to limit D/B's indemnity obligations contained in this Agreement.

11.2 D/B shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the D/B, its agents, representatives, employees or subconsultants. All subconsultants shall be required to comply with the applicable insurance provisions. The maintenance of proper coverage is a material element of this Agreement and that failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Agreement.

### 11.3 Minimum Scope of Insurance

11.3.1 Coverage shall be at least as broad as:

11.3.1.1 Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) including Insurance Services Office Form (G0009 11 88 Owners and Contractors Protective Liability Coverage Form – Coverage for Operations of Designated Contractor).

11.3.1.2 Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

11.3.1.3 Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

11.3.1.4 Errors and Omissions Insurance. The D/B shall carry errors and omissions insurance for any work performed by licensed design professionals retained by D/B under this Agreement.

11.3.1.5 Builder's Risk Property Insurance: D/B will provide coverage for "all risk" Builder's Risk Insurance, excluding the peril of earthquake, and subject to other policy terms, conditions and exclusions, Coverage will be provided for the Full Hard Cost Replacement Cost of Materials, Equipment and fixtures destined to become a permanent part of the structure, Property in Transit, and Property in Offsite Storage for Fire Station No. 1 construction in an amount to be mutually agreed upon. Contractors and Subcontractors will be added to policies as Loss Payees as their interest may appear.

11.3.1.6 Contractor and its Subcontractors will be solely responsible for any loss or damage to their personal property including contractor's tools and equipment owned, used, leased, or rented by the Contractor or Subcontractor.

11.3.1.7 Any policy deductible amount will be the responsibility of Contractor and/or Subcontractor.

### 11.4. Minimum Limits of Insurance

11.4.1 Contract or appropriate subcontractor shall maintain limits no less than:

11.4.1.1	General Liability	\$3,000,00	per occurrence for bodily injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this
	(Including operations, products and completed operations.)		

			Project/location or the general aggregate limit shall be twice the required occurrence limit.
11.4.1.2	Automobile Liability:	\$1,000,000	per accident for bodily injury and property damage.
11.4.1.3	Workers' Compensation Employer's Liability	\$1,000,000	per accident for bodily injury, disease policy limit and disease- each employee.
11.4.1.4	Errors and Omissions	\$1,000,000 \$2,000,000	per occurrence policy aggregate
11.4.1.5	Builder's Risk	TBD	Hard Construction Cost of Structure

11.5 Deductibles and Self-Insured Retentions

11.5.1 Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the D/B shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

11.6 Other Insurance Provisions

11.6.1 The general liability policy shall contain, or be endorsed to contain, the following provisions:

11.6.1.1 The City, its officers, officials, employees, and volunteers are to be covered as additional insureds using ISO Form CG 2010 or its equivalent, with respect to liability arising out of work or operations performed by or on behalf of the D/B including materials, parts or equipment furnished in connection with such work or operations.

11.6.1.2 For any claims related to this project the D/B's insurance coverage shall be the primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the D/B's insurance and shall not contribute to it.

11.6.1.3 Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under



Subdivision (b) of Sections 2782 of the Civil Code.

11.6.1.4 D/B's insurer will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage during the life of this contract.

#### 11.7 Verification of Coverage

11.7.1 D/B shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

#### 11.8 Subcontractors

11.8.1 All coverages for subcontractors or subconsultants shall be subject to all of the requirements stated herein. Subcontractors and Subconsultants shall be protected against risk of loss by maintaining insurance in the categories and at the limits required herein. Subcontractors and Subconsultants shall name City and D/B as additional insureds under its policies.

11.9 Cooperation. The D/B and its Contractors shall cooperate fully with and provide any information or records requested by the City or regarding all aspects of the insurance and project, including but not limited to claims, audit, payroll, insurance records and safety. Delays in reporting information to the City may result in delays in progress payments to the D/B.

11.10 Prior to beginning Work under the Agreement, each and every Contractor of any tier shall furnish Certificates of Insurance satisfactory to the City. All such Certificates shall contain at least the following provisions:

11.10.1 Thirty (30) days written notice to the City prior to any cancellation, non-renewal or material reduction in coverage.

11.10.2 The words "will endeavor" and "but failure to mail such notice shall impose no such obligation or liability of any kind upon the company, its agents or representatives" will be deleted from the Certificates.

11.10.3 Throughout the life of the Agreement, each and every Contractor of any tier shall pay for and maintain in full force and effect, with Insurers authorized by the California Insurance Commissioner to do business in the State of California, any policies required by this Agreement.

11.10.4 Any insurance provided for this project is to be placed with licensed insurers admitted to transaction business in the State of California with a current A.M. Best Rating of not less than A-V. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A:X. Any exceptions are at the sole discretion of the City and subject to written approval of the City.

11.11 Questions concerning the insurance requirements of this Agreement shall be directed to the City Representative.

#### Section 12: Inspection

12.1 D/B shall be responsible for all specialty inspection and material testing and inspections. The City shall perform building inspection with its own forces. It shall be the responsibility of D/B, however, to call for, coordinate and schedule all inspections.

12.2 City, its consultants, subcontractors, independent testing laboratories as well as other governmental agencies with jurisdictional interests will have access at reasonable times for this observation, inspecting and testing. D/B shall provide them proper and safe conditions for such access and advise them of D/B's safety procedures and programs so that they may comply.

12.3 D/B will make, or have made, such inspections and tests, as the City deems necessary, to see that the Work is being accomplished in accordance with the requirements of the Construction Documents. Unless otherwise specified, the cost of such inspection and testing will be borne by the City. In the event such inspections or tests reveal non-compliance with the requirements of the Construction Documents, D/B shall bear the cost of corrective measures deemed necessary by City, as well as the cost of subsequent re-inspection and re-testing. Neither observations by the City nor inspections, tests, or approvals by others shall relieve D/B from D/B's obligations to perform the Work in accordance with the Construction Documents. D/B shall give City timely notice of readiness of the Work for all required building inspections and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. D/B shall give at least twenty-four (24) hours' notice for building inspections.

12.4 City has the right to stop or suspend Work activities which will conceal or cover up D/B Work product which is to be inspected or tested, or which will interfere with the inspection or testing activities, for a reasonable time and D/B will have no right to additional cost or time it may incur as a result of the Work stoppage.

#### Section 13: D/B GMP for Services and Reimbursements

13.1 The GMP includes the Hard Construction Costs, D/B Contingency Fund, Reimbursable Costs, and D/B Fixed Fee for the complete design and construction of the entire Project; provided that:

13.1.1 The GMP shall not exceed \$2,189,000 and included within said GMP are Design Support Services and General Conditions.

13.1.2 D/B contingency fund shall not exceed five percent (5%) of the Hard Construction Costs.

13.1.3 All Hard Construction Costs included in the GMP are for direct Construction costs incurred in performing the work, including taxes, delivery and installation. City shall reimburse D/B for the exact amount of subcontract, self performed work or invoice amount. No additional D/B markup, handling fees, overhead, or other charges are to be added or paid except as otherwise set forth in this Agreement. Upon Final Completion of the Project, any amount of Hard Construction Costs or D/B Contingency Fund monies not utilized shall result in a deductive Change Order.

13.1.4 The GMP shall include a D/B Contingency Fund which can be used by the D/B with City approval. If the Parties mutually agree that there is a sufficient surplus, the D/B Contingency Fund will be available to provide additional funds for Change Orders as provided for in Section 7 of this Agreement. This Contingency Fund will not be available for: (1) Work required due to D/B's and/or Contractors/subcontractors failure to perform according to the terms of this Agreement and/or in compliance with the Construction Documents, or (2) uninsured losses resulting from the negligence of D/B or its Contractors/subcontractors. All change orders, including zero dollar change orders, which require the use of the D/B Contingency Fund, shall require City approval.

13.1.5 D/B shall prepare, with the cooperation of City, alternate bid items to assist in meeting the GMP.

13.2 Except as otherwise expressly provided in this Agreement, as full and complete compensation for performance of all services and obligations under this Agreement, D/B shall be compensated in accordance with the GMP. Said GMP shall not be exceeded unless additional services are requested pursuant to Section 7 above or a change order issued pursuant to Section 14. Unless otherwise expressly provided in this Agreement, D/B GMP shall include full compensation for all costs of any type incurred by D/B in performing all services and obligations under this Agreement, including but not limited to the following:

13.2.1 All Design Support Consultants, including but not limited to, communications and fire systems consultants;

13.2.2 Estimating, value engineering and construction management;

13.2.3 Construction supervision and Project management personnel, including but not limited to superintendents, Project managers, Project secretaries, Project engineers, Project accountants, and all other D/B personnel wherever located;

13.2.4 All on-site and off-site equipment, supplies and facilities, including but not limited to, computers, estimating, dictating, communication and accounting equipment, office space, trailers, field equipment and storage facilities;

13.2.4.1 In no case shall the cumulative monthly rental charges to the Project for equipment and Small Tools used by the D/B exceed ninety percent (90%) of the fair market value of any one piece of equipment or Small Tools. At City's option, the full price for equipment or Small Tools may be paid, and City may take possession upon completion of the Work.

13.2.5 All home-office and field overhead costs of any type including document control and retention;

13.2.6 All business license costs;

13.2.7 All profit D/B intends to earn under this Agreement.

13.2.8 All direct and incidental costs incurred by D/B, except for those specifically identified in Section 9.

13.3 D/B shall be reimbursed, without markup and only as specified in this Agreement for the following "Reimbursable Costs."

13.3.1 Any reimbursable cost expressly provided for elsewhere in this Agreement.

13.4 D/B agrees and acknowledges the City retains its full and complete discretion for all legislative actions, including any future appropriations necessary to complete this Project or fund this Agreement. As more fully provided in Section 26, the City may terminate this Agreement for any reason, including but not limited to, if City Council fails to appropriate sufficient funds.

#### Section 14: Change in GMP and Contract Time

14.1 The GMP and Contract Time may only be changed by written Change Order. Change Orders shall be issued only under the following circumstances:

14.1.1 The City directs D/B to perform Additional Services or City Changes as provided in Section 9.

14.1.2 For reasons expressly provided elsewhere in this Agreement.

14.2 The following procedure shall be followed for the issuance of Change Orders:

14.2.1 Upon the occurrence of any event that gives rise to a Change Order, D/B shall give the City notice of the same with five (5) days. D/B shall not proceed with any such services or work until such notice has been given to City

except if such services or work are necessary to protect public health, safety or property.

14.2.2 Unless otherwise directed by City Representative in writing, before proceeding with any Change Order work, D/B shall promptly provide City with a detailed and complete estimate of cost impact associated with the Change Order, including all appropriate direct and indirect costs and credits. All such costs and credits shall be accurately categorized into D/B Fixed Fee, Reimbursable Costs or Hard Construction Costs. D/B shall also provide City with a realistic estimate of the impact, if any, the Change Order will have on the Contract Time.

14.2.3 Upon submission of the detailed estimates by the D/B, the Parties will attempt to negotiate an appropriate adjustment in GMP and Contract Time. If an agreement is reached, a Change Order reflecting said agreement will be executed by the Parties. If an agreement is not reached, the City shall have the option to direct the D/B to proceed with the subject services and/or work, during which time the D/B shall contemporaneously maintain accurate and complete records of all labor, material and equipment utilized in performing the subject services and/or work. These records shall be submitted to the City and shall become the basis for continued negotiations between the Parties for an equitable adjustment to the GMP and/or Contract Time.

14.2.4 In the event there is any disagreement or dispute between the Parties as to whether the D/B is entitled to a Change Order or the amount of the Change Order, the matter shall be resolved in accordance with Section 33. D/B shall not have the right to stop or delay in the prosecution of any services or work, including services or work that is the subject of the Change Order, pending this resolution process. Instead, D/B shall continue diligently prosecuting all such services and work.

14.2.5 City may, in its sole discretion, adjust the GMP or Contract Time for any undisputed amount or time associated with the Change Order or Additional Services.

## Section 15: Payment Terms

15.1 D/B shall provide all Phase I and II services for the Phase I and II Fee. D/B shall submit certificate and application for payment to the City on a monthly basis for Phase I-II services rendered and costs incurred. The monthly payment shall be based upon percentage of completion of the Schedule of Values plus any Reimbursable Costs as provided in Section 15.3.

15.2 D/B shall provide all Phase III and IV services for the Phase III and IV Fee. D/B shall submit certificate and application for payment to City on a monthly basis for Phase III-IV services. The monthly payment application shall be based upon the percentage of completion of the Schedule of Values plus any Reimbursable Costs and Hard Construction Costs as provided in Section 15.3 and 15.4, less any payments previously made by the City and subject to the receipt of unconditional lien releases for all prior

payments and if the invoiced amount is not disputed by City, it shall pay D/B ninety percent (90%) of payment application based upon the percentage complete of the Schedule of Values and one hundred percent (100%) of the reimbursable costs within thirty (30) days after receipt of the fully documented invoice. City will withhold the remaining ten percent (10%) as security for D/B's full performance.

15.3 D/B shall develop and maintain an accurate system for tracking all Reimbursable Costs. Utilizing this system, D/B shall include with each month payment application an itemization of all such Reimbursable Costs actually incurred by D/B, during the previous month. If requested by City, D/B shall provide all backup documentation supporting such Reimbursable Costs.

15.4 D/B shall develop and maintain an accurate system for tracking all Hard Construction Costs it incurs on the Project. Utilizing this system, D/B shall include with each monthly application for payment an itemization of all Hard Construction Costs actually incurred by D/B during the previous month.

15.5 D/B shall separately submit to City certificate and application for payment on a monthly basis for any authorized Additional Services performed by D/B. Subject to the receipt of unconditional lien releases for all prior payments and if Additional Services are not disputed by City, City shall pay ninety percent (90%) of the invoiced amount within thirty (30) days of receipt of fully complete invoice. City will withhold the remaining ten percent (10%) as security for D/B's full performance.

15.6 Subject to Sections 15.8, City shall pay D/B the ten percent (10%) retention being withheld pursuant to Sections 15.2, and 15.5 as part of the "Final Payment" to D/B. Final Payment will be made thirty-five (35) days after Final Completion.

15.7 The City Manager will consider the release of the entire retention for subcontractors upon completion of the subcontractors' work and execution of a disclaimer and unconditional final lien release by the subcontractor.

15.8 In lieu of withholding retention under this Agreement, at the election of D/B, City will deposit retention amounts into escrow and/or the substitution of securities for money as provided in California Public Contract Code Section 22300.

#### Section 16: Project Completion

16.1 Substantial Completion shall be that stage in the progress of the construction when all Work on the Project is sufficiently complete in accordance with the Construction Documents so that City can fully utilize entire Project. Substantial Completion shall further mean that all goods, services and systems to be provided under the terms and conditions of the Construction Documents are in place and have been initially tested, and are operationally functional, subject only to final testing, balancing and adjustments and normal Final Completion punchlist Work.

16.2 Final Completion shall be deemed to occur on the last of the following events: (1) recordation of a Notice of Completion for the Project; (2) acceptance of the Project by the City; (3) issuance of a final Certificate of Occupancy for the Project; (4) submission of all documents required to be supplied by D/B to City under this Agreement, including but not limited to As-Built Drawings, warranties, and operating manuals; and (5) delivery to City of a Certificate of Completion duly verified by D/B.

16.3 D/B shall provide City with a Certificate of Completion, certifying to City under penalty of perjury, that the Project has been completed in accordance with the Construction Documents, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Project.

16.4 D/B shall provide two sets of City final record drawing documents at the end of construction and one copy in electronic format ("As-Built Drawings") and one copy of reproducible drawings. As-Built Drawings are to be accurate and legible records showing exact location by dimensions, and the exact depth by elevation of underground lines, valves, plugged tees, wiring and utilities.

16.5 D/B shall provide a copy of, or make available before destruction, all records (which includes all writings as defined in Evidence Code Section 250) to the City upon receipt or generation, which shall include a copy of D/B's filing protocol.

#### Section 17: Contract Time

17.1 The "Contract Time" shall be the number of calendar days stated in Section 1 for D/B to achieve Substantial Completion.

17.2 Time is of the essence with regard to Contract Time and all milestones listed in the Construction Schedule.

17.3 The Contract Time may only be changed by a Change Order as set forth in Section 14.

17.4 An extension in Contract Time will not be granted unless D/B can demonstrate through an analysis of the Project Schedule that the increases in the time to perform or complete the Project, or specified part of the Project, beyond the corresponding Contract Time arise from unforeseeable causes beyond the control and without the fault or negligence of D/B, its Design Consultants, and subcontractors or suppliers, and that such causes in fact lead to performance or completion of the Project, or specified part in question, beyond the corresponding Contract Time, despite D/B's reasonable and diligent actions to guard against those effects.

17.5 D/B carries the burden of proving an entitlement to an increase in the Contract Time. Delays attributable to and within the control of Design Support Consultants, or subcontractor or supplier shall be deemed to be delays within the control of D/B. No time extension will be allowed for such delays. An increase in Contract Time does not necessarily mean that D/B is due an increase in the GMP.

Section 18: Late Completion

18.1 City and D/B recognize that time is of the essence in this Agreement and that City will suffer financial loss if the Project is not completed within the Contract Time, plus any extensions thereof allowed in accordance with Section 17.3. The Parties also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by City if the Project is not completed on time. Accordingly, instead of requiring any such proof, City and D/B agree that D/B shall pay as liquidated damages (but not as a penalty) for each calendar day of delay beyond the time specified for Substantial Completion of the Project, the following amounts which D/B expressly agrees are "not unreasonable under the circumstances" as defined in California Civil Code §1671(b): one hundred dollars (\$100) for each calendar day. Liquidated Damages shall not be assessed after the date on which Substantial Completion is achieved pursuant to Section 16.

Section 19: Right to Modify Work

19.1 Without invalidating the Agreement and without notice to any surety, City may at any time or from time to time, order additions, deletions, or revisions in the Project; said additions, deletions or revisions will be authorized by a written Change Order prepared and issued by City. Upon receipt of any such document, D/B shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Construction Documents (except as otherwise specifically provided).

19.2 When City desires a change in the Project, City may issue a Request for Proposal to D/B. D/B will be required to respond within the time indicated by City.

Section 20: Intentionally Omitted

Section 21: Work By Others

21.1 City may perform other work related to the Project at the Project Site by City's own forces, or let other direct contracts ("City Contractor"). The City will give D/B reasonable notice of its intent to do such other work. D/B's work shall take priority over the City Contractors, but the Parties will use their best efforts to coordinate their work so as to minimize the disruption to each other's work and to allow City Contractor to proceed expeditiously.

21.2 If the proper execution or results of any part of D/B's work depends upon the work by the City or City Contractor, D/B shall promptly inspect and report to City in writing any apparent delays, defects, or deficiencies in the City's work that render it unavailable or unsuitable for such proper execution and results. D/B's failure to promptly report such delays, defects, or deficiencies in writing before commencement of the affected work, will constitute an acceptance of the City's work as fit and timely for integration with D/B's Work except for latent defects and deficiencies in the City's work for which D/B will not be responsible.



21.3 If D/B or any person or entity working for D/B causes damage to the City's or City Contractor's work, property, or person, or if any claim arising out of D/B's performance of the Project by any other contractor is made against D/B, by City, any other contractor, or any other person, D/B shall promptly repair and/or resolve said claim at no cost to City.

Section 22: Warranties and Guarantees

22.1 D/B warrants and guarantees to City that materials and equipment incorporated into the Project will be new unless otherwise specified and that all work will be in strict accordance with the Construction Documents and will not be defective. Prompt notice of defects known to City shall be given to D/B. All Defective Work, whether or not in place, may be rejected, corrected, or accepted as reasonably directed by City, provided D/B shall not be entitled to an extension in Contract Time or increase in GMP because of any delay or increase in cost attributable to the rejection, correction or acceptance of said work. Defective work may be rejected even if approved by prior inspection.

22.2 The warranty period shall commence when the Certificate of Final Completion is issued (irrespective of beneficial use by City prior to Final Completion) and extend one (1) year after that date or whatever longer period may be prescribed by laws or regulations or by the terms of any applicable special guarantee or specific provision of the Construction Documents.

22.3 D/B is to provide any extra material for maintenance at the completion of the Project, including items such as carpeting, base, floor tile, ceiling tile, paint, and filters.

22.4 D/B is to provide City two (2) sets of operating and maintenance data manuals, fully bound and indexed, including warranties, guarantees, and bonds.

22.5 If within the designated warranty period, or such longer period as may be required by laws or regulations, the Project or any part of the Project, is discovered to contain defective work, D/B shall promptly, without any reimbursement or adjustment in the GMP, and in accordance with City's written instructions, either correct that defective work, or if it has been rejected by City, remove it from the Project and replace it with work which is not defective. If circumstances warrant it, including but not limited to, in an emergency, City or D/B may have the defective work corrected or the defective work removed and replaced. In that event, D/B shall not be allowed to recover any associated cost and D/B shall reimburse City for all direct, and indirect costs of City and City shall be entitled to an appropriate decrease in the GMP, to withhold a setoff against amount recommended for payment, or make a claim on D/B's bond if D/B has been paid in full.

22.6 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and materials furnished under this Agreement, the D/B shall:

22.6.1 Obtain all warranties that would be given in normal commercial practice and as required by the City;

22.6.2 Require all warranties to be executed, in writing, for the benefit of City;

22.6.3 Enforce all warranties for the benefit of City, if directed by City;

22.6.4 In the event D/B's warranty under Section 22.2 has expired, City may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty;

22.6.5 D/B shall assign all subcontractor, supplier and manufacturer warranties including maintenance contracts from the installer for specialized equipment, such as elevators, escalators, movable partitions, equipment etc., to cover the limited warranty period to City at the expiration of the one year warranty.

#### Section 23: Use and Possession Prior to Completion

23.1 City shall have the right to take possession of or use any completed or partially completed part of the Work if mutually agreed upon by the Parties. Before taking possession of or using any Work, City shall furnish D/B a list of items of Work remaining to be performed or corrected on those portions of the Work that City intends to take possession of or use. However, failure of City to list any item of Work shall not relieve D/B of responsibility for complying with the terms of this Agreement. City's possession or use shall not be deemed an acceptance of any Work under this Agreement, nor relieve the D/B of any of its obligations under this Agreement.

23.2 While City has such possession or use, D/B shall be relieved of the responsibility for the loss of or damage to the Work resulting from City's possession or use. If prior possession or use by City delays the progress of the Work or causes additional expense to D/B, an equitable adjustment shall be made in the GMP or the Contract Time, and the Agreement shall be modified in writing accordingly.

#### Section 24: Personal Services and Non-Assignability

24.1 This is a personal services Agreement and, therefore, D/B shall not alter the key employees or Design Consultants nor assign or transfer, voluntarily or involuntarily, any of its rights, duties or obligations under this Agreement except upon the prior written consent of City. Any such change, assignment or transfer without the prior written consent of the City shall be deemed null and void and constitute a material breach under this Agreement.

#### Section 25: Indemnification

25.1 To the fullest extent permitted by the law, D/B shall indemnify, defend, protect and hold harmless City, its elected and appointed officers, agents, employees, consultants, (collectively herein the "Indemnitees"), from and against all claims, demands, causes of action, damages, injuries, liabilities, losses and expenses (including, without limitation, reasonable attorneys' and consultants' fees and expenses)

of any kind whatsoever, arising in whole or in part out of or resulting from D/B's performance of this Agreement, D/B's breach of this Agreement, or the alleged negligent acts or omissions of D/B, its architects, engineers, other professionals and consultants, Contractors, suppliers or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable. The obligations of the D/B under this paragraph for errors or omissions, including those of the design professional subcontractors, which includes the Design Support Subcontractors, consultants, agents and employees thereof ("Design Support Subcontractors"), which arise from (1) the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specifications, or (2) the giving of or the failure to give directions or instructions shall not be limited to the amount of coverage provided for in the professional liability insurance policy. If City is fully reimbursed by D/B's insurance for any loss covered by this paragraph, D/B shall have no further obligation for such loss.

25.2 D/B's obligation to indemnify under section 25.1 shall not extend to such claims, demands, causes of action, damages, injuries, liabilities, losses and expenses, to the extent that such is the result of the active negligence or the willful misconduct of an Indemnitee. D/B's obligation to defend under section 25.1, if not covered by the insurance to be provided on the Project, shall not extend to such claims, demands, causes of action, damages, injuries, liabilities, losses and expenses, or causes of actions, to the extent that such are caused by the active negligence or the willful misconduct of the Indemnitee, and from no other cause.

25.3 The D/B agrees, notwithstanding the above to the fullest extent permitted by law, to indemnify, defend, and hold harmless the City, its elected and appointed officers, employees, agents and consultants from and against any and all claims, suits, demands, liabilities, losses, or costs, including reasonable attorney's fees and defense costs, resulting or accruing to any and all persons, firms, and any other legal entity, caused by, arising out of or in any way connected with the handling, removal, abatement, capping, migration (after handling, removal, abatement or capping) of, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the jobsite, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action. D/B's obligation regarding asbestos or hazardous or toxic substances, products or materials shall be limited to the proper removal within the Project boundaries and the proper disposal of such materials.

#### Section 26: Right to Terminate and Suspend Work

26.1 Archaeological and Paleontological Discoveries: If a discovery is made of an archaeological or paleontological interest, D/B shall immediately cease operations in the area of the discovery and shall not continue until ordered by City. When resumed, operations within the area of the discovery shall be as directed by City.

26.1.1 Discoveries which may be encountered may include, but are not be limited to, dwelling sites, stone implements or other artifacts, animal bones, human bones, fossils or any item with cultural significance.

26.1.2 D/B shall be entitled to an extension of time and compensation in accordance with the provisions of this Agreement.

26.2 Termination of Agreement by City for Cause: If, through any cause, D/B shall fail to fulfill in a timely and proper manner D/B's obligations under this Agreement, or if D/B shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right to terminate this Agreement by giving written notice to D/B of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, drawings, maps, plans, specifications, reports and other materials prepared by D/B, or any of its agents, Design Support Consultants or Subcontractors, shall, at the option of the City, become the property of the City, and D/B shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of Notice of Termination, not to exceed amounts payable hereunder, and less any damages caused by D/B's breach.

26.2.1 In the event the Agreement is terminated in accordance with this Section, City may take possession of the Project and may complete the Project by whatever method or means City may select.

26.2.2 If the cost to complete the Project exceeds the balance, which would have been due, D/B shall pay the excess amount to City.

26.2.3 Rights of City Preserved: Where D/B's services have been so terminated by City, the termination will not affect any rights or remedies of City against D/B then existing or which may thereafter accrue. Any retention or payment of moneys due D/B by City will not release D/B from liability. It is agreed that termination hereafter will not in any way release, waiver, or abridge any rights the City has against D/B's performance bond surety.

26.2.4 Any dispute as to the amount due or owed to D/B upon termination under this section shall be resolved in accordance with Section 33.

26.3 Termination for Convenience by City: City may terminate this Agreement at any time and for any reason, by giving specific written notice to D/B of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In that event, all finished and unfinished documents and other materials described hereinabove shall, at the option of the City, become City's sole and exclusive property. If the Agreement is terminated by City as provided in this paragraph, D/B shall be entitled to receive just and equitable compensation for any satisfactory Work completed, including reasonable demobilization costs, to the effective date of such termination. D/B hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth herein.

26.3.1 Records and Documents Relating to Termination: Unless otherwise provided in the Agreement or by statute, D/B shall maintain all records and documents relating to the terminated portion of this Agreement for three (3) years after final settlement. This includes all books and other evidence bearing on

D/B's costs and expenses under this Agreement. D/B shall make these records and documents available to City, at D/B's office, at all reasonable times, without any direct charge. If approved by the City Manager, photographs, electronic files, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

26.4 Upon receipt of the Notice of Termination, D/B shall take any action that may be necessary, or that the City Manager may direct, for the protection and preservation of the property related to this Agreement that is in the possession of D/B and in which City has or may acquire an interest.

26.5 Payment to D/B Due to Termination - D/B and the City Manager may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a fee proportional to the percentage of work satisfactorily completed. However, the agreed amount, exclusive of costs shown in section 26.9 below, may not exceed the total dollar amount authorized by City as reduced by the amount of payments previously made.

26.6 Failure to Agree on Payment - If D/B and City fail to agree on the whole amount to be paid because of the termination of Project, City shall pay D/B the fair and reasonable amounts determined in good faith by City as follows, but without duplication of any amounts agreed to above:

26.6.1 The price for completed services accepted, including any retention, by City not previously paid;

26.6.2 The costs incurred in the performance of the Project terminated, including initial costs and preparatory expense allocable thereto. These costs are only for Work completed and accepted by the City based on an audit of all Contractors' bills of materials and the timecards for Work actually performed;

26.6.3 A portion of the D/B Fixed Fee (overhead and profit) based on the percentage of Work completed on the Project; however, if D/B would have sustained a loss on the entire Agreement had it been completed, City shall allow no profit under this section and shall reduce the settlement to reflect the indicated rate of loss;

26.6.4 D/B and Design Subcontractor services through the date of termination shall be paid based on actual time spent as documented on timecards. Expenses shall be paid based on invoice and receipts provided by D/B;

26.6.5 Under no circumstances will D/B be entitled to any consideration for lost profit or lost opportunity costs.

26.7 If D/B does not agree that the amount determined by the City Manager is fair and reasonable and if D/B gives notice of such disagreement to City within thirty (30) days of

receipt of payment, then the amount due shall be as later determined pursuant to the Dispute Resolution procedures in Section 33.

26.8 Payment for Property Destroyed, Lost, Stolen or Damaged - Except to the extent that City expressly assumed the risk of loss, the City Manager shall exclude from the amounts payable to D/B under this Section, the fair value, as determined by the City Manager, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to City.

26.9 Deductions - In arriving at the amount due D/B under this section, there shall be deducted:

26.9.1 Any claim which City has against D/B under this Agreement; and

26.9.2 The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by D/B or sold under the provisions of this clause and not recovered by or credited to City.

26.10 Termination of Agreement by D/B:

26.10.1 D/B may terminate the Agreement upon ten (10) days written notice to City, whenever:

26.10.1.1 The Project has been suspended under the provisions of Section 26.1 or 26.2, for more than ninety (90) consecutive days through no fault or negligence of D/B, and notice to resume Work or to terminate the Agreement has not been received from City within this time period; or,

26.10.1.2 City should fail to pay D/B any monies due it in accordance with the terms of this Agreement and within ninety (90) days after presentation to City by D/B of a request therefore, unless within said 10-day period City shall have remedied the condition upon which the payment delay was based.

26.10.2 In the event of such termination, D/B shall have no claims against City except for those claims specifically enumerated in Section 26.9, herein, and as determined in accordance with the requirements of said Section.

## Section 27: Independent Contractor

27.1 D/B and any Design Support Consultant, Contractor, Subcontractor, agent or employee of D/B, shall act as an independent contractor and not as an agent, officer or employee of City. Except as expressly provided in this Agreement, City assumes no liability for D/B's actions and performance; in particular, but without limitation, City assumes no responsibility for paying any taxes, bonds, payments or other commitments, implied or explicit, by or for D/B. D/B acknowledges that it is aware that because it is an independent contractor, City is making no deductions from the fees for services being paid to D/B and that City is not contributing to any fund on the behalf of D/B. D/B disclaims the right to any type of additional fee or benefits.

Section 28: Independent Judgment

28.1 Unless otherwise directed in writing by City, D/B shall, in providing the professional services required by this Agreement, arrive at conclusions with respect to the rendition of information, advice and recommendations, independent of the control and direction of City, other than normal contract monitoring; D/B, however, shall possess no authority with respect to any City decision beyond rendition of such information, advice and recommendations. D/B shall not have the authority to act as an agent on behalf of City unless specifically authorized to do so by City in writing.

Section 29: Maintenance of Records and Accounting

29.1 D/B shall maintain, during the Project and for a period of three (3) years after completion of the Project, accurate and organized records of all costs of any type and all services performed under this Agreement. City will have the right at any time, including during the performance of all Phases of the Project to audit and copy all such records.

Section 30: Ownership of Documents

30.1 All reports, studies information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced under this Agreement shall be the sole and exclusive property of City. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express written consent of City. City shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.

Section 31: Force Majeure

31.1 Any party to this Agreement may be excused for any delay or failure to perform its duties and obligations under this Agreement, except for obligations to pay money, but only to the extent that such failure or delay is caused by an Event of Force Majeure as set forth in section 31.2. If an Event of Force Majeure set forth in Section 31.2 causes a delay or failure in performance of only a portion of the obligations of a Party under this Agreement, then only that portion of performance which was delayed or prevented by such cause shall be deemed excused, and the performance of all other obligations of a Party not so delayed shall not be excused by an Event of Force Majeure. Delay or failure in performance of all other obligations of a Party not so delayed shall not be excused by such Event of Force Majeure. Delay or failure in performance by a Party which is the result of an Event of Force Majeure set forth in section 31.2 shall be deemed excused for a period no longer than the delay or failure in performance caused by such Event.

31.2 An Event of Force Majeure means an occurrence beyond the control and without the fault or negligence of a Party, including but not limited to unusually severe weather, flood, earthquake, fire, lightning, and other natural catastrophes, acts of God or the public enemy, war, terrorist act, riot, insurrection, civil disturbance or disobedience, strike or labor dispute for which D/B is not responsible, expropriation or confiscation of facilities, changes of applicable law, or sabotage of facilities, so long as such Party makes good faith and reasonable efforts to remedy the delays or failures in performance caused thereby. However, D/B, in developing the GMP and Project Schedule, has incorporated three (3) days for anticipated adverse weather days that may disrupt work on the Project; D/B shall be entitled to relief under this Section for adverse weather only to the extent adverse weather days exceed this amount of days.

31.3 A Party shall give written notice to the other Party as soon after becoming aware of the delay or failure in performance caused by an Event of Force Majeure as is reasonably possible, but in any event within five (5) working days after Party becomes aware of such delay or failure.

31.4 No Event of Force Majeure shall be a basis for monetary adjustment to the GMP. Costs incurred by the D/B as a result of a Force Majeure Event will be reimbursed according to the terms of this Agreement from the Contingency Fund.

#### Section 32: Hazardous Materials

32.1 In the event the D/B or any other party encounters asbestos or hazardous or toxic materials at the Project Site, or should it become known in any way that such materials may be present at the Project Site or any adjacent areas that may affect the performance of the D/B's services, the D/B may, at his or her option and without liability for consequential or any other damages, suspend performance of services on the Project until the City retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the hazardous or toxic materials, and warrant that the Project Site is in full compliance with applicable laws and regulations.

#### Section 33: Disputes

33.1 All claims, counterclaims, disputes, and other matters in question arising under, or relating to, the Agreement or the breach thereof shall be processed in accordance with the provisions of this Section, unless specifically addressed by another provision of this Agreement.

33.2 D/B shall submit its written request for a Change Order to City pursuant to Section 14. City shall make a determination on D/B's request in writing within seven (7) days of receipt of request and all supporting data. Said Change Order shall be made in good faith and accurately reflect the adjustment in GMP or Contract Time for which D/B believes City is liable, and covers all costs and delays to which D/B believes it is entitled as a result of the occurrence of the claimed event. All requests for adjustment in Contract Time shall include an analysis of the Master Construction Schedule and the impact of the claimed work on specific activities on the Master Construction Schedule.



33.3 If D/B disagrees with City's determination, D/B shall file a claim in writing in accordance with the procedures set forth in Chapter 10 of the Escondido Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of the same.

33.4 Pending final resolution of any claim, including litigation, D/B shall proceed diligently with performance of the Project, and comply with any direction of City.

Section 34: Notices

34.1 All notices, demands or other communications hereunder shall be given or made in writing and shall be delivered personally or sent by courier or registered or certified mail, return receipt requested, postage prepaid, addressed to the Party to whom they are directed at the following addresses, or at such other addresses as may be designated by notice from such Party:

(i) To CITY:

Mike Lowry, Fire Chief  
1163 North Centre City Parkway  
Escondido, CA 92026

(ii) To D/B:

Erickson-Hall Construction Co.  
500 Corporate Drive  
Escondido, CA 92029  
Attn. Michael Hall

Any notice, demand or other communication given or made solely by mail in the manner prescribed in this Section shall be deemed to have been given and to be effective three (3) days after the date of such mailing, provided however, that any notice, demand or other communication which would otherwise be deemed to have been given on a day which is not a business day shall be deemed to have been given on the next subsequent business day.

Section 35: Miscellaneous Terms

35.1 Representations: Each Party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each Party further declares and represents that this Agreement is being made without reliance upon any statement or representation of any other Party not contained herein, or any representative, agent or attorney of any other Party.

35.2 Severability: If any term or condition of this Agreement is held to any extent to be invalid or unenforceable, all the remaining terms and conditions shall be enforceable to the fullest extent permitted by law.

35.3 Entire Agreement: This Agreement contains the entire agreement, between the Parties and supersedes all prior negotiations, discussions, obligations and rights of the Parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the Parties. No modification, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the Parties hereto.

35.4 Drafting Ambiguities: The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

35.5 Applicable Law; Venue: The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Diego, North County Branch. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Southern District of California, in San Diego.

35.6 Waiver: Unless otherwise expressly provided herein, no delay or omission by the Parties hereto in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy, nor shall it be construed as a bar to or a waiver of any such right or remedy on any future occasion.

35.7 Effect of Headings: Headings appearing in this Agreement are inserted for convenience of reference only, and shall in no way be construed to be interpretations of the provisions hereof.

35.8 Amendments: This Agreement may be modified, amended or supplemented only by the mutual written agreement of the Parties hereto.

35.9 Authorization and Compliance: Each Party represents that it is duly authorized to execute and carry out the provisions of this Agreement.

35.10 Further Assurances: The Parties agree to do such further acts and things and execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated hereby.

35.11 Counterparts: This Agreement may be executed by the Parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The facsimile signatures of the Parties shall be deemed to constitute original signatures,

And facsimile copies hereof shall be deemed to constitute duplicate original counterparts.

35.12 Exhibits and Glossary of Terms: All Exhibits and Glossary of Terms are incorporated herein by reference into this Agreement.

35.13 Third Party Beneficiary: Nothing within this Agreement shall create a contractual relationship between the City and any third party.

*(Signatures on next page)*

IN WITNESS WHEREOF, City and Design Builder have executed this Agreement on the day and year first written above.

CITY OF ESCONDIDO, a  
municipal corporation

Erickson-Hall Construction Co.

By: \_\_\_\_\_  
Sam Abed, Mayor

By: \_\_\_\_\_  
Michael Hall  
Chief Operating Officer

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

By: \_\_\_\_\_  
Dave Erickson  
Chief Executive Officer

Approved as to Form:  
Jeffry R. Epp, City Attorney

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

EXHIBIT LIST (1 - 4 )

1. Conceptual Plan
2. Guaranteed Maximum Price
3. Project Schedule
4. Project Team

(Exhibits to be provided at a later date)



# CITY COUNCIL

For City Clerk's Use:

APPROVED  DENIED

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

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

Agenda Item No.: 13  
Date: **October 5, 2011**

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Jerry Van Leeuwen, Director of Community Services  
**SUBJECT:** California State Library Services and Technology Act Grant: LibraryYOU: Sharing Knowledge

RECOMMENDATION:

It is requested that Council approve a \$35,000 grant award from the California State Library.

FISCAL ANALYSIS:

There will be no impact to the General Fund. Funding will come from the California State Library award for \$35,000.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Council's Action Plan regarding Community Outreach.

PREVIOUS ACTION:

N/A

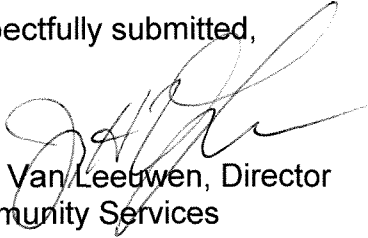
BACKGROUND:

The trend in libraries is not only to be content consumers and distributors in multimedia formats such as dvds, ebooks and databases but also to become content creators. LibraryYOU will encourage local community members to create videos or podcasts which would be showcased on the library's website. The implementation of LibraryYOU will mean:

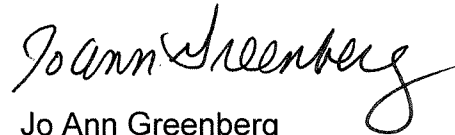
- Community members will have an online place to share knowledge and learn from their fellow community members.
- Escondido will be seen as a city with a diverse group of content experts.
- The library will become the place to learn to communicate online with the latest video and audio tools.
- The library's digital collection will grow by being able to create our own community content using video and podcast-sharing web tools.

- Other libraries will be able to replicate this project and share local knowledge using social audio and video technologies in their own communities.

Respectfully submitted,



Jerry Van Leeuwen, Director  
Community Services



Jo Ann Greenberg  
City Librarian





#14

ORDINANCE NO. 2011-12

AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
APPROVING A MODIFICATION TO MASTER  
AND PRECISE DEVELOPMENT PLAN 2005-  
28-PD TO REVISE THE ARCHITECTURE  
AND BUILDING LAYOUT FOR THE  
REMAINING 84 RESIDENTIAL UNITS IN THE  
CITY SQUARE CONDOMINIUM  
DEVELOPMENT

PLANNING CASE NO. PHG 11-0009

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN  
as follows:

SECTION 1. That proper notice of a public hearing has been given and a  
public hearing has been held before the City Council on this issue.

SECTION 2. That the City Council has reviewed and considered the Mitigated  
Negative Declaration (City Log No. ER 2005-20) and Mitigation Monitoring Report  
prepared at the time the project was originally approved and has determined that all  
environmental issues associated with the project have been addressed and no  
significant environmental impacts will result from approving this modification to the  
Master and Precise Development Plan.

SECTION 3. That upon consideration of the staff report and all public  
testimony presented at the hearing held to consider the proposed modification, this City  
Council finds that the proposed modification to the Master and Precise Development

A COMPLETE COPY OF THIS ORDINANCE  
IS ON FILE IN THE OFFICE OF THE  
CITY CLERK FOR YOUR REVIEW.

# CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

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

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

**Agenda Item No.: 15**  
**Date: October 5, 2011**

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

**FROM:** Jerry Van Leeuwen, Director of Community Services

**SUBJECT:** Recommendations for Allocation of Neighborhood Stabilization Program (NSP) funds

**RECOMMENDATION:**

Staff recommends approval of allocations of NSP funds to one developer request received through the recent RFP process as follows:

1. Approve an allocation of federal NSP funds in the amount of \$763,087 to Urban Housing Communities (UHC) for the development of four (4) affordable ownership housing units in Escondido Views Mobile Home Park and two (2) affordable ownership housing units in Mountain Shadows Mobile Home Park; and
2. Approve the sale of four vacant property lots at Escondido Views Mobile Home Park (APN: 235-161-2241, 235-161-2249, 235-161-2261, and 235-161-2162) and two vacant property lots at Mountain Shadows Mobile Home Park (APN: 235-163-1358 and 235-163-1364); and
3. Approve the reallocation of \$200,000 of NSP funds initially used to purchase 537 N Elm Street to Community HousingWork's affordable housing development, El Norte Apartments; and
4. Adopt City Council Resolution No. 2011-102 in support of the above actions and authorizing the Mayor and City Clerk to execute, on behalf of the City, the necessary affordable housing agreements and grant deeds in a form acceptable to the City Attorney.

**FISCAL ANALYSIS:**

There will be no impact on the General Fund. NSP funds must be spent on affordable housing activities.

**BACKGROUND:**

In April of 2009 the State of California released a Notice of Funding Availability for Neighborhood Stabilization Program (NSP) activities.

## Recommendations for Allocations (Housing)

October 5, 2011

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On June 10, 2009, in a public hearing, Council adopted Resolution No. 2009-81 authorizing submittal of an application for funding from the State of California NSP program. The City's application outlined three specific activities of the program as follows:

- 1) Financing Mechanisms: Establishing financing mechanisms by offering a Homebuyer Down Payment Assistance Program for potential homebuyers whose income is at or below 120% of the area median income; and
- 2) Redevelopment: Acquiring vacant or demolished single-family homes for the purpose of demolishing those homes determined to be blighted structures. After demolition, the sites would be made available for future redevelopment of dwellings for potential renters/homebuyers whose income is at or below 120% of the area median income; and
- 3) Demolition: Demolition of acquired blighted structures that pose a threat to human health, safety and public welfare.

On November 12, 2009, the State notified the City that its planned activities were approved through execution of a Standard Agreement, contingent upon submittal of additional documentation for each site identified for acquisition and/or demolition.

On June 9, 2010, in a public hearing, City Council approved the grant of a vacant property purchased with \$200,000 in NSP funds located at 537 N. Elm (APN 230-103-1700) to San Diego Habitat for Humanity in exchange for affordability restrictions on the subsequent development of the property.

On June 22, 2011, in a public hearing, Council adopted Resolution No 2011-79 and 2011-80 authorizing a one-year extension of the NSP grant and the second amendment to the State contract to expand the permitted uses to allow funds to be used for new construction on eligible properties within the approved NSP Target Areas.

On July 13, 2011, in a public hearing, Council authorized an RFP offering NSP funds to for-profit and non-profit developers for the provision of new, affordable residential units in order to sell or rent the units to potential homebuyers/renters whose incomes are at or below 120% of area median income. These funds are to be used in conjunction with City-owned properties acquired with Housing Set-Aside Funds which will be purchased by the developer at market value.

On August 23, 2011, San Diego Habitat for Humanity informed staff that they would be unable to meet the occupancy deadlines imposed by the state NSP funds. By removing the NSP obligation to this project, \$200,000 in NSP funds must either be reobligated to a project or repaid to the state.

Three responses to the RFP were received and have been reviewed in detail by staff. The proposals were evaluated carefully based on the rating criteria included in the RFP and approved by Council. Upon completion of the review, staff brings its recommendation to Council for consideration to

## Recommendations for Allocations (Housing)

October 5, 2011

Page 3

allocate NSP funds totaling \$763,087 and to sell, at market value, of the properties included in the RFP to the highest scoring proposal by UHC. The NSP funds will be provided in the form of a grant to the project in exchange for affordability restrictions. The final structure of each of the agreements will be in form approved by the City Attorney's office.

### Property acquired with Housing Set-Aside Funds:

In 1991, the residents of Mountain Shadows and Escondido Views Mobile Home Parks who wished to convert their rental mobile home parks to resident ownership urged the City to purchase the Parks and to help them with the conversion. The City financed the purchase of the Parks through a bond issue that was structured so that the lot sales would reduce the overall bond amount. The City applied for and received \$1,000,000 of State funds to help with the individual take-out loans for lower-income Park residents. The City matched the State commitment with Housing Set-Aside funds. As each of the lots are sold, proceeds from the sale are returned to the Affordable Housing Set-Aside fund. The bond has been paid in full. The City owns six vacant mobile home lots which were listed for sale until the release of the RFP. These properties are known as: lot numbers 72 (APN 235-161-2241), 80 (APN 235-161-2249), 92 (APN 235-11-2261), and 141 (APN 235-161-2162) located in the Escondido Views Mobile Home Park at 2400 W. Valley Parkway and lot numbers 58 (APN 235-163-1358) and 64 (APN 235-163-1364) located in the Mountain Shadows Mobile Home Park at 1751 W. Citracado Parkway. Due to difficulty in financing park lots without units pre-installed, it has not been possible to sell the lots.

### DISCUSSION OF RECOMMENDED PROJECT AND ANALYSES:

#### **Developer: Urban Housing Communities (UHC)**

UHC responded to the RFP with a proposal for both redevelopment projects. UHC propose s building four (4) manufactured units at Escondido Views Mobile Home Park and two (2) manufactured units at Mountain Shadows Mobile Home Park. UHC recently completed *The Crossings at Escondido*, a 55-unit affordable housing development on Mission Grove Place. They are currently developing an 18-unit development in Rancho Cordova using NSP funds and using the same General Contractor, Competitive Edge, a local Escondido contractor. While they propose using Champion as the modular builder (of Silvercrest homes), UHC plans to use Competitive Edge for construction oversight. Pre-sales will begin as soon as an agreement is reached; units will be completed by the end of 2012. Once completed, priority will be given to Escondido residents who are first-time homebuyers with annual gross household incomes that are at or below 120% of Area Median Income (AMI). Due to current market conditions and current comparables, units will also be marketed to families earning at or less than 80% AMI. The Project will consist of two 2-bedroom and four 3-bedroom units. As per NSP requirements, each home will have recorded covenants restricting affordability for 20 years.

The proposed UHC Project addresses many of the City of Escondido's Housing Priorities including that it:

- Redevelops the property to a better use, constructing homes to replace the current undeveloped land.
- Expands the supply of affordable, permanent ownership housing in the community.
- Promotes neighborhood stability by adding additional ownership units in the neighborhood.
- Adds improved site planning and design while maximizing the permitted density.

Financing Plan:

Total project development costs are projected to reach \$1,683,820. Current market conditions suggest that the total net proceeds from this development will be \$900,000. UHC has requested an allocation from the City's NSP funds of \$763,087 for project construction. Land costs will be paid out of the sale of the property to the home owners. UHC will fund the remaining development costs with a conventional construction loan. A copy of the complete proforma is included as Attachment "A."

Staff recommends approval of a combined allocation of NSP funds in the amount of \$763,087, as well as sale of vacant mobile home lots at market value, for development of these two projects proposed by UHC.

DISCUSSION OF PREVIOUSLY APPROVED NSP-FUNDED DEVELOPMENT AND DIRECTION TO INVEST ADDITIONAL FUNDS:

**Developer: Community HousingWorks (CHW)**  
**Project: El Norte Apartments**

On June 9, 2010, City directed staff to pursue discussions with CHW relative to the potential development of affordable housing units to be located at 141, 211 and 221 El Norte Parkway in conjunction with a City-owned lot purchased with NSP funds at 1282 N. Broadway. CHW has since included 1260 N Broadway in the development. The properties will be redeveloped to the scale of the surrounding neighborhood, creating homes for 36 families (including 8 disabled veterans) and a community garden. On August 18, 2010, the City adopted Resolution No. CDC 2010-136 approving the grant of the City-owned parcel to CHW in exchange for long-term affordability covenants and CDC 2010-10 authorizing an Exclusive Negotiating Agreement (ENA) with CHW for the redevelopment of the parcels and the encumbrance of Housing Funds in an amount not to exceed \$500,000 for development costs. On March 16, 2011, CDC allocated FY 2011-2012 and FY 2012-2013 affordable housing Set-Aside funds in an amount not to exceed \$1,900,000 as leveraged financing to CHW for the development. On June 22, 2011, CDC authorized an additional

## Recommendations for Allocations (Housing)

October 5, 2011

Page 5

encumbrance of FY2011-12 Affordable Housing Set-Aside funds in an amount not to exceed \$500,000 as leveraged financing to CHW for its proposed multi-family development, known as El Norte Apartments. A total of \$2,900,000 in Affordable Housing funds plus a land donation of \$250,000, has been invested in this project. On September 20, 2011, CHW received a preliminary reservation letter advising CHW that they would be recommended for 2011 Second Record Tax Credits on September 28, 2011. CHW will break ground on this project Fall 2011 in order to achieve occupancy by the NSP deadline in February 2013.

On June 9, 2010, in a public hearing, City Council approved an allocation of federal HOME/CHDO funds in the amount of \$396,300 to San Diego Habitat for Humanity (SDHFH) for the development of 15 affordable ownership housing units along with the grant of a vacant property purchased with NSP funds located at 537 N. Elm (APN 230-103-1700) to San Diego Habitat for Humanity in exchange for affordability restrictions on the subsequent development. On August 23, 2011, San Diego Habitat for Humanity informed staff that they would be unable to meet the occupancy deadlines imposed by the State NSP funds. They requested that the NSP funds be removed from the development and are not asking for additional funds at this time. By removing the NSP obligation to this project \$200,000 in NSP funds must either be reobligated to a project or repaid to the state.

Staff recommends regranteeing \$200,000 NSP funds to the CHW project. Occupancy of NSP developments must be achieved by February 2013, or the funds must be returned to the State. El Norte Apartments is the only remaining project that can reach occupancy in this timeframe. Granting NSP funds to the development will reduce the obligation of other Affordable Housing funds into the project.

### CONCLUSION AND RECOMMENDATION:

Staff recommends approval of allocations of NSP funds to one developer request received through the recent RFP process as follows:

1. Approve an allocation of federal NSP funds in the amount of \$763,087 to UHC for the development of four (4) affordable ownership housing units in Escondido Views Mobile Home Park and two (2) affordable ownership housing units in Mountain Shadows Mobile Home Park; and
2. Approve the sale of four vacant property lots at Escondido Views Mobile Home Park (APN: 235-161-2241, 235-161-2249, 235-161-2261, and 235-161-2162) and two vacant property lots at Mountain Shadows Mobile Home Park (APN: 235-163-1358 and 235-163-1364); and
3. Approve the reallocation of \$200,000 of NSP funds initially used to purchase 537 N Elm Street to Community HousingWork's affordable housing development, El Norte Apartments; and

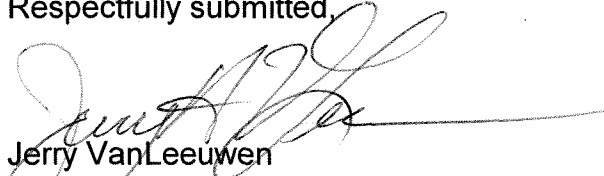
Recommendations for Allocations (Housing)

October 5, 2011

Page 6

4. Adopt City Council Resolution No. 2011-102 in support of the above actions and authorizing the Mayor and City Clerk to execute, on behalf of the City, the necessary affordable housing agreements and grant deeds in a form acceptable to the City Attorney.

Respectfully submitted,



Jerry VanLeeuwen  
Director of Community Services

**Attachment A**

**9/27/2011  
Financial Model.xlsx  
Permanent Sources and Uses**

<b>SOURCES OF FUNDS</b>	<b>Total</b>	<b>Per Unit</b>
Deferred Land Loan	\$ 376,000	\$ 62,667
Soft Loan 1 (NSP)	763,087	127,181
Return from Sales	544,733	90,789
Other	-	-
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$ 1,683,820</b>	<b>\$ 280,637</b>
<b>USES OF FUNDS</b>		
Acquisition Costs	\$ 394,800	\$ 65,800
Rehabilitation Costs	-	-
New Construction Costs	668,280	111,380
Contingency	66,828	11,138
Relocation	-	-
Architecture Fees	40,000	6,667
Survey and Engineering	12,000	2,000
Construction Financing	120,000	20,000
Permanent Financing	-	-
Legal Fees	40,000	6,667
Reserves	-	-
Other Soft Costs	141,912	23,652
Construction Oversight	200,000	33,333
<b>TOTAL USES OF FUNDS</b>	<b>\$ 1,683,820</b>	<b>\$ 280,637</b>
<b>SOURCES LESS USES</b>	<b>\$ (0)</b>	<b>\$ (0)</b>

**NOTES:**

Any net amount in excess of \$96,789 would be applied towards the land costs	
Eliminated school impact fees	
Included impact fee to upsize water meter if required by Fire Dept. (\$3,240/unit)	
Example:	
Estimated Avg. Sale Price of \$150,000 (times 6)	\$900,000
Return from Sale in budget	544,733
Net Proceeds applied City Deferred Loan	\$355,267
<b>Net City Deferred Loan</b>	<b>\$ 20,733</b>



9/27/2011  
Financial Model.xlsx  
Development Costs

TCAC Category/Item	Amount	per Unit	per sq ft building
<b>ACQUISITION COSTS</b>			
Land Cost or Value	\$ 376,000	62,667	44.58
<b>Subtotal Land and Improvements</b>	<b>376,000</b>	<b>62,667</b>	<b>44.58</b>
Closing Costs	18,800	3,133	2.23
<b>Subtotal Closing Costs</b>	<b>18,800</b>	<b>3,133</b>	<b>2.23</b>
<b>Total Acquisition Cost</b>	<b>394,800</b>	<b>65,800</b>	<b>46.81</b>
<b>NEW CONSTRUCTION</b>			
2 Bedroom 2 Bath Bradford Series	203,131	33,855	24.08
3 Bedroom 2 Bath Bradford Series	433,328	72,221	51.38
Insurance	31,823	5,304	3.77
<b>Total New Construction</b>	<b>668,280</b>	<b>111,380</b>	<b>79.24</b>
<b>CONTINGENCY</b>	<b>66,828</b>	<b>11,138</b>	<b>7.92</b>
<b>RELOCATION EXPENSES</b>			
<b>ARCHITECTURAL FEES</b>			
Supervision	40,000	6,667	4.74
<b>Total Architectural Costs</b>	<b>40,000</b>	<b>6,667</b>	<b>4.74</b>
<b>SURVEY AND ENGINEERING</b>			
	12,000	2,000	1.42
<b>CONSTRUCTION INTEREST AND FEES</b>			
Construction Loan Interest	32,000	5,333	3.79
Origination Fee	8,000	1,333	0.95
Payment and Performance Bond Premium	5,000	833	0.59
Taxes	10,000	1,667	1.19
Insurance	15,000	2,500	1.78
Title and Recording	20,000	3,333	2.37
Other-Bridge Loan Interest	-	-	-
Other-Guarantee Fee	20,000	3,333	2.37
Other-Due Diligence Fee	10,000	1,667	1.19
<b>Total Construction Interest and Fees</b>	<b>120,000</b>	<b>20,000</b>	<b>14.23</b>
<b>LEGAL FEES</b>			
Legal Fees Paid by Applicant	40,000	6,667	4.74
Other Legal Fees	-	-	-
<b>Total Legal Fees</b>	<b>40,000</b>	<b>6,667</b>	<b>4.74</b>
<b>OTHER PROJECT COSTS</b>			
Environmental Audit	5,000	833	0.59
Local Development Impact Fees	21,678	3,613	2.57
Permit Processing Fees	13,734	2,289	1.63
Marketing and Sales	45,000	7,500	5.34
Accounting/Reimbursable	12,000	2,000	1.42
Soft Cost Contingency	29,000	4,833	3.44
Other-Soil Tests	8,000	1,333	0.95
Other-Professional Fees - Wage Consultant	7,500	1,250	0.89
<b>Total Other Costs</b>	<b>141,912</b>	<b>23,652</b>	<b>16.83</b>
<b>SUBTOTAL PROJECT COSTS</b>	<b>1,483,820</b>	<b>247,303</b>	<b>175.93</b>
<b>DEVELOPER COSTS</b>			
Developer Oversight / Risk	200,000	33,333	23.71
<b>Total Developer Costs</b>	<b>200,000</b>	<b>33,333</b>	<b>23.71</b>
<b>TOTAL DEVELOPMENT COSTS</b>	<b>1,683,820</b>	<b>280,637</b>	<b>199.65</b>

RESOLUTION NO. 2011-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING ALLOCATIONS OF NEIGHBORHOOD STABILIZATION FUNDS IN THE TOTAL AMOUNT OF \$963,087; AUTHORIZING THE SALE OF LOT NUMBERS 58 AND 64 IN MOUNTAIN SHADOWS MOBILE HOME PARK AND LOT NUMBERS 72, 80, 92 AND 141 IN ESCONDIDO VIEWS MOBILE HOME PARK; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, ALL NECESSARY AGREEMENTS, LOAN DOCUMENTS AND GRANT DEEDS

WHEREAS, on June 10, 2009, at a Public Hearing, Council authorized submittal of a Neighborhood Stabilization Program ("NSP") grant application to the State of California ("State") for the amount of \$1,309,830 for certain activities including redevelopment; and

WHEREAS, on June 22, 2011, at a Public Hearing, Council authorized an amendment to the State NSP contract to expand the permitted uses to allow funds to be used for new construction of affordable housing units for the purpose of redevelopment; and

WHEREAS, on July 13, 2011, Council authorized the release of a Request for Proposals for the provision of long-term affordable housing, utilizing available NSP funds; and

WHEREAS, on October 5, 2011, at a Public Hearing, Council approved a grant of \$763,087 in NSP funds, to Urban Housing Communities ("UHC"), for affordable housing purposes; and

WHEREAS, Council further approved a grant of \$ 200,000 in NSP funds to Community HousingWorks for allowable costs associated with development of affordable housing; and

WHEREAS, the City desires at this time, and deems it to be in the best public interest to approve the grants of NSP funds and to authorize the execution of all agreements, loan documents and grant deeds necessary to provide such funds and property for the provision of affordable housing; and

WHEREAS, the City Council of the City of Escondido, California, has determined that property identified as lot numbers 58 (APN 235-163-1358) and 64 (APN 235-163-1364) located in the Mountain Shadows Mobile Home Park at 1750 W. Citracado Parkway are excess to the City's needs; and

WHEREAS, the City Council of the City of Escondido, California, has determined that property identified as lot numbers 72 (APN 235-161-2241), 80 (APN 235-161-2249), 92 (APN 235-161-2261), and 141 (APN 235-161-2162) located in the Escondido Views Mobile Home Park at 2400 W. Valley Parkway are excess to the City's needs; and

WHEREAS, the property was originally acquired with bond financing funded by housing redevelopment Set-Aside funds, and in the event that any of the lots are sold, proceeds from the sale are returned to the Affordable Housing Set-Aside fund; and

WHEREAS, the City Council desires at this time, and deems it to be in the best public interest to sell these six lots to Urban Housing Communities as part of a development agreement to build affordable housing;

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 approves a grant of \$763,087 in NSP funds, as well as the right to purchase, at market value, vacant property known as lot numbers 58 and 64 in the Mountain Shadows Mobile Home Park at 1750 W. Citracado Parkway and lot numbers 72, 80, 92, and 141 in the Escondido Views Mobile Home Park at 2400 W. Valley Parkway Escondido to Urban Housing Communities for the provision of affordable housing units.
3. That the amount designated for this project is appropriate.
4. That the City Council approves an allocation of \$200,000 in NSP funds to Community HousingWorks for costs related to the potential development of affordable housing units.
5. That the Mayor and City Clerk are hereby authorized to execute, on behalf of the City, in a form approved by the City Attorney, any agreements, loan documents, and grant deeds necessary to provide such funds and property for the development of affordable housing.

# CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

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

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

**Agenda Item No.: 16**  
**Date: October 5, 2011**

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

**FROM:** Joyce Masterson, Assistant to the City Manager  
Corrine Neuffer, Deputy City Attorney

**SUBJECT:** Resolution of Intention to Set the Public Hearing Date to Disestablish the Downtown Business Improvement District (BID)

**RECOMMENDATION:**

It is requested that Council adopt Resolution 2011-129 to set November 2, 2011, at 4:30 p.m., as the public hearing date to disestablish the Downtown Business Improvement District.

**FISCAL ANALYSIS:**

No fiscal impact to the City budget.

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

This item relates to the City Council 2011-2011 Action Plan regarding Economic Development.

**PREVIOUS ACTION:**

Council initially adopted Ordinance No. 89-28 on June 14, 1989, establishing a Downtown Business Improvement (Assessment) District. On September 14, 2011, Council directed staff to begin the necessary legal requirements to disestablish the BID.

**BACKGROUND:**

California Streets and Highways Code Section 36550 authorizes the City Council to disestablish a parking and business improvement area by ordinance after adopting a resolution of intention prior to conducting a public hearing on the ordinance. The resolution of intention shall state the reason for the disestablishment, the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the parking and business improvement area. The public hearing shall be held not less than 20 or more than 30 days after the adoption of the resolution of intention.

Annual BID Report  
October 5, 2011  
Page 2

Upon the disestablishment of the area, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be refunded to the owners of the businesses located and operating within the area, applying the same method and basis that was used to calculate the levied assessments. It is anticipated that approximately \$30,000 in BID funds has been collected to date.

Respectfully submitted,



Joyce Masterson  
Assistant to the City Manager



Corrine Neuffer  
Deputy City Attorney

#16

RESOLUTION NO. 2011-129

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, DECLARING ITS INTENTION TO DISESTABLISH THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT AND AUTHORIZING THE MAYOR AND CITY CLERK, ON BEHALF OF THE CITY, TO SET A PUBLIC HEARING DATE OF NOVEMBER 2, 2011, AT 4:30 PM

WHEREAS, City Council established a Downtown Business Improvement District ("BID") pursuant to the California Streets and Highways Code Section 36500 *et seq.* by Ordinance No. 89-28, dated June 14, 1989; as revised by Ordinance No. 91-37, dated October 2, 1991; and

WHEREAS, Streets and Highways Code Section 36550 authorizes the City Council to disestablish a parking and business improvement area by ordinance after adopting a resolution of intention prior to conducting a public hearing on the ordinance; and

WHEREAS, the services provided and funded through the BID are no longer desired and City Council declares its intention to disestablish the BID; and

WHEREAS, the City Council desires at this time, and deems it to be in the best public interest, to set a hearing date to disestablish the BID, as set forth within this resolution;

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 will consider on November 2, 2011, at 4:30 PM, disestablishing the BID.

3. That upon the effective date of the ordinance declaring such disestablishment the BID will be disestablished.

4. Upon disestablishment of the BID, any remaining revenues derived from the levy of assessments will be refunded to the owners of the businesses, applying the same method and basis that was used to calculate the levied assessments.

5. The City Clerk is hereby directed to give notice of the above-mentioned public hearing in accordance with Section 36523 of the California Streets and Highways Code.



# CITY COUNCIL

For City Clerk's Use:

**APPROVED**       **DENIED**

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

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

**Agenda Item No.: 17**  
**Date: October 5, 2011**

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

**FROM:** Barbara J. Redlitz, Director of Community Development

**SUBJECT:** Request to Initiate an Annexation, Sphere of Influence Amendment, Prezone, General Plan Amendment, and the preparation of Specific Plans and Development Agreements for approximately 1,700 acres located near the northeastern area of the City (Sager/Von Seggern Annexation Initiation)

**STAFF RECOMMENDATION:**

It is requested that Council consider the request and provide direction to staff.

**PROJECT DESCRIPTION:**

A request from the Sager and Von Seggern families to initiate an Annexation, Sphere of Influence Amendment, Prezone, General Plan Amendment, and the preparation of one or more Specific Plans and Development Agreements for their properties, other privately-owned properties and approximately 972-acres of city-owned land in an area generally located between Daley Ranch and Lake Wohlford. The Sager development proposal would include a rural resort and up to 107 single-family homes on 194 acres. The Von Seggern proposal would include up to 81 single-family homes on 282 acres and would require the purchase and transfer of residential density from city-owned lands currently preserved as open space. There are no requests to develop any of the other five privately owned properties that have been included in the proposed annexation based on their expressed interest or a desire to enhance connectivity.

**FISCAL ANALYSIS:**

The Von Seggern proposal relies on annexing city-owned lands to provide connectivity to the city boundary, but also to increase the allowable residential density on their property through a density transfer. The proposal would include purchasing up to 36 density transfer units from the city similar to what has occurred in the Northeast Gateway Specific Plan area. The price for each unit is unknown at this time and would be negotiated as part of the Development Agreement. The most recent density transfer agreement in the Northeast Gateway area netted a fee payable to the city of \$51,000 per unit.

Future development of the two proposed projects would require substantial sewer and water extensions and the installation of significant new infrastructure to serve the new residents. While the

applicant would be responsible for constructing the improvements, the city would be responsible for long-term maintenance. It is unknown whether the increase in tax revenue from the annexation and the collection of development agreement fees would offset the city's costs of providing and maintaining services in the area. It is expected that a fiscal impact analysis would be submitted concurrently with the annexation application should it be initiated.

#### GENERAL PLAN ANALYSIS:

The properties proposed for inclusion into the annexation are currently under three General Plan designations. A portion of the Sager property is within SPA #2 (Daley Ranch Specific Planning Area). The rest of the Sager property and all of the other privately-owned properties are located in the Rural I designation (one dwelling unit per 4, 8 or 20 acres), which allows the lowest density for residential designations in the General Plan. Most of the city-owned land is located in the Public Lands/Parks designation, although some of the more recently acquired properties are still in the Rural I designation. The Von Seggern proposal involves changing the General Plan designation for their property and the majority of city properties currently designated as Rural I to Specific Plan. This is necessitated by their desire to increase residential density on their property through a transfer of density from city-owned land.

#### BACKGROUND:

On April 21, 2009, representatives of the Sager and Von Seggern families submitted a letter requesting that the city initiate annexation of approximately 1,631 acres of property in the northeastern area of the city's General Plan, including privately-owned parcels with multiple ownerships and approximately 23 parcels of vacant land owned by the city. Two city-owned parcels targeted for annexation are outside the city's Sphere of Influence and would require a sphere amendment. The Von Seggern property is located outside of the San Diego County Water Authority (SDCWA) boundaries. LAFCO has noted that any proposal to develop that property would also involve annexation into a SDCWA member agency and annexation into the SDCWA and the Metropolitan Water District of Southern California. The request for initiation notes the Sager family intends to process a residential subdivision and rural resort development proposal to complete their long-standing plans that have stalled since the city adopted a specific plan for their property in 1987. The Von Seggern proposal would similarly include a residential subdivision with up to 81 rural residential lots.

A month after the request was received, staff responded back with a request for additional information to further assess and determine the feasibility of the request. There followed an extended period of time where the applicant and staff met and traded information on the numerous issues the proposal presents regarding residential density and transfers, rural resort development, utility service and infrastructure needs, city maintenance costs, and emergency services and access. As discussions progressed, it became apparent that the Von Seggern proposal raises more issues and complications than the Sager proposal. It should be noted that aside from an opportunity to share some costs, there is no real link between the Sager and Von Seggern requests, and the Council could choose to initiate one, both or neither proposal.

## ANALYSIS:

While the majority of land included in the annexation is owned by the city, the annexation request is privately initiated and intended to foster future development of the Sager and Von Seggern properties. Both of these properties were considerably downzoned by the recent adoption of the County General Plan and the owners are looking to recapture development potential. Potential benefits that could be realized by the city from the proposal include an opportunity place large amounts of city-owned land under city control, an opportunity to extend the city limits to the western end of Lake Wohlford which could facilitate the processing of future permits for dam improvements, and the ability to connect northern open space areas to eastern open space areas to facilitate regional trail and conservation efforts.

Questions for consideration by the Council include whether some or all of the targeted city properties should be annexed with the applicant's properties, whether the city wants to promote development requiring considerable extension of utilities and services when the General Plan Update is focusing on infill under smart growth principles, whether residential density is actually available to be sold from city land already dedicated as public open space; and whether density should be transferred to develop properties on the periphery of the city or reserved for centrally located properties where services already exist. Other issues will include the feasibility of maintaining acceptable emergency response times to these areas, the potential for noise complaints to be generated by the new city residents located closest to the police firing range, and whether the proposed specific plan approach to transfer residential density conflicts with Proposition "S." Potential financial impacts to the city remain unknown and could involve reviewing emergency services, staffing levels and facilities, long-term maintenance of extended utility lines and water facilities, annexation of a substandard Lake Wohlford Road and the assumption of financial responsibility for future Lake Wohlford Road improvements.

It is expected that the city's work effort across multiple departments will be quite extensive should the Council initiate the applicant's request. This would likely include the preparation of an Environmental Impact Report, review and input into multiple technical, engineering and financial feasibility studies, negotiation of Development Agreement terms, coordination with multiple outside agencies, and review of project entitlement plans and documents. With the number and complexity of issues associated with the request, combined with the on-going focus on priority development proposals already located within the city and mandatory processing times for development applications (excluding annexations and zone changes), Planning staff believes that current staffing levels are inadequate to meet the applicant's anticipated timeframes. It is therefore expected that the applicant would provide additional funding for a contract planner or private consultant to serve as an extension of Planning staff for the purpose of review and coordination of all aspects of the annexation proposal. This approach would still necessitate a significant amount of staff time for project management and administration through the anticipated multi-year processing timeframe that will be needed to complete environmental and agency reviews. Anticipated costs to the applicant for these services are unknown at this time.

Respectfully submitted,



Barbara J. Redlitz  
Director of Community Development



Bill Martin  
Principal Planner



**LOUNSBERY FERGUSON  
ALTONA & PEAK LLP**

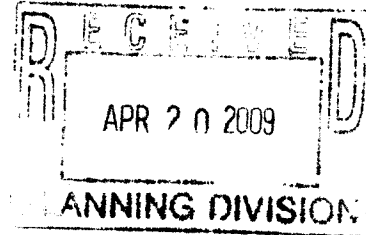
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OF COUNSEL  
GARTH O. REID

SPECIAL COUNSEL  
JOHN W. WITT

April 20, 2009



Barbara Redlitz, AICP  
Assistant Planning Director  
City of Escondido  
City Hall, First Floor  
201 North Broadway  
Escondido, CA 92025

RE: Annexation to the City of Escondido

Dear Ms. Redlitz:

This firm represents the von Seggern Family (John Henry, LLC.) and the Sager Family (Sager Management Corp.). John Henry, LLC. owns approximately 281.99 acres and Richard Sager and the Sager Family owns approximately 194.2 acres northeast of the City of Escondido.

The purpose of this letter is to request that the City initiate annexation of approximately 1,631.27 acres of property in the northeast corner of the City's existing General Plan, including parcels within the City's Sphere of Influence owned privately and by the City, and two parcels owned by the City that are outside the Sphere of Influence. A map of the targeted annexation properties is attached as Exhibit "A" and the properties are identified and described below.

**Identification and Description of the Properties to be Annexed:**

City of Escondido Properties:

The proposed annexation includes nineteen City of Escondido properties totaling 972.15 acres:

APN: 190-010-11	179.00 acres	APN: 190-080-25	157.24 acres
APN: 190-010-44	83.50 acres	APN: 190-090-01	92.89 acres
APN: 190-021-01	45.26 acres	APN: 190-090-06	5.58 acres
APN: 190-021-02	45.00 acres	APN: 190-090-08	5.44 acres
APN: 190-080-01	103.84 acres	APN: 190-090-10	5.21 acres
APN: 190-080-03	11.16 acres	APN: 190-090-11	5.29 acres
APN: 190-080-12	11.93 acres	APN: 190-090-12	5.50 acres
APN: 190-080-24	102.30 acres	APN: 190-090-13	5.54 acres

City of Escondido Properties (cont.):

APN: 240-030-02	35.00 acres
APN: 240-030-24	71.17 acres
APN: 240-030-27	1.30 acres

All of the City property is designated Public Lands/ Parks in the Escondido General Plan. All but one of the properties is designated in the current San Diego County General Plan as Public Lands, which prohibits any development; the last property (APN 190-080-01) is designated Rural.

Two of the properties (APN 190-010-44 and 190-021-02) are outside the City's Sphere of Influence and are included at the request of City staff with the understanding that including these two parcels will require the City to apply to the San Diego Local Agency Formation Commission (LAFCO) for a Sphere Amendment and to pay for any additional expenses caused by the Sphere Amendment.

von Seggern Property:

The von Seggern property is in the City of Escondido's General Plan and Sphere of Influence. It includes approximately 281.99 acres. The individual lot sizes are as follows:

APN: 190-090-02	41.98 acres
APN: 190-090-03	39.75 acres
APN: 190-090-04	96.55 acres
APN: 190-090-05	103.71 acres

The property includes slopes ranging from 0-35%. Escondido Creek runs east to west across the property and fills a 1.81 acre pond in the central portion of the property. The southwestern corner of the property is currently leased by "Mr. Paintball USA" and is being used for paint ball games (County Major Use Permit No. P94-024). The remainder of the von Seggern Property is undeveloped.

The von Seggern property has access from Lake Wohlford Road via a dirt road that enters the property at the paint ball field, continues west, and then curves north to the pond.

The von Seggerns are currently preparing a Tentative Map, with the intention of processing a Specific Plan for their property emphasizing large rural residential lots that maximize the beauty of the environmental setting. The Tentative Map and the proposed Specific Plan will be consistent with the property's current General Plan designations and would accommodate a maximum of 81 units. A description of the land use plan and a draft conceptual plan are attached as Exhibit "B" and outline the proposal for developing the property for residential use, within the topographical and environmental characteristics of the land.

Sager Property:

The Sager property is in the City of Escondido's General Plan and Sphere of Influence and includes 194.20 acres. The individual lot sizes are as follows:

APN: 187-080-05	37.5 acres
APN: 187-080-07	68.4 acres
APN: 187-080-08	36.6 acres
APN: 190-080-13	51.7 acres

The Sager property is located adjacent to the east boundary of Daley Ranch, approximately one-half mile west of Valley Center Road. The majority of the land is on the top of a generally north-trending ridge, with a 300 foot range in elevation from approximately 1,400 to 1,700 feet overlooking much of Daley Ranch.

Development of the Sager property is subject to the following: The Sager Ranch Specific Plan allows for a proposed development of 100 dwelling units and a rural resort on APNs 187-080-05, 07 and 08. Current land use designation allows for an additional 7 dwelling units on APN 190-080-13. The Sagers' intention is to process a Tentative Map for their property consisting of low density, upscale, residential lots and an equestrian resort on the western parcels and estate lots, single-family or higher density housing on the eastern parcel. The proposed development of the Sager property is attached as Exhibit "C". The residential development on the eastern parcel will be further defined in discussions with City staff and as a result of future studies.

An important part of the concept plan is the creation and dedication of a recreation area to supplement Daley Ranch. This recreation area will provide easier access to Daley Ranch for seniors and children and will provide picnic areas where people can congregate without disturbing the natural beauty of Daley Ranch.

Other Privately-owned Properties:

The privately-owned properties are in the City of Escondido's General Plan and Sphere of Influence and include approximately 182.93 acres. The specific property owners and lot sizes are as follows:

<i>Wohlford Elizabeth B. Trust 01-25-96:</i>	APN: 190-080-20	94.61 acres
<i>25125 Lake Wohlford LLC:</i>	APN: 190-080-22	28.3 acres
	APN: 190-080-05	9.3 acres
<i>A-1 Sunshine Farms, LLC.<sup>1</sup>:</i>	APN: 190-080-08	2.44 acres
	APN: 190-080-11	43.14 acres

---

<sup>1</sup> Carlin Enterprises, LLC. sold these properties to A-1 Sunshine Farms, LLC. on or around March 2009.

Other Privately-owned Properties (cont.):

<i>Viersen Glen A Trust</i>	APN: 190-010-10	5.14 acres
<i>Kyddlf &amp; Rdlfg FT No 1 LLC (De la Fuente)</i>	APN: 187-080-30	4.41 acres
	APN: 187-080-31	4.41 acres
	APN: 187-080-32	4.41 acres
	APN: 187-080-33	4.41 acres
<i>Bureau of Land Management</i>	APN: 187-080-20	33.06 acres
	APN: 187-080-29	17.6 acres

On February 27, 2009, we mailed a letter to each of the above property owners explaining the annexation and how it might affect their properties. The letter included a map of their property in relation to the proposed annexation area, the current County General Plan density, the proposed County General Plan density under the County's General Plan Amendment and the City General Plan density. Escondido planning staff received copies of the letter when it was sent.

The letter included a consent letter to be returned to my office within two weeks, on or before March 16, 2009, indicating whether or not they were interested in being included in the annexation. The letter explained that if they did not respond by March 16, 2009, it would be understood that the property owner was not interested in annexing to Escondido.

As of the date of this letter, two property owners have returned a signed form consenting to their property being included in the proposed annexation, Viersen Glen A Trust (APN: 190-010-10) and Kyddlf & Rdlfg FT No 1 LLC (De la Fuente) (APN: 187-080-30; 187-080-31; 187-080-32; 187-080-33).

Elizabeth Wohlford (APN: 190-080-20; 190-080-22; 190-080-05) has also indicated an interest in being included in the annexation but requested more time to confer with her family before returning the form.

The Bureau of Land Management (BLM) (APN: 190-080-08; 190-080-11) has confirmed receipt of the letter and has transferred the matter to the appropriate person to respond. We will forward BLMs response, if any, on receipt.

Carlin Enterprises LLC. (APN: 190-080-08; 190-080-11) sold the property on or around March 2009, after we sent the introduction letter. We have sent the letters to the new owners, A-1 Sunshine Farms, LLC., and will forward their response, if any, on receipt.

**The Annexation:**

In meeting with City staff, one area that remains unanswered is whether existing City facilities, services and infrastructure are adequate to serve the proposed annexation areas. The von



Seggerns and Sagers understand the need for technical studies to further evaluate these issues and that the ultimate annexation configuration may be dependent on the outcome of these studies. They also understand that the costs associated with evaluating all properties, including the City properties within the sphere of influence, will be the proponents' responsibility.

The Sager Family is seeking to complete long-standing development plans for their property, which began with the City adoption of a Specific Plan for their property in 1987. Having waited 22 years, the Sagers believe that with the completion of the Valley Center Road improvements, the development of Eureka Springs, and the installation of a new sewer line to service the area, it is now appropriate to proceed with annexation. In addition to providing the City with luxury homes and/ or more affordable housing options and an upscale resort, the Sagers believe that the property will provide the City with a unique opportunity: Easy access to Daley Ranch and the addition of an active recreation component adjacent to Daley Ranch.

The annexation of the property owned by the von Seggern Family and the adjacent property will provide the City with a number of opportunities. The annexation will: (1) close the gap between the existing City boundaries and the City-owned land to the north and east, allowing the City to annex and take control of its own land; (2) expand the City boundaries to the western edges of Lake Wohlford, giving the City the opportunity to annex this important resource in the future if it so chooses; and will, (3) connect the open space areas to the west and south, giving the City control over a vital link in its open space, trail and conservation plans.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you for your consideration.

Sincerely,















DAVID W. FERGUSON, ESQ.

DWF/rmq

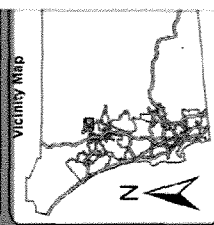
cc. Jonathan Brindle, Director of Community Development  
Charles Grimm, Assistant City Manager

# Exhibit of Targeted Annexation Property

## Legend

-  City of Escandido, Parcel
-  US Public Parcels
-  Privately Held Parcels
-  Segers/Von Seggern Park
-  Parcels
-  Roads
-  Highways
-  Municipalities
-  Prop. Density Transfer from City Parcels
-  Sphere of Influence
-  Targeted Annexation
-  Propectics

0 100,000 210,000  
1 inch = 243,460 feet



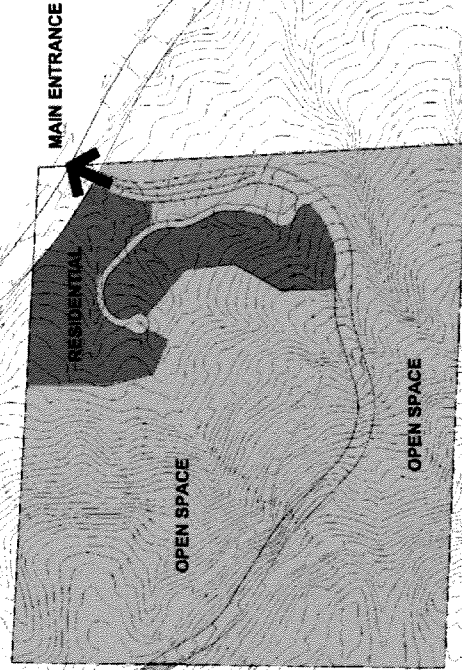
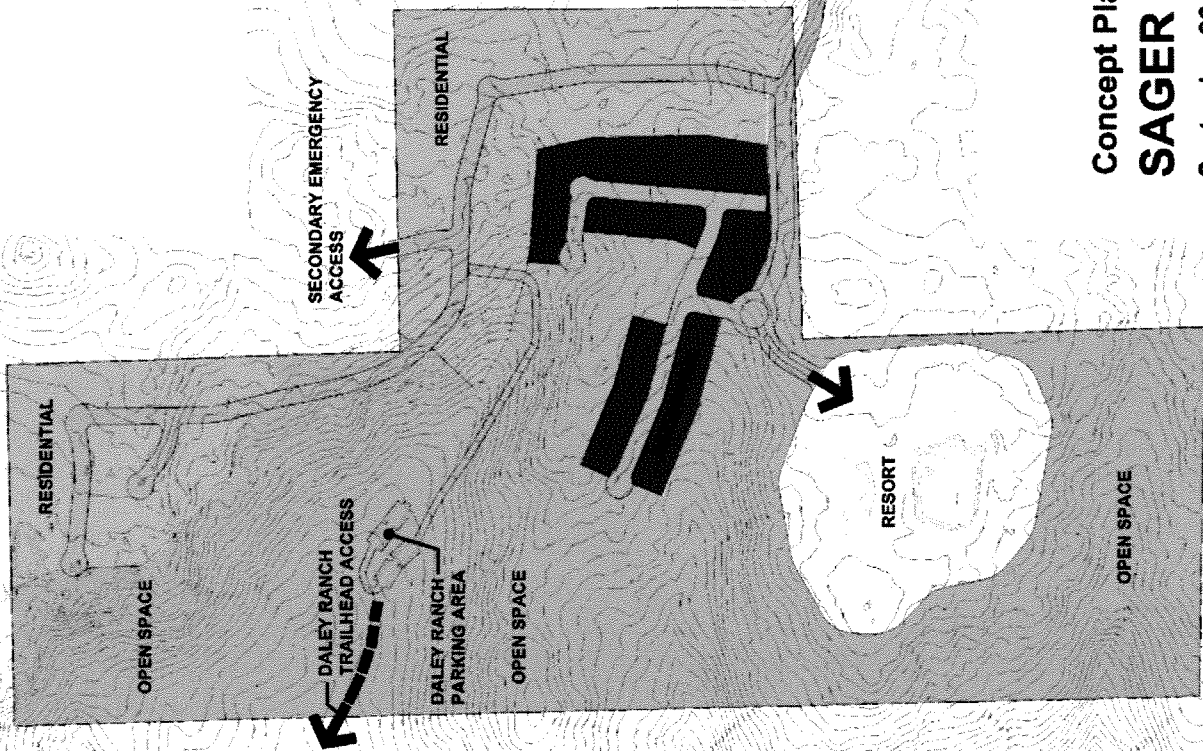
**SANGIS**  
We Make Smart Maps Smarter


This report was prepared for the City of Escandido by Sangis GIS, Inc. 2011 Main Road, Suite 5 San Diego, CA 92131  
www.sangis.org

For reports, mapping or additional information please contact SANGIS.

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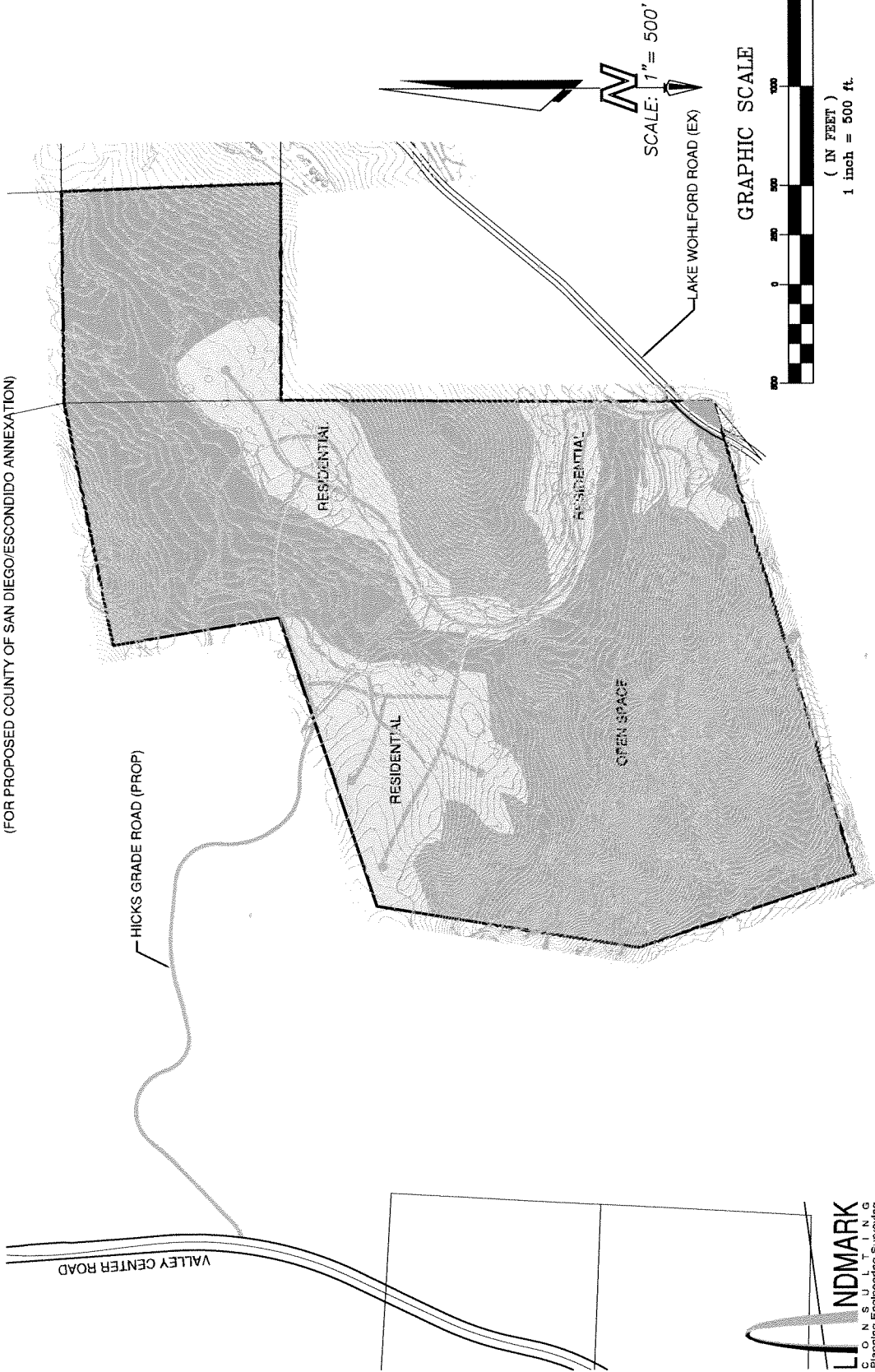



 Concept Plan —
   
**SAGER RANCH**
  
 September 26, 2011



MARCH 15, 2011

CONCEPT PLAN EXHIBIT  
VON SEGGERN PROPERTY  
(FOR PROPOSED COUNTY OF SAN DIEGO/ESCONDIDO ANNEXATION)



DATE
SUBMITTAL 04-15-11
REVISION 1
REVISION 2
REVISION 3

**LANDMARK**  
CONSULTING  
Planning Engineering Surveying  
1000 Camino del Rio South  
San Diego, CA 92108 (619) 587-8070

## City Parcels with Rural I General Plan Designation

<b>City of Escondido General Plan Designation</b>				
Parcel Number	Acres	Theoretical Yield	Current Designation	Proposed Specific Plan
<b>City of Escondido Properties</b>				
190-080-12	11.93	1.66	Rural I 1 du/ 4, 8, 20 acres	SPA # 13 Maximum will be 0.29/ acre
190-090-08	5.44	0.39	Rural I 1 du/ 4, 8, 20 acres	SPA # 13 Maximum will be 0.29/ acre
190-090-10	5.21	0.82	Rural I 1 du/ 4, 8, 20 acres	SPA # 13 Maximum will be 0.29/ acre
190-090-11	5.29	0.85	Rural I 1 du/ 4, 8, 20 acres	SPA # 13 Maximum will be 0.29/ acre
190-090-12	5.55	1.15	Rural I 1 du/ 4, 8, 20 acres	SPA # 13 Maximum will be 0.29/ acre
190-090-13	5.54	1.38	Rural I 1 du/ 4, 8, 20 acres	SPA # 13 Maximum will be 0.29/ acre
190-010-44	83.44	11.94	Rural I 1 du/ 4, 8, 20 acres	SPA # 13 Maximum will be 0.29/ acre
190-021-02	45.09	5.84	Rural I 1 du/ 4, 8, 20 acres	SPA # 13 Maximum will be 0.29/ acre
190-080-01	103.84	7.35	Rural I 1 du/ 4, 8, 20 acres	SPA # 13 Maximum will be 0.29/ acre
190-010-12	37.07	4.59	Rural I 1 du/ 4, 8, 20 acres	SPA # 13 Maximum will be 0.29/ acre
<b>Subtotal</b>	<b>308.4</b>	<b>36*</b>		

\* Preliminary density calculations based on City of Escondido Derived Slope Exhibit

## von Seggern Development Fee Estimate

### Sales Proceeds

von Seggern Lots	45	45
City Lots	36	36
Total Lots	81	81
Selling Price	\$200,000	\$200,000
Total:	<b>\$16,200,000</b>	<b>\$16,200,000</b>

### Development Costs

General (\$85,000 per lot)	\$6,885,000	\$6,885,000
Water Line	\$962,550	\$962,550
Sewer Line	\$236,900	\$236,900
Access Road	\$1,787,928	\$1,787,928
Water Pump and Tank	\$750,000	\$750,000
Processing	<u>\$250,000</u>	<u>\$250,000</u>
	<b>\$10,872,378</b>	<b>\$10,872,378</b>

**Net Income** **\$5,327,622** **\$5,327,622**

### Development Fee

Profit on City Lots	\$2,367,832	\$2,367,832
Profit per lot	\$65,773	\$65,773
Fee per lot - 50%	\$32,887	
Fee per lot - 51K		\$51,000
<b>Total DA Fee</b>	<b>\$1,183,916</b>	<b>\$1,836,000</b>
<b>Remaining Profit</b>	<b>\$1,183,916</b>	<b>\$531,832</b>



ITEM NO.: 18

AGENDA: 10-5-11

WILL BE DISTRIBUTED WHEN AVAILABLE



## CITY COUNCIL

Agenda Item No.: 18  
Date: October 5, 2011

TO: Honorable Mayor and Members of the City Council

FROM: Barbara Redlitz, Director of Community Development

SUBJECT: General Plan Update and Environmental Impact Report (Case No. PHG 09-0020)

### **RECOMMENDATION:**

It is requested that the City Council: 1) adopt Resolution 2011-128 involving the First Amendment to Consulting Agreement with Atkins Consultants totaling \$217,135 for completion of the Environmental Impact Report (EIR) associated with the General Plan Update, Climate Action Plan and updated Downtown Specific Plan; and 2) receive and review an updated status report on the General Plan, EIR and associated technical studies.

### **FISCAL ANALYSIS:**

A contract totaling \$546,984 was approved in 2010 with Atkins Consultants for environmental consulting services associated with the General Plan update. Due to budget limitations for this multi-year project, the scope of work for the initial contract involved preparing the General Plan EIR to a first screen-check level of completion. A contract amendment totaling \$217,135.00 is now needed for additional tasks to complete the Final EIR, thus bringing the *total* General Plan EIR contract amount to \$764,119.00. There are sufficient funds in the 2011-2012 FY Capital Improvement Program Budget to complete this phase of the work. The CIP budget also includes the salary for one staff Project Manager as well as minor, incidental expenses.

### **BACKGROUND:**

On December 15, 2010, three contracts totaling \$899,302 were approved with Atkins Consultants to conduct the following services:

- 1) A contract totaling \$199,628 was approved to prepare planning technical studies including a market and fiscal analysis to evaluate the proposed General Plan buildout assumptions as well as preparing the Housing Element, Noise Element and the Complete Streets analysis, which are required by state law. No changes are proposed to this contract.
- 2) A fixed fee contract not to exceed \$152,690 was approved to prepare the City's Climate Action Plan (CAP) which includes a local Green House Gas (GHG) Emissions Inventory and contain policies appropriate for Escondido that promote sustainability and reduce greenhouse gas emissions in concert with Assembly Bill 32. No changes are proposed to this contract.
- 3) A contract totaling \$546,984 (including a \$65,000 contingency) was approved as described above to prepare a screen-check draft of the General Plan Program EIR. The scope of work included technical studies for air quality, noise and traffic, and evaluation of the updated General Plan policies, proposed amendments to the Downtown Specific Plan, and the Climate Action Plan. The contingency funds have been depleted to conduct unforeseen tasks involved in aligning all General Plan Policies and implementation measures for the EIR's analysis and to augment the traffic analysis and related studies.



**PROPOSED CONTRACT AMENDMENT:**

When the City Council authorized the above three contracts, staff noted that additional funding would be required to complete the EIR for the General Plan to remain on schedule for the November 2012 election. Staff anticipates that the proposed contract amendment should be sufficient to complete the Final EIR. The additional scope of work is based on "time and materials" and includes performing revisions to the screen-check document necessary for preparing the Draft EIR, responding to comments received from individuals, groups, and public agencies during the public review period, preparing the mitigation monitoring and reporting program, drafting the statement of overriding considerations, and includes a \$100,000 contingency for unforeseen tasks (such as more than anticipated responses to EIR comments or additional technical analysis). Housing Division set-aside funds totaling \$30,000 have been earmarked to finance most of the Housing Element preparation, which will be subject to a future budget adjustment upon completion of the General Plan update.

**PROJECT STATUS:**

1. General Plan - A complete version of all proposed General Plan policies were reviewed and endorsed by the City Council on July 13, 2011, as a basis for the EIR's analysis. A draft of the entire Draft General Plan and the updated Downtown Specific Plan are anticipated to be released concurrently with the Draft EIR by early January 2012. Information regarding the General Plan Update is available online at the following link:  
<http://www.escondido.org/general-plan-update.aspx>
2. Housing Element - On August 10, 2011, the City Council endorsed the Draft Housing Element including its goals, policies and programs and authorized submittal to the State Department of Housing and Community Development (HCD) for a 60-day review and comment period. The Housing Element was received by HCD on September 7, 2012; no comments have been received to date. The public may still comment on the Housing Element while the document is under review at HCD and throughout the General Plan and EIR public review period. The City Council will have an opportunity to review and respond to HCD and additional comments prior to formal approval.
3. Climate Action Plan (CAP) - A screen-check draft of the CAP has been completed and is under review by staff. The Draft CAP is anticipated to be released concurrently with the Draft General Plan and Draft EIR. While the CAP is technically an implementation measure of the General Plan, staff has been advised to prepare both documents concurrently to assure consistency and a demonstrated commitment to the policy implementation.
4. EIR - Preparation of a "Program EIR" is underway for the General Plan Update and CAP. This type of EIR is a comprehensive analysis of the series of actions characterized by the build-out of the General Plan and provides the framework to streamline subsequent CEQA analyses for future development.

The EIR analysis is required to include "baseline" information documenting existing conditions at the time of commencing the General Plan update (including traffic). A preliminary traffic report has been completed, and additional work has been authorized to augment that

analysis to address significance thresholds. The report's baseline information for Grand Avenue in Downtown includes a four-lane Collector Street with parallel parking and center median. The current contract includes the City Council's prior direction to evaluate the appropriateness of returning the one-way Second Avenue / West Valley Parkway couplet back to two-way traffic as a means for providing a more pedestrian-friendly downtown and slowing traffic through downtown. Staff notes that any changes to the baseline conditions that measurably affect capacity (such as a reduction in the number of travel lanes on a Circulation Element street) or change street classifications would necessitate changes and delays in the preparation of the EIR and associated technical studies and could jeopardize the schedule for meeting the November 2012 election.

**SCHEDULE:**

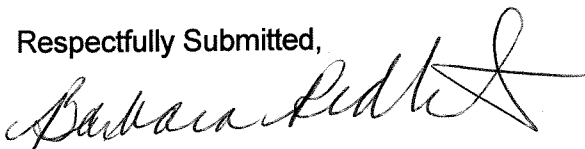
The General Plan process is on track for completion in time for the November 2012 election per City Council direction. Staff proposes to release the Draft General Plan and Climate Action Plan for a 45-day public review and comment period concurrently with the Draft EIR, which is consistent with general plan adoption procedures used throughout the state. Staff intends to hold public workshops on the General Plan and Draft EIR during this review period. The City Council may also wish to reconvene the General Plan Citizen's Committee for their input. All necessary City Council approvals, including the proposed ballot language, must be completed by early August 2012. In order to accomplish this effort, this schedule leaves no opportunity for incorporating significant changes or alternatives without jeopardizing the targeted election date. Below is a tentative timetable of milestones that allows completion of the General Plan to meet the City Council's objective:

Jan. 12, 2012 – Feb. 27, 2012:	General Plan and Draft EIR 45-day public review period
Feb. 28 – Apr. 4, 2012:	Prepare Responses to EIR comments
Apr. 24 and May 8, 2012:	Planning Commission Public Hearings
June 6 – June 20, 2012:	City Council Public Hearings
July 2, 2012:	Posting of EIR Notice of Determination with County Recorder
Aug. 8, 2012:	Registrar of Voter Deadline to receive Nov.2012 ballot language

**NEXT STEPS IN THE PROCESS:**

Staff has reviewed and refined the consultant's scope of services for the completion of the EIR to ensure its appropriateness. Upon approval, the consultants will conclude analysis and associated technical studies to prepare the document. Environmental impacts and proposed mitigation measures will be considered concurrently to provide the City Council with as much information as possible in making a decision regarding the General Plan Update in time for the public's vote on the November 2012 election.

Respectfully Submitted,



Barbara Redlitz  
Director of Community Development



Jay Petrek  
Principal Planner

RESOLUTION NO. 2011-128

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A FIRST AMENDMENT TO THE CONSULTING AGREEMENT WITH ATKINS FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

WHEREAS, the City of Escondido ("City") desires to have the General Plan updated involving a Climate Action Plan and Downtown Specific Plan; and

WHEREAS, an Environmental Impact Report (EIR) is necessary to evaluate impacts and identify mitigation measures in said Plans; and

WHEREAS, the City approved Resolution 2010-181 on December 15, 2010, authorizing ATKINS to perform the required planning services that involved preparing the General Plan EIR to a first screen-check level of completion; and

WHEREAS, a contract amendment is required for Atkins to perform additional tasks to complete the Final EIR; and

WHEREAS, City staff have completed negotiations with Atkins for planning services and the Director of Community Development recommends that the First Amendment to the Consulting Agreement ("Agreement") be approved; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to approve said Agreement in an amount not to exceed \$217,135.00.

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 Mayor and City Clerk are hereby authorized to execute, on behalf of the City, an Agreement with Atkins. A copy of the Agreement is attached as Exhibit "1" and is incorporated by this reference.

## EXHIBIT 1

### CITY OF ESCONDIDO FIRST AMENDMENT TO CONSULTING AGREEMENT

This "Amendment" is made this 5th day of October 2011.

Between:           CITY OF ESCONDIDO  
                      a municipal corporation  
                      201 N. Broadway  
                      Escondido, California 92025  
                      Attn: Jay Petrek, Principal Planner  
                      760-839-4556  
                      ("CITY")

And:                ATKINS  
                      9275 Sky Park Court, Suite 200  
                      San Diego, CA 92123-4386  
                      Attn: Kim Howlett  
                      858-514-1018  
                      ("CONSULTANT")

Witness that whereas:

- A.    CITY and CONSULTANT entered into an agreement on December 15, 2010 ("Agreement"), wherein CITY retained CONSULTANT to provide services for the General Plan Update and to prepare an Environmental Impact Report; and
- B.    CITY and CONSULTANT desire to amend the Agreement to include additional work, which is defined in "Attachment A" to this Amendment, which is incorporated by reference;

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

1. The CONSULTANT will furnish the services described in "Attachment A" to this Amendment.
  
2. CITY will compensate the CONSULTANT in an additional amount not to exceed \$217,135.00, pursuant to the conditions contained in "Attachment A" to this Amendment.
  
3. All additional terms under the Agreement between CITY and CONSULTANT still apply to the additional work to be performed by CONSULTANT under this Amendment. If any of the terms of this Amendment conflict with the Agreement, this Amendment must prevail.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

CITY OF ESCONDIDO

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

\_\_\_\_\_  
Sam Abed  
Mayor

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

ATKINS

\_\_\_\_\_  
Kim Howlett  
Associate Vice President, Atkins

*(The above signature should be notarized)*

APPROVED AS TO FORM:

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

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

## **Attachment A**

# **Escondido General Plan Update Environmental Impact Report**

## **Second Screencheck Draft EIR through Final EIR**

October 5, 2011

### **1. Background**

The original Escondido General Plan Update Environmental Impact Report (EIR) scope of work only included the preparation of the First Screencheck Draft EIR and did not include subsequent tasks related to the preparation of the Draft EIR, Final EIR or other products related to the EIR process. The scope of work provided below includes the remaining tasks to complete the EIR process for the Escondido General Plan Update EIR.

### **2. Scope of Work**

#### **Task 1 Second Screencheck Draft EIR**

1. Atkins will prepare the 2<sup>nd</sup> Screencheck Draft EIR based on City comments that will be collated in one electronic copy of the document within the limits of a 112 hour professional staff budget.
2. Atkins will submit six hard copies and one electronic copy of the 2<sup>nd</sup> Screencheck Draft EIR to the City for review.

#### **Products:**

- Six hard copies and one electronic copy of the 2<sup>nd</sup> Screencheck Draft EIR (including technical appendices)

#### **Task 2 Print Check Draft EIR**

Atkins will prepare one set of revisions to the 2<sup>nd</sup> Screencheck Draft EIR based on one set of City-collated comments within the limits of a 34-hour professional staff budget. Atkins will prepare three hard copies and one electronic copy of the Print Check Draft EIR for City staff to review and approve. Once approved, Atkins will proceed with production of the Draft EIR for public review.

#### **Products:**

- Three hard copies and one electronic copy of the Print Check Draft EIR (including technical appendices)

### **Task 3 Draft EIR Public Review**

Atkins will provide 20 hard copies, 110 PDF electronic CD copies, and one Word electronic CD copy of the Draft EIR and appendices to the City. Atkins will also prepare 15 hard copies of the EIR Executive Summary and the Notice of Completion form for the State Clearinghouse submittal. Atkins will prepare the Notice of Availability and provide one electronic PDF version and one electronic Word version of this notice to the City. This scope of work assumes that the City will be responsible for public review distribution of the Draft EIR, including the submittal of the Notice of Completion and copies of the Draft EIR to the State Clearinghouse. The City will also distribute the Notice of Availability and publish it in a paper of general circulation.

#### **Products:**

- Twenty hard copies, 110 electronic CD copies, and one electronic Word copy of the Draft EIR and appendices. 15 hard copies of the EIR Executive Summary. PDF and Word electronic versions of the Notice of Completion and Notice of Availability.

### **Task 4 Draft Mitigation Monitoring and Reporting Program**

Atkins will prepare and submit for City review a draft mitigation monitoring and reporting program (MMRP) for the General Plan EIR based on the mitigation measures identified in the Draft EIR. The MMRP will meet the requirements of an MMRP for an EIR as outlined in CEQA Guidelines §15097. The information in the MMRP will be in a tabular, user-friendly format acceptable to the City. Atkins will submit one electronic Word version of the Draft MMRP to the City for review.

#### **Product:**

- One electronic Word version of Draft MMRP.

### **Task 5 Revise Mitigation Monitoring and Reporting Program**

Atkins will prepare a final version of the mitigation monitoring and reporting program (MMRP) for the General Plan Update EIR based on one set of collated comments received from City staff and revisions made to the Final EIR based on public review comments within the limits of a 4-hour professional staff budget. Atkins will submit one camera-ready hard copy, 15 electronic PDF electronic CD copies, and one electronic Word copy of the Final MMRP to the City.

#### **Products:**

- One camera-ready hard copy, 15 electronic PDF CD copies, and one electronic Word copy of the Final MMRP.

### **Task 6 Draft Findings and Statement of Overriding Considerations**

Atkins will prepare and submit to the City draft findings and a draft statement of overriding considerations consistent with the requirements of CEQA Guidelines §15091 and §15093. It is assumed that City staff will provide information in support of the statement of overriding considerations. Atkins will submit one Word electronic copy of the draft findings and statement of overriding considerations to the City for review.

#### **Product:**

- One electronic Word version of Draft Findings and Statement of Overriding Considerations



## **Task 7      Revise Findings and Statement of Overriding Considerations**

Atkins will prepare one set of revisions to the findings and statement of overriding considerations based on one set of collated comments received from City staff within the limits of a 30-hour professional staff budget. Atkins will submit one camera-ready hard copy, 15 electronic PDF electronic CD copies, and one electronic Word copy of the Final Findings and Statement of Overriding Considerations to the City.

### **Products:**

- One camera-ready hard copy, 15 electronic PDF electronic CD copies, and one electronic Word copy of the Final Findings and Statement of Overriding Considerations.

## **Task 8      Final EIR**

### **Task 8.1      Draft Responses to Comments**

Upon the completion of public review, Atkins will begin preparation of responses to written comments on the Draft General Plan EIR received by the City. This will entail the reading and numbering of all comments, as well as assigning comments to members of the Atkins team and possibly City staff to prepare responses. Because the level of effort to respond to comments on the Draft General Plan Update EIR is dependent on the number of comments received and the type of questions raised in the comments, Atkins has provided a professional staff hourly budget of 160 hours to respond to comments. This budget may either be less than, or more than, sufficient to prepare the responses to public comments. Atkins will therefore evaluate the responses to comments budget after reviewing the comment letters and may revise the budget as appropriate. The 160-hour budget includes any changes made to the Draft EIR, as well as the preparation of a Commenter's Index.

The effort to respond to public comments is not expected to require substantial new analysis, such as the addition of an alternative or substantial revision to a section of the Draft EIR. The response to comments and any changes made to the Draft General Plan EIR in response to the comments will be submitted in both Word and PDF format to the City for review and comment.

The response to comments will be presented in side-by-side format with a reduced version of the comment letter on the left side of the page and the responses on the right side of the page. Atkins will also prepare a response to comments Introduction section which will provide a list of persons, organizations, and agencies commenting on the Draft EIR and a summary of any changes made to the Draft EIR that were incorporated into the Final EIR.

### **Products:**

- One Word and one PDF electronic copy of the Draft Responses to Comments.

### **Task 8.2      Revise Responses to Comments**

Atkins will prepare one set of requested revisions to the response to comments and the revisions to the Draft EIR, based on City staff comments within the limits of a 60-hour professional staff budget. The City's comments will be provided in one collated electronic copy. Atkins will submit one electronic version in both Word and PDF format to the City.

**Products:**

- One Word and one PDF electronic copy of the Final Responses to Comments.

**Task 8.3 Print Check Final EIR**

Atkins will prepare three hard copies and one electronic copy of the Print Check Final General Plan Update EIR (not including technical appendices) and submit them to the City for a print check review. Atkins will expend up to 16 professional staff hours to prepare revisions to the Print Check Final EIR if requested by the City.

**Products:**

- Three hard copies and one electronic copy of the Print Check Final EIR.

**Task 8.4 Final General Plan Update EIR**

Upon approval of the Print Check Final EIR, Atkins will prepare and deliver to the City five hard copies, 25 PDF electronic CD copies and one Word electronic CD copy of the Final General Plan Update EIR and Technical Appendices. This scope of work assumes that the City will be responsible for distribution of the Final EIR, including the provision of responses to comments to any public agencies that commented on the Draft EIR ten days prior to the City Council hearing to consider certification of the EIR. If certified, Atkins will prepare the Notice of Determination (NOD) and the City will file the NOD with the State Clearinghouse and County Clerk's office within five days of certification of the EIR.

**Products:**

- Five hard copies, 25 PDF electronic CD copies and one Word electronic CD copy of the Final General Plan EIR and Technical Appendices.

**Task 9 Meetings**

The Atkins Project Manager, Kim Howlett, and Assistant Project Manager, Diane Sandman will attend up to ten meetings with City staff or other members of the project team.

**Task 10 Teleconferences**

Prepare for and participate in four teleconferences with City staff regarding the status of the EIR.

**Printing Costs**

The Draft and Final EIR and appendices document production budget is included in the tasks described above. The exact cost for document printing may be greater or less than what was budgeted, depending on the length of the document, color graphics, oversize graphics, and the number of copies requested by the City. Therefore, should the printing budget need revision, Atkins will inform the City prior to incurring additional charges.

**Filing Fees**

Filing fees are not included in this scope of work and cost. It is assumed that the City will pay all fees, such as the fee for the California Department of Fish and Game which is due upon filing the NOD.

**Cost**

Task 1	Prepare 2 <sup>nd</sup> Screencheck DEIR .....	\$20,698
Task 2	Print Check DEIR .....	\$7,387
Task 3	Draft EIR Public Review & NOA & NOC .....	\$6,056
Task 3	Draft EIR Public Review Copies .....	\$3,128
Task 4	Prepare Draft MMRP .....	\$3,284
Task 5	Revise MMRP .....	\$754
Task 6	Prepare Draft Findings and SOCs .....	\$6,524
Task 7	Revise Findings and SOCs .....	\$4,996
Task 8.1	Prepare Draft Responses to Comments .....	\$27,168
Task 8.2	Revise Response to Comments .....	\$11,478
Task 8.3	Print Check Final EIR .....	\$4,789
Task 8.4	Final EIR Copies & NOD .....	\$1,274
Task 9	Meetings .....	\$15,240
Task 10	Teleconferences .....	\$3,094
Misc. Expenses	.....	\$1,150
Contingency	.....	\$100,000
<b>Total</b>	.....	<b>\$217,135</b>

**FUTURE CITY COUNCIL AGENDA ITEMS**  
**September 29, 2011**

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

Green Sheet Due by Noon on Monday, 9/26/11  
Staff Reports/Resos due by Noon on Tuesday 10/4/11

**OCTOBER 12, 2011**  
**4:30 p.m.**

<b>CONSENT CALENDAR</b>	
1	<p><b>Adopt Resolutions Updating the Salary Plans for the Unclassified Clerical/Technical Group, Salary Bands for the Management Group, Salary Plans for Part-Time Positions and the Unclassified Service Schedule List</b> (S. Bennett)</p> <p><i>The City is required to update positions and salaries within the Management and Unclassified Clerical/Technical Groups, the Part-Time Salary Plan, as well as maintain an updated listing of all unclassified employee titles.</i></p>
2	<p><b>Notice of Completion for Replacement of Lift Station #4</b> (C. Whittemore)</p> <p><i>Completion of this project provides all new equipment at the wastewater lift station in the Escondido Country Club area, providing greater reliability and more emergency wastewater storage capacity.</i></p>
3	<p><b>Abandoned Vehicle Abatement (AVA) Program Renewal</b> (B. Redlitz)</p> <p><i>The City currently is a participant in the County's AVA Program. The program sunsets on April 30, 2012 unless the County requests an extension. We have been recently informed that the Department of Motor Vehicles needs the San Diego County AVA Board's formal request for continuance of the program in San Diego County. The County has requested a letter of intent and formal resolution from each participant.</i></p>
4	<p><b>Increase Spending Authority on Phase 4 of the Tulip Street Improvement Project</b> (R. Buquet)</p> <p><i>The Tulip Street Improvement project is a multi-phase street improvement project in Escondido's Westside neighborhood. We are in the final phase of construction and expect to be complete in October 2011.</i></p>

**OCTOBER 12, 2011**  
**Continued**

	<b>PUBLIC HEARINGS:</b>
5	<p><b>Approve an Amendment to FY 2011-2012 Action Plan for CDBG to Allocate \$75,000 in Unallocated CDBG Funds to the Grape Street Neighborhood Improvement Project</b>  (R. Buquet)</p> <p><i>This is a public hearing to amend the FY 2011-2012 Action Plan for CDBG. It is requested that Council approve an amendment to the FY 2011-2012 Action Plan for CDBG to allocate \$75,000 in unallocated CDBG funds to the Grape Street Neighborhood Improvement Project.</i></p>
	<b>CURRENT BUSINESS</b>
6	<p><b>Facility Rental Fees for City Facilities and Program Fees for Recreation Programs</b>  (J. Van Leeuwen)</p> <p><i>Per Council direction, facility and program fees have been reviewed and recommendation for adjustments will be presented.</i></p>
7	<p><b>City Financial Report</b>  (G. Rojas)</p> <p><i>Summary of financial status of City reporting entities as of June 30, 2011.</i></p>
8	<b>Future Agenda Items (M. Whalen)</b>

Green Sheet Due by Noon on Monday, 10/3/11  
Staff Reports/Resos due by Noon on Tuesday 10/11/11

**OCTOBER 19, 2011**  
**4:30 p.m.**

	<b>CONSENT CALENDAR</b>
	<p><b>Street Sweeping</b>  (J. Van Leeuwen)</p> <p><i>(Need Green Sheet)</i></p>
	<b>PUBLIC HEARINGS:</b>
	<b>CURRENT BUSINESS</b>
	<p><b>Pay down of Prop P</b>  (G. Rojas)</p> <p><i>(Need Green Sheet)</i></p>
	<p><b>Downtown Parking</b>  (C. Grimm)</p> <p><i>(Need Green Sheet)</i></p>
	<b>Future Agenda Items (M. Whalen)</b>