



Council Meeting Agenda

JULY 8, 2015

CITY COUNCIL CHAMBERS

3:30 P.M. Closed Session; 4:30 P.M. Regular Session

201 N. Broadway, Escondido, CA 92025

MAYOR	Sam Abed
DEPUTY MAYOR	Michael Morasco
COUNCIL MEMBERS	Olga Diaz Ed Gallo John Masson
CITY MANAGER	Clay Phillips
CITY CLERK	Diane Halverson
CITY ATTORNEY	Jeffrey Epp
DIRECTOR OF COMMUNITY DEVELOPMENT	Barbara Redlitz
DIRECTOR OF PUBLIC WORKS	Ed Domingue

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

**July 8, 2015
3:30 P.M. Meeting**

Escondido City Council

CALL TO ORDER

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

ORAL COMMUNICATIONS

In addition to speaking during particular agenda items, the public may address the Council on any item which is not on the agenda provided the item is within the subject matter jurisdiction of the City Council. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. (Please refer to the back page of the agenda for instructions.) Speakers are limited to only one opportunity to address the Council under Oral Communications.

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

- I. CONFERENCE WITH LEGAL COUNSEL-- EXISTING LITIGATION (Government Code 54956.9(d)(1))**
- Case Name:** Stuck in the Rough, LLC. v. City of Escondido, et al.
Case No: 37-2013-00074375-CU-WM-NC
- II. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)**
- a. **Property:** West Valley Parkway Parking Lot between City Hall and the California Center for the Arts (APN 299-372-20 por.)
- City Negotiator:** Clay Phillips, City Manager
Negotiating Parties: Pierpoint Management, LLC.
Under Negotiation: Price and Terms of Agreement

ADJOURNMENT



Council Meeting Agenda

**July 8, 2015
4:30 P.M. Meeting**

**Escondido City Council
Mobilehome Rent Review Board**

CALL TO ORDER

MOMENT OF REFLECTION:

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

FLAG SALUTE

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

PRESENTATIONS: San Diego Gas & Electric/San Diego Junior Lifeguard Foundation

ORAL COMMUNICATIONS

The public may address the Council on any item that is not on the agenda and that is within the subject matter jurisdiction of the legislative body. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. (Please refer to the back page of the agenda for instructions.) NOTE: Depending on the number of requests, comments may be reduced to less than 3 minutes per speaker and limited to a total of 15 minutes. Any remaining speakers will be heard during Oral Communications at the end of the meeting.

CONSENT CALENDAR

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

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency)**
3. **[APPROVAL OF MINUTES: A\) Regular Meeting of June 10, 2015 B\) Regular Meeting of June 17, 2015](#)**

4. **SPECIAL EVENT PERMITS -**

Request Council approve the adoption of Ordinance 2015-05 to update the City's Special Event Permits policies and procedures.

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

ORDINANCE NO. 2015-05 (First Reading and Introduction)

5. **COMMUNITY SERVICES BUDGET ADJUSTMENT -**

Request Council approve a budget adjustment of \$5,000 resulting from a grant received from San Diego Gas & Electric (SDG&E) for the Community Services Department Aquatics Program and authorize the City Manager and Director of Administrative Services to make the necessary budget adjustments to the Community Services Department Recreation fund.

Staff Recommendation: **Approval (Community Services Department: Loretta McKinney)**

6. **COMMUNITY SERVICES DEPARTMENT FACILITY USE POLICY -**

Request Council approve the revised Community Services Department Facility Use Policy to include the addition of a fee for Classification E (commercial groups, businesses, trade shows, etc.) to rent the Kit Carson Park Fitness Course and park areas as well as the Tennis Courts at Kit Carson, Mountain View and Washington parks at the rate of \$30 per hour for each amenity.

Staff Recommendation: **Approval (Community Services Department: Loretta McKinney)**

7. **NOTICE OF COMPLETION: CORROSION CONTROL SYSTEM FOR THE ESCONDIDO SEWER OUTFALL -**

Request Council approve authorizing the Director of Utilities to file a Notice of Completion for the Corrosion Control System for the Escondido Sewer Outfall.

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

RESOLUTION NO. 2015-119

8. **MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ESCONDIDO AND THE ESCONDIDO CITY EMPLOYEES' ASSOCIATION - ADMINISTRATIVE, CLERICAL AND ENGINEERING BARGAINING UNIT -**

Request Council approve the execution of a successor Escondido City Employee's Association - Administrative, Clerical & Engineering Bargaining Unit Memorandum of Understanding.

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

RESOLUTION NO. 2015-125

9. [MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ESCONDIDO AND THE ESCONDIDO CITY EMPLOYEES' ASSOCIATION - SUPERVISORY BARGAINING UNIT -](#)
Request Council approve the execution of a successor Escondido City Employee's Association - Supervisory Bargaining Unit Memorandum of Understanding.

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

RESOLUTION NO. 2015-126

10. [BID AWARD FOR THE FISCAL YEAR 2014/2015 STREET MAINTENANCE PROJECT -](#)
Request Council approve authorizing the bid award to American Asphalt South, determined to be the lowest responsive and responsible bidder and authorize the Mayor and City Clerk to execute a Public Improvement Agreement in the amount of \$1,261,332.18 for the FY 2014/2015 Street Maintenance Project.

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

RESOLUTION NO. 2015-127

11. [AMENDMENT OF ESCONDIDO MUNICIPAL CODE SECTION 17-5 AND 18-107 -](#)
Request Council approve amendments to the Escondido Municipal Code to improve the tools available to law enforcement in dealing with safety issues surrounding the use of medians and public sidewalks, walkways and passageways.

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

ORDINANCE NO. 2015-15 (First Reading and Introduction)

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

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

12. [AMENDMENT TO THE ZONING CODE PERTAINING TO AIR SPACE CONDOMINIUMS AND COMMUNITY APARTMENTS \(AZ 15-0001\) -](#)

Approved on June 24, 2015 with a vote of 4/0/1 (Masson absent)

ORDINANCE NO. 2015-14 (Second Reading and Adoption)

PUBLIC HEARINGS

13. [SHORT-FORM RENT INCREASE APPLICATION FOR CAREFREE RANCH -](#)
Request Council consider the short-form rent increase application submitted by Carefree Ranch and if approved, grant an increase of seventy-five percent (75%) of the change in the Consumer Price Index, or 0.963% (an average of \$4.70) for the period of December 31, 2013 to December 31, 2014.

Staff Recommendation: **Consider for Approval (Community Development Department: Barbara Redlitz)**

RRB RESOLUTION NO. 2015-04

14. **COST REPORT FOR 2015 WEED ABATEMENT PROGRAM -**
Request Council receive the 2015 Weed Abatement Report; consider any objections; and approve confirming the Fire Chief's 2015 Weed Abatement Report.

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

RESOLUTION NO. 2015-100

CURRENT BUSINESS

15. **DECLARATION OF A UTILITY EMERGENCY AND AWARD OF CONTRACT TO REPAIR THE ESCONDIDO SEWER OUTFALL IN THE ESCONDIDO CREEK -**

Request Council approve declaring that, pursuant to the terms of Section 20168 of the California Public Contract Code, the City Council may forego normal bidding procedures and pass a resolution by four-fifths vote declaring that public interest and necessity demand the immediate expenditure to safeguard life, health, or property.

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

RESOLUTION NO. 2015-128

16. **CLEAN WATER STATE REVOLVING FUND LOAN APPLICATION FOR FREQUENT FINANCER PROGRAM -**

Request Council approve authorizing the Director of Utilities or his designee to sign, on behalf of the City, applications to the Clean Water State Revolving Fund (SRF) Loan Frequent Financer Program for future loans to fund the Recycled Water and Potable Reuse Program. The Resolution provides commitment to reimbursement of said loans once loan funds are actually disbursed. Each SRF loan for a particular project requires four distinct packages (General, Technical, Environmental, and Financial). This action will help staff streamline the Financial package for future loan applications. The remaining packages (General, Technical, and Environmental) will be submitted for individual projects only with Council approval, which is consistent with existing practice. This action will not increase the Utilities Department debt obligations without future authority from the City Council, but it will authorize staff to submit streamlined financial packages to save future staff time and reduce application costs.

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

RESOLUTION NO. 2015-108

17. **BID AWARD FOR THE CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT AND BUDGET ADJUSTMENT -**

Request Council approve authorizing the Mayor and City Clerk to execute a Public Improvement Agreement with MNR Construction Inc., the lowest responsive and responsible bidder, in the amount of \$6,790,250 for the Cemetery Area Water Pipeline Replacement Project and authorize a budget adjustment in the amount of \$2,550,000. The competitive bids were publicly opened by the City Clerk's representative on Thursday, June 18, 2015.

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

RESOLUTION NO. 2015-120

18. **POWER PURCHASE AGREEMENT AT THE HALE AVENUE RESOURCE RECOVERY FACILITY WITH ESCONDIDO BIOENERGY FACILITY, LLC -**

Request Council approve authorizing the Mayor and City Clerk to execute, on behalf of the City, a twenty-year Power Purchase Agreement with Escondido Bioenergy Facility, LLC and authorize the Director of Utilities to execute, on behalf of the City, a Site License Agreement with Escondido Bioenergy Facility, LLC for constructing and operating a cogeneration facility at the Hale Avenue Resource Recovery Facility.

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

RESOLUTION NO. 2015-107

19. [DESIGNATION OF VOTING DELEGATE - LEAGUE OF CALIFORNIA CITIES CONFERENCE -](#)

Request Council designate a voting delegate, and up to two alternates, to represent the City of Escondido at the business meeting to be held during the League of California Cities Annual Conference, September 30 - October 2, 2015 in San Jose.

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

FUTURE AGENDA

20. [FUTURE AGENDA -](#)

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

Staff Recommendation: **None (City Clerk's Office: Diane Halverson)**

COUNCIL MEMBERS SUBCOMMITTEE REPORTS

CITY MANAGER'S UPDATE/BRIEFING

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

- [CITY MANAGER'S UPDATE -](#)

ORAL COMMUNICATIONS

The public may address the Council on any item that is not on the agenda and that is within the subject matter jurisdiction of the legislative body. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. Speakers are limited to only one opportunity to address the Council under Oral Communications.

ADJOURNMENT

UPCOMING MEETING SCHEDULE

Date	Day	Time	Meeting Type	Location
July 15	-	-	No Meeting	-
July 22	-	-	No Meeting	-
July 29	-	-	No Meeting	-
August 5	Wednesday	3:30 & 4:30 p.m.	Regular Meeting	Council Chambers

TO ADDRESS THE COUNCIL

The public may address the City Council on any agenda item. Please complete a Speaker's form and give it to the City Clerk. Submission of Speaker forms prior to the discussion of an item is highly encouraged. Comments are generally limited to 3 minutes.

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

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

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

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

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

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

LIVE BROADCAST

Council meetings are broadcast live on Cox Cable Channel 19 and U-verse Channel 99 – Escondido Gov TV. They can also be viewed the following Sunday and Monday evenings at 6:00 p.m. on those same channels. The Council meetings are also available live via the Internet by accessing the City's website at www.escondido.org, and clicking the "Live Streaming –City Council Meeting now in progress" button on the home page.

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

**The City Council is scheduled to meet the first four Wednesdays
of the month at 3:30 in Closed Session and 4:30 in Open Session.
(Verify schedule with City Clerk's Office)**

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

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



If you need special assistance to participate in this meeting, please contact our ADA Coordinator at 839-4643. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

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

CITY OF ESCONDIDO
June 10, 2015
3:30 P.M. Meeting Minutes
Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 3:30 p.m. on Wednesday, June 10, 2015 in the Council Chambers at City Hall with Mayor Abed presiding.

ATTENDANCE:

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

ORAL COMMUNICATIONS

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

MOTION: Moved by Councilmember Gallo and Seconded by Councilmember Masson to recess to Closed Session. Ayes: Abed, Diaz, Masson and Gallo. Noes: None. Absent: Morasco. Motion carried.

- I. CONFERENCE WITH LABOR NEGOTIATOR (Government Code §54957.6)**
- a. **Agency Negotiator:** Sheryl Bennett & Clay Phillips
Employee Organization: Escondido City Employee Association: Supervisory (SUP) Bargaining Unit
 - b. **Agency Negotiator:** Sheryl Bennett & Clay Phillips
Employee Organization: Escondido City Employee Association: Administrative/Clerical/Engineering (ACE) Bargaining Unit
 - c. **Agency Negotiator:** Sheryl Bennett & Clay Phillips
Employee Organization: Maintenance & Operations, Teamsters Local 911
- II. CONFERENCE WITH LEGAL COUNSEL-- EXISTING LITIGATION (Government Code 54956.9(d)(1))**
- Case Name:** Stuck in the Rough, LLC. v. City of Escondido, et al.
 - Case No:** 37-2013-00074375-CU-WM-NC
- III. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)**
- a. **Property:** 455 N. Quince Street
City Negotiator: Debra Lundy, Real Property Manager
Negotiating Parties: Stylution USA, Inc. (dba Wickline Bedding)
Under Negotiation: Price and Terms of Agreement

IV. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION/SIGNIFICANT EXPOSURE (Government Code 54956.9(d)(2))
a. One Case - Claim No. 4678

No action was announced.

ADJOURNMENT

Mayor Abed adjourned the meeting at 3:53 p.m.

MAYOR

CITY CLERK

MINUTES CLERK

CITY OF ESCONDIDO
June 10, 2015
4:30 P.M. Meeting Minutes

Escondido City Council

CALL TO ORDER

MOMENT OF REFLECTION:

Kathy Hearn led the Moment of Reflection.

FLAG SALUTE

Mayor Abed led the Flag Salute.

PRESENTATIONS:

Dahvia Lynch and Johnny Dunning held a presentation regarding North County Transit District.

ATTENDANCE:

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

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

ORAL COMMUNICATIONS

Mike Santero, Escondido, introduced the Orange Glen Academic Team President Kendra Gambley, who shared the team's accomplishments and thanked the Council for support.

Roy Garrett, Escondido, noted Juan Pillipe Herrera, a student from Escondido that was named Poet Lauriat for the State of California and provided a poem he wrote about the City; also noted the limited hours of Queen Califia's Magical Circle.

Elizabeth Murguid and Jacob Sierra, Escondido, spoke to the council about their goal to reduce underage drinking through the Escondido Youth Advocacy Coalition.

CONSENT CALENDAR

MOTION: Moved by Councilmember Masson and seconded by Councilmember Diaz that the following Consent Calendar items be approved. Ayes: Abed, Diaz, Masson and Gallo. Noes: None. Absent: Morasco. Motion carried.

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency)**
3. **APPROVAL OF MINUTES: Regular Meeting of May 6, 2015**

4. **GRANT OF EASEMENT DEED TO SAN DIEGO GAS & ELECTRIC COMPANY FOR INSTALLATION AND MAINTENANCE OF OVERHEAD ELECTRIC FACILITIES AND APPURTENANCES ADJACENT TO LAKE DIXON -**

Request Council approve authorizing the Real Property Manager to execute an Easement Deed for the benefit of San Diego Gas & Electric Company for installation and maintenance of overhead electric facilities and appurtenances. (File No. 0690-80)

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

RESOLUTION NO. 2015-91

5. **RECYCLED WATER EASTERLY MAIN EXTENSION - AWARD OF CONSULTING AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES -**

Request Council approve authorizing the Mayor and City Clerk to execute a Consulting Agreement for \$477,280 with Michael Baker International for construction management services. (File No. 0600-10 [A-])

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

RESOLUTION NO. 2015-83

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

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

6. **PROPOSED AMENDMENTS TO CHAPTER 31 OF THE ESCONDIDO MUNICIPAL CODE CONCERNING WATER USE RESTRICTIONS AND MEASURES -**

Approved on June 3, 2015 with a vote of 5/0 (File No. 0680-50)

ORDINANCE NO. 2015-12 (Second Reading and Adoption)

PUBLIC HEARINGS

7. **ADOPTION OF FISCAL YEAR 2015/16 AND 2016/17 TWO-YEAR ANNUAL OPERATING BUDGET AND THE APPROPRIATIONS LIMIT (GANN LIMIT) FOR FISCAL YEAR 2015/16 -**

Request Council approve the FY 2015/16 Annual Operating Budget and approve the Appropriations Limit (Gann Limit) for FY 2015/16. (File No. 0430-30)

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

A) RESOLUTION NO. 2015-84 B) RESOLUTION NO. 2015-85

Sheryl Bennett, Director of Administrative Services; Joan Ryan, Assistant Director of Finance, and Jodi Coco, Budget Manager, presented the staff report, utilizing a PowerPoint presentation.

Chad Martinelli, Escondido, expressed his concerns about cuts to recreation programs.

Chelsea Hodgkiss-Harlow, Escondido, does not support reducing contracted instructors for community recreation classes.

Patricia Borchmann, Escondido, requested the Council consider the value recreation programs provide.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Masson to approve the FY 2015/16 Annual Operating Budget and approve the Appropriations Limit (Gann Limit) for FY 2015/16 and adopt Resolution No. 2015-84 and Resolution No. 2015-85. Ayes: Abed, Diaz, Masson and Gallo. Noes: None. Absent: Morasco. Motion carried.

MOTION: Moved by Councilmember Masson and seconded by Councilmember Gallo to approve amending the FY 2015-16 Operating Budget for the California Center for the Arts for gas and electric costs and a reclassification of various positions. Ayes: Abed, Diaz, Masson and Gallo. Noes: None. Absent: Morasco. Motion carried.

CURRENT BUSINESS

- 8. LIMITING LANDSCAPE IRRIGATION WITH POTABLE WATER TO TWO DAYS EACH WEEK -**
Request Council approve declaring that landscape irrigation with potable water within the water service area of the City of Escondido shall be limited to two days each week for no more than 10 minutes at each irrigation station. (File No. 1320-90)

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

RESOLUTION NO. 2015-98

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

Sally Roney, Escondido, stated that the Ordinance pertaining to water usage should include the word ornamental along with landscaping.

Michelle Haskero, Escondido, requested that schools be allowed to water turf fields more frequently than twice per week to ensure athlete safety.

NO ACTION, ITEM CONTINUED TO JUNE 17, 2015.

FUTURE AGENDA

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

Staff Recommendation: **None (City Clerk's Office: Diane Halverson)**

COUNCIL MEMBERS SUBCOMMITTEE REPORTS

Councilmember Gallo reported on San Diego County Water Authority and the sources of water that San Diego County receives.

CITY MANAGER'S UPDATE/BRIEFING

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

- **CITY MANAGER'S UPDATE -**

ORAL COMMUNICATIONS

ADJOURNMENT

Mayor Abed adjourned the meeting at 7:19 p.m.

MAYOR

CITY CLERK

MINUTES CLERK

CITY OF ESCONDIDO
June 17, 2015
3:30 P.M. Meeting Minutes
Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 3:30 p.m. on Wednesday, June 17, 2015 in the Council Chambers at City Hall with Mayor Abed presiding.

ATTENDANCE:

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

ORAL COMMUNICATIONS

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

MOTION: Moved by Councilmember Diaz and seconded by Deputy Mayor Morasco to recess to Closed Session. Motion carried unanimously.

I. CONFERENCE WITH LABOR NEGOTIATOR (Government Code §54957.6)

- a. **Agency Negotiator:** Sheryl Bennett & Clay Phillips
Employee Organization: Escondido City Employee Association: Supervisory (SUP) Bargaining Unit
- b. **Agency Negotiator:** Sheryl Bennett & Clay Phillips
Employee Organization: Escondido City Employee Association: Administrative/Clerical/Engineering (ACE) Bargaining Unit

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

- a. **Property:** 272 E. Via Rancho Parkway, Escondido
City Negotiator: Clay Phillips
Negotiating Parties: City and Westfield Shopping Town, Inc.
Under Negotiation: Price and terms of payment

ADJOURNMENT

Mayor Abed adjourned the meeting at 3:50 p.m.

MAYOR

CITY CLERK

MINUTES CLERK

CITY OF ESCONDIDO
June 17, 2015
4:30 P.M. Meeting Minutes

Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 4:30 p.m. on Wednesday, June 17, 2015 in the Council Chambers at City Hall with Mayor Abed presiding.

MOMENT OF REFLECTION:

Greg Lane led the Moment of Reflection.

FLAG SALUTE:

Mayor Abed led the Flag Salute.

PROCLAMATIONS:

Retirement of California District 31 Little League Administrator Larry Burch

ROLL CALL:

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

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

ORAL COMMUNICATIONS

Donald W Park, Escondido, spoke about unsafe living conditions at Eagles Point Apartment building and thanked the City for help in enforcement.

Gena Knutson, Escondido, provided information regarding smoke free outdoor dining patios.

Robroy Fawcett, Escondido, noted living conditions at Eagles Point Apartments; spoke about the Evenwel v. Abbott Supreme Court case citing the one person/one vote principal; also stated he does not support the closing of the downtown Palomar Hospital.

Michael Schwartz, Escondido, expressed concern with a street closure and stated that Traffic Engineering staff has not provided him with the correct information regarding the closure.

CONSENT CALENDAR

Councilmember Masson removed item 9 from the Consent Calendar for discussion.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Diaz that the following Consent Calendar items be approved. Motion carried unanimously.

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency)**
3. **APPROVAL OF MINUTES: A) Regular Meeting of May 20, 2015 B) Regular Meeting of June 3, 2015**
4. **AWARD OF BID FOR LEGAL ADVERTISING FISCAL YEAR 2015-16 -**
Request Council approve awarding the bid for the City's legal advertising for a one-year period to the Union Tribune San Diego North County. (File No. 0600-10 [A-3144])

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

RESOLUTION NO. 2015-102

5. **FINAL ASSESSMENT ENGINEER'S REPORT FOR ZONES 1-36 AND 38 OF THE CITY OF ESCONDIDO LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT FOR FISCAL YEAR 2015/2016 -**
Request Council approve the Assessment Engineer's Report and the annual levy and collection of assessments in Zones 1-36 and 38 of the Escondido Landscape Maintenance Assessment District for FY 2015/2016. (File No. 0685-10)

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

RESOLUTION NO. 2015-106

6. **THIRD AMENDMENT TO THE COUNTY OF SAN DIEGO SENIOR NUTRITION SERVICES CONTRACT NO. 547766 -**
Request Council approve authorizing the Director of Library and Community Services to execute a Third Amendment to County Contract No. 547766, County of San Diego, Health and Human Services Agency Agreement with the City of Escondido for the Senior Nutrition Program. (File No. 0600-10 [A-???)

Staff Recommendation: **Approval (Community Services Department: Loretta McKinney)**

RESOLUTION NO. 2015-95

7. **PUBLIC SERVICE AGREEMENT WITH REDWOOD SENIOR HOMES AND SERVICES FOR SENIOR TRANSPORTATION -**
Request Council approve authorizing the Mayor and City Clerk to execute a Public Service Agreement with Redwood Senior Homes and Services, to provide transportation services for the Senior Nutrition Program in the amount of \$147,800. (File No. 0600-10 [A-???)

Staff Recommendation: **Approval (Community Services Department: Loretta McKinney)**

RESOLUTION NO. 2015-96

8. PUBLIC SERVICE AGREEMENT WITH REDWOOD SENIOR HOMES AND SERVICES FOR MEAL SERVICE -

Request Council approve authorizing the Mayor and City Clerk to execute a Public Service Agreement with Redwood Senior Homes and Services Town Court, to provide meals for the Nutrition Program offered at the Escondido Senior Center for Fiscal Year 2015-2016 in the amount of \$129,051. (File No. 0600-10 [A-??])

Staff Recommendation: **Approval (Community Services Department: Loretta McKinney)**

RESOLUTION NO. 2015-97

9. LIMITING LANDSCAPE IRRIGATION WITH POTABLE WATER TO TWO DAYS EACH WEEK -

Request Council approve declaring that landscape irrigation with potable water within the water service area of the City of Escondido shall be limited to two days each week for no more than 10 minutes at each irrigation station. **THIS ITEM IS CONTINUED FROM JUNE 10, 2015.** (File No. 1320-90)

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

RESOLUTION NO. 2015-98(R)

Councilmember Masson questioned why there is not a 3 day option included in the proposal.

Christopher W. McKinney, Director of Utilities, noted his understanding of the rationale for two day watering based on Council direction at the June 10, 2015 Council meeting.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Diaz to approve declaring that landscape irrigation with potable water within the water service area of the City of Escondido shall be limited to two days each week, choice of watering day left to each customer, for no more than 10 minutes at each irrigation station and adopt Resolution No. 2015-98. Ayes: Diaz and Gallo. Noes: Abed, Masson, and Morasco. Abstained: None. Motion failed.

MOTION: Moved by Councilmember Diaz and Seconded by Mayor Abed to approve declaring that landscape irrigation with potable water within the water service area of the City of Escondido shall be limited to two days each week: homes with odd addresses to water Sunday and Wednesday; homes with even addresses to water Tuesday and Saturday; apartments, condos and businesses to water Monday and Thursday, for no more than 10 minutes at each irrigation station, with review no later than six months, and adopt Resolution No. 2015-98. Ayes: Abed and Diaz. Noes: Gallo, Masson and Morasco. Abstained: None. Motion failed.

MOTION: Moved by Councilmember Masson and seconded by Deputy Mayor Morasco to approve declaring that landscape irrigation with potable water within the water service area of the City of Escondido shall be limited to three days each week: homes with odd addresses to water Sunday, Tuesday and Thursday; homes with even addresses to water Saturday, Monday and Wednesday; apartments, condos and businesses to water Monday, Wednesday and Friday, for no more than 7 minutes at each irrigation station, with review no later than six months, and adopt resolution No. 2015-98(R). Motion carried unanimously.

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

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

PUBLIC HEARINGS

10. **PRELIMINARY, MASTER AND PRECISE DEVELOPMENT PLAN, AND ZONE CHANGE (PHG 14-0020 AND ENV 15-0004) -**

Request Council approve a mixed-use development proposed by Veterans Village of San Diego (VVSD) consisting of a 54-unit affordable multi-family residential apartment project for military veterans and their families including a 1,500 SF commercial component to support training opportunities offered at the facility. The residential component includes the construction of 48 new apartment units and preservation of six existing adobe apartment units. A zone change to Planned Development-Mixed Use (PD-MU) is proposed to facilitate development of the project. The project is requesting to use the reduced parking ratios and reduce the number of covered spaces as allowed for affordable projects in conformance with the City's Density Bonus and Residential Incentives Ordinance (Article 67, Escondido Zoning Code). The project site is developed with historic Weir Bros. adobe commercial and multi-family residential structures and the adobe office structures and six-unit adobe apartment building would be retained. All other structures would be removed. (File No. 0800-40)

Staff Recommendation: **Approval (Community Development Department: Barbara Redlitz)**

ORDINANCE 2015-13 (Introduction and First Reading)

Bill Martin, Deputy Director of Planning, presented the staff report, utilizing a PowerPoint presentation.

David Ferguson, spoke on behalf of the Veterans Village Project and thanked staff for work regarding the site.

MOTION: Moved by Councilmember Masson and seconded by Deputy Mayor Morasco to approve a mixed-use development proposed by Veterans Village of San Diego (VVSD) consisting of a 54-unit affordable multi-family residential apartment project for military veterans and their families including a 1,500 SF commercial component to support training opportunities offered at the facility. The residential component includes the construction of 48 new apartment units and preservation of six existing adobe apartment units. A zone change to Planned Development-Mixed Use (PD-MU) is proposed to facilitate development of the project. The project is requesting to use the reduced parking ratios and reduce the number of covered spaces as allowed for affordable projects in conformance with the City's Density Bonus and Residential Incentives Ordinance (Article 67, Escondido Zoning Code). The project site is developed with historic Weir Bros. adobe commercial and multi-family residential structures and the adobe office structures and six-unit adobe apartment building would be retained. All other structures would be removed and introduce Ordinance No. 2015-13. Motion carried unanimously.

11. **THE FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM, THE FISCAL YEAR 2015/16 CIP BUDGET, AND THE TRANSNET FIVE YEAR LOCAL STREET IMPROVEMENT PROGRAM -**

Request Council approve adopting Fiscal Years 2015/16-2019/20 Five-Year Capital Improvement Program, Fiscal Year 2015/16 CIP Project Budgets, and approve authorizing an amendment to the 2014 Regional Transportation Improvement Plan and the Transnet Five-Year Local Street Improvement Program of Projects for Fiscal Years 2016-2020. (File No. 0430-30)

Staff Recommendation: **Approval (Finance Department: Sheryl Bennett and Public Works Department/Engineering: Ed Domingue)**

A) RESOLUTION NO. 2015-86 B) RESOLUTION NO. 2015-87

Sheryl Bennett, Director of Administrative Services, Michelle Lefever, Finance, Matt Souttere, Engineering, and Craig Whittemore, Deputy Director of Utilities, presented the staff report, utilizing a PowerPoint presentation.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Masson to approve adopting Fiscal Years 2015/16-2019/20 Five-Year Capital Improvement Program, Fiscal Year 2015/16 CIP Project Budgets, and approve authorizing an amendment to the 2014 Regional Transportation Improvement Plan and the Transnet Five-Year Local Street Improvement Program of Projects for Fiscal Years 2016-2020 and adopt Resolution No. 2015-86 and Resolution No. 2015-87. Motion carried unanimously.

CURRENT BUSINESS

12. APPOINTMENTS TO THE LIBRARY BOARD OF TRUSTEES AND THE COMMUNITY SERVICES COMMISSION -

Request Council ratify the Mayor's appointments to (1) fill an unscheduled vacancy on the Library Board of Trustees; term to expire March 31, 2017; and (2) fill an unscheduled vacancy on the Community Services Commission, term to expire March 31, 2016. (File No. 0120-10)

Staff Recommendation: **Ratify the Mayor's Appointment (City Clerk's Office: Diane Halverson)**

Mayor Abed appointed Zoe Sanchez Richardson to the Community Services Commission.

MOTION: Moved by Mayor Abed and seconded by Councilmember Masson to ratify the Mayor's appointment to fill an unscheduled vacancy on the Community Services Commission; term to expire March 31, 2016. Motion carried unanimously.

Mayor Abed appointed Ronald Guiles to the Library Board of Trustees.

MOTION: Moved by Mayor Abed and seconded by Councilmember Gallo to ratify the Mayor's appointment to fill an unscheduled vacancy on the Library Board of Trustees; term to expire March 31, 2017. Motion carried unanimously.

FUTURE AGENDA

13. FUTURE AGENDA -

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

Staff Recommendation: **None (City Clerk's Office: Diane Halverson)**

COUNCIL MEMBERS SUBCOMMITTEE REPORTS

Deputy Mayor Morasco noted the California Center for the Art's upcoming season.

Councilmember Gallo reported on the San Diego County Water Authority's pipe break in San Marcos.

Mayor Abed reported on the SANDAG Board Meeting and the San Diego Forward Regional Plan; they are reviewing the draft environmental impact report.

CITY MANAGER'S UPDATE/BRIEFING

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

- **CITY MANAGER'S UPDATE -**

ORAL COMMUNICATIONS

ADJOURNMENT

Mayor Abed adjourned the meeting at 6:42 p.m.

MAYOR

CITY CLERK

MINUTES CLERK

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 4

Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Joyce Masterson, Director of Economic Development & Community Relations
Gary J. McCarthy, Senior Deputy City Attorney
Adam Phillips, Deputy City Attorney

SUBJECT: Special Event Permits

RECOMMENDATION:

It is requested that Council adopt Ordinance No. 2015-05 to update the City's Special Event Permits policies and procedures.

FISCAL ANALYSIS:

Staff anticipates no significant change to the current budget.

PREVIOUS ACTION:

The City Council enacted the current ordinance as found in Escondido Municipal Code Chapter 16, Licenses and Business Regulations Generally, Article 4, Special Event Permits, in 1995.

BACKGROUND:

The City recognizes the value that Special Events bring to the community. In deciding whether to approve a permit, no consideration may be given to the message of the event, the content of speech, the identity or associational relationships of the applicant, or to any assumptions or predictions as to the amount of hostility which may be aroused in the public by the content of the speech or message conveyed by the event. Reasonable time, place and manner restrictions on speech are permissible under the First Amendment if the restrictions (1) are justified without reference to the content of the regulated speech; (2) are narrowly tailored to serve a significant government interest; (3) leave open alternate channels for communication of the information; and (4) in the case of a permitting scheme, do not delegate overly broad licensing discretion to a government official.

The Special Event Permits ordinance authorizes private parties and organizations to temporarily take control of city owned public property subject to reasonable limits. The current ordinance established a formal committee structure to manage the permitting process. In practice, a committee is not needed except for large scale events such as the Amgen Tour of California. Most special events are effectively coordinated by a single staff member in the City Manager's office. Staff continues to encourage the temporary use of city owned property through a process that ensures equitable use of the public property subject to reasonable rules and regulations contained in the proposed ordinance.

PROPOSED REVISIONS:

The proposed ordinance is a routine update to reflect current practices and aligns our local procedures with court decisions related to Special Event permits. Exhibit 1 is a strike-out document that compares the current article with the proposed changes. The most noticeable change involves the de-emphasis of the special events committee and the shift in staff responsibility from former Parks and Recreation Director to the City Manager.

Other key changes include:

- Refines the definition of a "Special Event" to require the presence of more than seventy-five (75) persons at any one time during the event.
- Emphasizes that activities with no significant impact on city resources are exempt from the Special Event permit process, i.e. sidewalk picketing without blocking pedestrian access or a gathering in a park.
- Adds a permit exemption to address Spontaneous Events that are held on the public areas of City Hall in response to recent news or public affairs.
- Updates the insurance and indemnification review process and allows waiver of the requirement when the scope of the risk allows.
- Updates permit processing procedures including the approval and denial criteria.
- Requires that the City Attorney review any proposed events involving expressive activities if the event receives a conditional approval or permit denial.
- Removes an unused section addressing cost recovery and revenue sharing for commercial special events. The City retains the ability to recover costs or share revenue through a separate contract.

CONCLUSION:

The proposed changes recognize current management of the Special Event Permit process and will allow prompt processing of Special Event Permits. Staff recommends the City Council adopt Ordinance No. 2015-05 to repeal and replace Escondido Municipal Code Chapter 16, Article 4, Special Event Permits.

Respectfully submitted,



JOYCE MASTERSON
Director of Economic Development
& Community Relations



GARY J. McCARTHY
Senior Deputy City Attorney



ADAM PHILLIPS
Deputy City Attorney

Exhibit 1

Chapter 16 - LICENSES AND BUSINESS REGULATIONS GENERALLY

ARTICLE 4 SPECIAL EVENT PERMITS

Sec. 16-201. Definitions.

(a) "Director" means the Director of Economic Development & Community Relations.

~~(a)~~(b) "Special Event" means the temporary use of city owned public property, including but not limited to streets, sidewalks, parks, and lakes for the purpose of conducting a parade or any other special enterprise, or any event which significantly impacts or substantially restricts the public's normal, typical or customary use, level of use, or ability to use such property and involves the presence of more than seventy-five persons at any one time during the event.

Sec. 16-202. Permit and exemptions.

(a) No person shall organize, produce, direct, conduct, manage, institute or carry on any special event a Special Event without having obtained a permit from the city pursuant to this chapter. (Ord. No. 95-1, § 1, 2-8-95)article.

(b) The following activities are exempt from the Special Event permit requirement:

(1) Spontaneous Events conducted on the paved pedestrian areas adjacent to city hall to include the rotunda and the public sidewalks between the city hall and the northwest corner of North Broadway and West Valley Parkway. A "Spontaneous Event" means an event which is occasioned by news or affairs coming into public knowledge less than forty-eight hours prior to such event.

(2) Events that are authorized by means of a contract with the City of Escondido.

Sec. 16-203. Interference with Special Event.

No person shall knowingly join or participate in any Special Event in violation of any of the terms, conditions or regulations of the permit issued therefor, or in any manner. No person shall knowingly interfere with the orderly conduct of such event. (Ord. No. 95-1, § 1, 2-8-95)any Special Event.

Sec. 16-204. Special Events committee established.

~~There is hereby established a special events committee composed of the chief of police, fire chief, parks and recreation director, public works director, human resources director, planning and building director, city attorney, community service director, San Diego County health department, city manager or their designated representative. Additional members may be added at the discretion of the city manager. The parks and recreation director, or his designated representative, shall be the chairperson of the committee. (Ord. No. 95-1, § 1, 2-8-95)~~

The Director shall chair a Special Events committee composed of pertinent department heads, or their designated representatives, and any additional members as needed. The Special Events committee should meet whenever departmental coordination is required to process a Special Event permit application.

Sec. 16-205. Permit application for Special Events; other permits.

(a) ~~An application for a permit for a special event shall~~ Special Event should be filed with the parks and recreation director ~~city~~ not less than sixty (60) nor more than three hundred sixty-five (365) days before the date proposed for holding a Special Event. Such application shall be signed by the applicant or the applicant's authorized agent and shall be accompanied by a nonrefundable processing fee payment to the City of Escondido in an amount established by the city council.

(b) ~~The parks and recreation director, in his discretion,~~ Director may accept for filing an application submitted less than sixty (60) days before the proposed special event Special Event for events requiring nominal city staff time, coordination or support and may waive the processing fee. Such discretion shall be exercised only to consider the ability to process the application and the timely nature of the request.

~~(c) The applicant also shall be required to obtain a separate public dance permit if such permit is required by this chapter.~~

~~(d)~~
(c) The procedures or requirements of this section shall not affect or supersede the provisions of law or the requirements for the issuance of fireworks, structural, electrical or any other permit issued by city departments prescribed elsewhere in this code, when such permits are otherwise required because of a particular condition or requirement of the Special Event. The procedures and standards of this section shall be used to the extent practicable or necessary to supplement procedures for the issuance of other permits. (Ord. No. 95-1, § 1, 2-8-95)

Sec. 16-206. Contents of application.

(a) ~~Application for a permit to hold a Special Event shall be made on forms provided by the city and approved by the special events committee.~~ The application shall include a detailed description of the proposed Special Event, including but not limited to the following:

(1) The name and address of the applicant, and if the same be a corporation, the names of its principal officers, or if the same be a partnership, association, organization or fictitious company, the names of the partners or persons comprising the association, organization or company with the address and telephone number of each;

(2) If such event is designed to be held by, on behalf of, or for any organization or individual other than the applicant, the applicant for such permit shall file a written communication from such organization or individual authorizing the applicant to apply for such permit on its behalf and certifying that it will be responsible for any costs or fees that may be imposed for such event;

(3) The peak number of persons anticipated to be participating, at any point, in the event;

(4) Purpose of the event;

(5) The date, hours and precise location where the event is to be held;

(6) The approximate times when assembly for and disbanding of the Special Event is to take place;

(7) The amount of any spectator, participant, entry or other fee, if any, to be charged in connection with the event;

(8) Type and nature of any vehicles, equipment or other apparatus to be used in connection with the event, including the number of and location for portable sanitation facilities, when appropriate;

(9) The number, location and amplifying range of any sound-amplifying systems to be used in connection with the event;

(10) Type of goods, wares, merchandise, food or beverages to be sold or otherwise provided to persons at the event;

(11) The name and business address and City of Escondido business license number of any vendors who will be participating in the event and proof of any required state or county permits. Special Event vendors may operate under the business license of the Special Event applicant;

(12) A copy of the tax exemption letter for any applicant claiming a tax-exempt, nonprofit status;

(13) Provisions for first aid, where appropriate;

(14) Location of the assembly area and, if appropriate, the proposed site or route;

(15) A site plan for the Special Event, to include number and location of available parking;

(16) Any ~~special or unusual~~ unique requirements that may be imposed or created by virtue of the proposed event.

(b) The application shall be signed by the applicant under penalty of perjury and shall contain an agreement ~~whereby the applicant agrees to fully compensate the city for any damage to public property, as well as to clean and otherwise restore the event site to the condition in which it was found prior to the conduct of the event. (Ord. No. 95-1, § 1, 2-8-95)~~ as provided in this Article.

Sec. 16-207. Procedure for processing special event permit applications.

~~(a)~~

Sec. 16-207. Processing Special Event permit applications.

(a) ~~The parks and recreation director~~ Director shall promptly ~~forward~~ process all properly filed special event applications to the members of the special events committee ~~for a Special Event. An untimely or incomplete application shall be returned to the applicant. Such members shall review the application and conduct any inquiry or investigation, as appropriate, into persons involved with the proposed event and other facts, circumstances, and information relating to such event.~~

~~(b)~~ (b) The chairperson of the committee shall convene a meeting to consider any properly filed

An application for a Special Event permit. The application shall be approved, conditionally approved or denied unless all committee members in attendance vote to approve the permit. Approval or denial of the application shall be made by the committee within thirty (30) days after its filing with the parks and recreation director; providing, however, that the committee shall not be required to act on an application the committee deems untimely or incomplete.

~~(b)~~ (c) ~~The submission of a complete application. The Director shall provide the applicant shall be promptly notified in writing of the a written explanation for any decision of the committee to conditionally approve or deny an application.~~

~~(d)~~ (d) Except for events sponsored by the city, wherever possible, priority

(c) Priority shall be given in permit issuance to city sponsored events and local nonprofit tax-exempt organizations operating in and providing services to the citizens of the city. (Ord. No. 95-1, § 1, 2-8-95)

Sec. 16-208. Reconsideration of an application.

~~(a)~~ (a) The decision of the special events committee on any permit application shall be final unless reconsideration of the decision is requested within seven days from the date of the

~~mailing of the committee's written notice of its decision. Reconsideration can be made at the written request of the applicant or potentially ten or more persons potentially aggrieved by the issuance of the permit. Such written request for reconsideration must be submitted to the city manager. Failure to file a written request for reconsideration within such seven-day period shall constitute a waiver of further review of the application, except that the committee chairman or designee, in his discretion, may accept for review an otherwise untimely request for consideration.~~

~~_____ (b) _____ Within five days of the filing of a request for reconsideration, the city manager or designee shall conduct such inquiry, investigation, or review as he, in his discretion, deems appropriate and proper under the circumstances and shall affirm, reverse or modify the committee's decision. (Ord. No. 95-1, § 1, 2-8-95)~~

(d) Issuance of a Special Event permit does not obligate or require the city to provide city services, equipment or personnel in support of an event.

(e) No date shall be considered confirmed until a Special Event permit is issued.

(f) No consideration may be given to the message of the event, the content of speech, the identity or associational relationships of the applicant, or to any assumptions or predictions as to the amount of hostility which may be aroused in the public by the content of speech or message conveyed by the Special Event. The Director shall consult with the city attorney whenever a permit involving "expressive activity" is conditionally approved or denied. "Expressive activity" means conduct, the sole or principal object of which is the expression, dissemination or communication by verbal, visual, literary or auditory means, of opinion, views or ideas. Expressive activity includes but is not limited to public oratory, any protest and the distribution of literature.

Sec. 16-208. Reserved.

Sec. 16-209. Surety and insurance.

(a) Prior to the issuance of a permit, the ~~special events committee city~~ shall require the following:

(1) The execution of an agreement to compensate the city for any loss or damage to public property that can be directly attributed to the holding of the Special Event or the deposit of a surety bond or cash in an amount sufficient to guarantee the cleaning ~~up and~~ restoration of the event site and removal of any debris left as a result to the condition in which it was found prior to the conduct of holding the special event; and

(2) Proof of public liability and property damage insurance in full force and effect during the Special Event, including products liability coverage, written by an insurance company acceptable to the city in the minimum limits, as set by resolution of

the city council, and in a form acceptable to the city attorney, naming the city as ~~additional insured; additionally, the committee will require execution of a hold harmless agreement, indemnifying the city for any personal injury or property damage arising from such special event.~~ Each applicant shall execute a hold harmless agreement in a form approved by the city attorney agreeing to defend, indemnify, and hold harmless the city against losses and liabilities incurred solely from the conduct of or operation of the Special Event by the applicant or its officers, employees, volunteers, and agents.

(b) ~~The special events committee may, upon considering~~ If the following factors, recommend to ~~Director, in consultation with the city council attorney, determines that a particular Special Event does not present significant public liability or property damage exposure for the city or its officers, agents, employees, or volunteers, the city may waive the insurance requirements set forth in this section be waived or modified. The committee will.~~ The Director may consider the prior history of injury to persons or property of the group requesting the permit; the prior history of similar groups engaged in similar activities; the scope of the risk; whether the risk can be lessened by adjusting the time, date, place or planned manner of expression; and finally, whether the applicant is willing to make such adjustments. (Ord. No. 95-1, § 1, 2-8-95)

Sec. 16-210. Conditions for issuing permit.

(a) As a condition to issuing a permit, the ~~special events committee~~ Director may impose reasonable terms and regulations concerning the time and place of such event; the area and manner of conducting such event; the maximum number of persons participating therein; the regulation of traffic, if required, including the number and type of signs and barricades to be provided by the applicant, if any, together with a plan of their disposition following the event; ~~permissible~~ reasonable decibel levels; and such other requirements as it may find reasonable and necessary for the protection of persons and property; or as is necessary to coordinate multiple uses of public property, to assure preservation and fair allocation of public spaces, to protect the health and safety of the community and to control vehicular and pedestrian traffic in and around the venue.

(b) The ~~special events committee~~ Director may require the applicant to compensate the city for any ~~incidental~~ costs associated with the event, including but not limited to, utility charges and any necessary or appropriate fire, police, paramedic, or parking enforcement, or other services directly connected to or made necessary by the event. The ~~permittee~~ applicant, as a condition to issuing the permit, may be required to bear some or all of such costs and to deposit a surety bond or cash in an amount sufficient to pay the cost of providing these services. Such bond or cash must be deposited with the city no later than thirty (30) days prior to the event. No applicant shall be required to provide or pay for the law enforcement costs to protect its attendees from hostile members of the public or counter-demonstrations.

(c) Issuance of any ~~special events~~ Special Event permit shall be conditioned on and subject to the right of the city to summarily cancel, restrict or modify such permit in

order to facilitate or accommodate any other duly approved or permitted special event ~~Special Event~~, celebration or activity. The ~~chairman of the special events committee~~ Director shall mail to the applicant a notice of such cancellation, restriction or modification no later than thirty (30) days prior to the ~~special event~~ Special Event and shall take reasonable and appropriate actions to reduce, minimize, or eliminate any inconvenience, hardship or burden ~~as that~~ that may result from the city's action. ~~(Ord. No. 95-1, § 1, 2-8-95)~~

Sec. 16-211. Termination or restriction of a Special Event.

The city manager or designee may immediately terminate or restrict the conduct of any Special Event if he determines that the public health or safety is in imminent danger because of real or threatened disaster, public calamity, riot or other emergency. ~~(Ord. No. 95-1, § 1, 2-8-95)~~

~~Sec. 16-212. Grounds for denial of permit.~~

Sec. 16-212. Permit denial or revocation.

(a) ~~An application for a special events~~ A Special Event permit may be denied or revoked on any of the following grounds:

~~(1) The applicant has failed or refused to provide the committee with the information referenced in section 16-206 of this article or any other information requested by the committee which is reasonably related to the conduct of the proposed event;~~

~~(2)~~
(1) The application is not complete or untimely;

~~(1)(2)~~ The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for a permit;

~~(3)~~
(2)(3) The building, structure, equipment or location of such special event ~~Special Event~~ does not comply with or fails to meet the applicable health, zoning, fire or safety requirements imposed by law;

~~(4)~~
(4) The activity ~~proposed area has been or location of the activity is such as will be~~ unreasonably limits, obstructs or curtails the free flow of traffic on any impacted by another event within 60 days of the scheduled Special Event;

~~(3)(5)~~ The proposed Special Event ~~unreasonably restricts public street use or sidewalk~~ access to public spaces;

~~(5)~~

The applicant ~~has failed~~fails to comply with any of the conditions imposed pursuant of approval, including the provision of sufficient personnel staffing to section 16-209 of this article;

~~_____ (6) _____ The conduct of~~support the special event or any proposed activity which may be part of the event is prohibited by this code except Special Event such as those sections which are expressly waived for the purpose and duration of the event;

~~_____ (4)(6) _____ (7) _____ The conduct of the special event will unreasonably interfere with the~~traffic management, crowd control, security, public peace, health, safety sanitation, or welfare;~~other services.~~

~~_____ (8) _____ The applicant refuses to agree to or abide or comply with all conditions and regulations attendant to issuance of the permit;~~

~~_____ (9) _____ The proposed event will unreasonably interfere with or obstruct another scheduled event or with the public's ability to use public property for activities unrelated to the event;~~

~~_____ (10) _____~~

The applicant has not obtained the approval of any other public agency within whose jurisdiction the event or portion thereof will occur;

~~_____ (11) _____ The sound amplifying system or other equipment which constitutes a potential noise source to be used in the conduct of the special event does not comply with section 17-226 et seq. of this code.~~

~~_____ (b) _____ The special events committee shall notify the applicant in writing as to the reasons for denial of any application for a permit. (Ord. No. 95-1, § 1, 2-8-95)~~

-

Sec. 16-213. Contents and display of permit.

~~_____ (a) _____ A special event permit shall contain the following:~~

~~_____ (1) _____ The name of the person or organization to whom issued;~~

~~_____ (5)(7) _____ (2) _____ The type of activity for which the permit~~damaged city property or has been issued;~~unpaid debts related to a prior Special Event.~~

~~_____ (3) _____ The date, hour and location for the event;~~

~~_____ (4) _____ Expiration date and hour of the event;~~

~~_____ (5) _____ Any conditions imposed on the holding of such special event; and~~

~~_____ (6) _____ Signature of the parks and recreation director as designated representative authorizing the event.~~

~~_____ (b) _____~~

Sec. 16-213. Display of permit and business license.

~~All permittees applicants shall have the Special Event permit in their immediate possession or clearly visible at all times during the special event and shall display such permit upon demand of any representative authorizing the event. Additionally, insure that all vendors participating in the event shall have a City of Escondido business license which shall be made available upon demand of any city representative. (Ord. No. 95-1, § 1, 2-8-95) from any city representative or shall publically display the permit during the Special Event.~~

~~Sec. 16-214. Notice to city departments of issuance of permit.~~

~~_____ Upon approval of the permit application, the parks and recreation director shall so notify the following:~~

- ~~_____ (a) _____ Police department;~~
- ~~_____ (b) _____ Fire department;~~
- ~~_____ (c) _____ Public works department;~~
- ~~_____ (d) _____ Business license officer;~~
- ~~_____ (e) _____ Risk manager;~~
- ~~_____ (f) _____ City manager;~~
- ~~_____ (g) _____ City attorney;~~
- ~~_____ (h) _____ San Diego County health department.~~

~~(Ord. No. 95-1, § 1, 2-8-95)~~

Sec. 16-214. Use of city name or logo.

~~It shall be unlawful for the applicant conducting a Special Event to use the words "the City of Escondido" or "City of Escondido" to suggest or indicate that the event is sponsored by the city or to use facsimile of the seal or logo of the City of Escondido in the promotional material or advertising for the event without the city's written authorization.~~

Sec. 16-215. Suspension or revocation of permit.

(a) A permit for any event hereunder may be summarily suspended or revoked by the ~~chairman of special events committee~~ Director at any time when ~~he~~ she has reason to believe that:

(1) Any ~~of the~~ grounds exist for which the original permit application could have been denied; or

(2) The health, safety or welfare of persons or property would be endangered because of real or threatened disaster, public calamity, riot or other emergency; or

(3) The event is deviating or will significantly or materially deviate from the terms of the proposed event as described in the ~~permittee's~~ application or in supplemental information provided to the ~~committee~~ city; or

(4) The ~~permittee is~~ applicant cannot or will be ~~unable to~~ not satisfy any condition of the permit.

~~(b) Notice of such suspension or revocation shall be made in writing to the permittee. (Ord. No. 95-1, § 1, 2-8-95)~~

~~Sec. 16-216. Exceptions:~~

~~No permit shall be required under this chapter for any event sponsored or cosponsored by the City of Escondido. (Ord. No. 95-1, § 1, 2-8-95)~~

~~Sec. 16-217. Cost recovery and revenue sharing for commercial special events:~~

~~(a) Definitions. As used in this section:~~

~~(1) Commercial special event shall refer to any special event organization and conducted by any organization that does not qualify as a tax exempt nonprofit organization.~~

~~(2) Noncommercial special event shall refer to any special event organized and conducted by an organization that qualifies as a tax exempt nonprofit organization. A tax exempt nonprofit organization sponsoring an event may acknowledge the receipt of cash or in-kind services or goods, donations, prizes or other consideration from for-profit organizations without causing the event to be considered a commercial special event. Such acknowledgment may include use of the name, trademark, service mark or logo of such a for-profit organization in the name or title of the event or the prominent appearance of the same in advertising or on collateral materials associated with the event.~~

~~———— (3) ——— Gross revenues shall refer to the sum of all revenues, including but not limited to: cash receipts; license, television, advertising and similar revenues; concessions; and all other income associated with the event to the sponsoring organization from whatever source, less profit organizations which operate from or provide services to or within the City of Eseondido.~~

~~———— (b) ——— Cost recovery. Except as provided herein or when funded by council resolution or ordinance, the city manager shall charge an established fee for the services provided by city personnel, for such personnel other than police, that charge may be figured as an actual cost of salary of city personnel involved in permit processing, event traffic control, fire safety or other facility or event support and the use of city equipment and other nonpersonnel expense for any commercial special event. The city manager shall require prepayment of such fees for a commercial special event or a reasonable estimate thereof at the time the completed application is approved, or in any event not later than thirty (30) days prior to the special event, unless the city manager for good cause extends the filing deadline or time for payment as prescribed herein.~~

~~———— (c) ——— Revenue sharing. Event organizers of commercial special events shall pay the city a negotiated percentage of gross revenues or a flat fee. Cost recovery shall not be required of commercial special events where payment for such services has been~~

~~negotiated by the city manager within a revenue sharing agreement with the city.~~

~~———— (d) ——— Audits and accounting procedures. The event organizer of a commercial special event shall make payment and provide a final financial statement audited by a certified public accountant to the city manager no later than thirty (30) days after the event for the fees and revenues to be paid to the city. The city manager is authorized to make determinations as to the commercial status of an event and, with the advice and assistance of the director, to promulgate additional standards and procedures for cost accounting to implement this subsection.~~

~~———— (e) ——— Whenever an event, whether commercial or noncommercial, is conducted without a permit when one is required or in violation of the terms of an issued permit, the event organizer shall be responsible for, and the city manager shall charge for, all city costs incurred for personnel and equipment for public safety response caused or necessitated by the adverse impacts of that event or the violation of an issued permit upon public safety. (Ord. No. 95-1, § 1, 2-8-95)~~

~~Sec. 16-218. Waivers and exceptions.~~

~~———— The city council or special events committee may waive or set aside any prohibition of Article 39 of the Zoning Code for the duration of any special event. (Ord. No. 95-1, § 1, 2-8-95)~~

~~Sees. 16-219 — 16-220. Reserved.~~

~~View the mobile version.~~

~~**Sec. 16-216 – 16-220. Reserved.**~~

ORDINANCE NO. 2015-05

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
TO REPEAL AND REPLACE ESCONDIDO
MUNICIPAL CODE, CHAPTER 16, LICENSES
AND BUSINESS REGULATIONS
GENERALLY, ARTICLE 4, SPECIAL EVENT
PERMITS

WHEREAS, the City Council seeks to encourage participation in the democratic process and to protect the rights of its citizens to engage in protected free speech and expressive activities and yet allow for the least restrictive and reasonable, time, place and manner regulation of those activities within the overall context of rationally regulating activities that have a significant impact upon public facilities and services; and

WHEREAS, the City Council recognizes that Special Events provide benefits to the entire community through the creation of unique venues for entertainment and expression that are not normally provided as a part of governmental services; and

WHEREAS, the City Council believes it is vital to provide a coordinated process for the regulation of certain activities to be conducted in conjunction with Special Events; and

WHEREAS, the City Council it is now appropriate to update the City's policies and procedures for Special Events.

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

SECTION 1. That Chapter 16, Licenses and Business Regulations Generally, Article 4, Special Events Permits, is repealed and replaced with Exhibit "A" which is incorporated herein by this reference.

SECTION 2. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 3. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

Chapter 16 - LICENSES AND BUSINESS REGULATIONS GENERALLY

ARTICLE 4 SPECIAL EVENT PERMITS

Sec. 16-201. Definitions.

(a) "Director" means the Director of Economic Development & Community Relations.

(b) "Special Event" means the temporary use of city owned public property, including but not limited to streets, sidewalks, parks, and lakes for the purpose of conducting a parade or any other event which significantly impacts or substantially restricts the public's normal, typical or customary use, level of use, or ability to use such property and involves the presence of more than seventy-five persons at any one time during the event.

Sec. 16-202. Permit and exemptions.

(a) No person shall direct, conduct, manage or carry on a Special Event without having obtained a permit from the city pursuant to this article.

(b) The following activities are exempt from the Special Event permit requirement:

(1) Spontaneous Events conducted on the paved pedestrian areas adjacent to city hall to include the rotunda and the public sidewalks between the city hall and the northwest corner of North Broadway and West Valley Parkway. A "Spontaneous Event" means an event which is occasioned by news or affairs coming into public knowledge less than forty-eight hours prior to such event.

(2) Events that are authorized by means of a contract with the City of Escondido.

Sec. 16-203. Interference with Special Event.

No person shall knowingly join or participate in any Special Event in violation of any of the terms, conditions or regulations of the permit issued. No person shall knowingly interfere with the orderly conduct of any Special Event.

Sec. 16-204. Special Events committee established.

The Director shall chair a Special Events committee composed of pertinent department heads, or their designated representatives, and any additional members as needed. The Special Events committee should meet whenever departmental coordination is required to process a Special Event permit application.

Sec. 16-205. Permit application for Special Events; other permits.

(a) An application for a permit for a Special Event should be filed with the city not less than sixty (60) nor more than three hundred sixty-five (365) days before the date proposed for holding a Special Event. Such application shall be signed by the applicant or the applicant's authorized agent and shall be accompanied by a nonrefundable processing fee in an amount established by the city council.

(b) The Director may accept for filing an application submitted less than sixty (60) days before the proposed Special Event for events requiring nominal city staff time, coordination or support and may waive the processing fee.

(c) The procedures or requirements of this section shall not affect or supersede the provisions of law or the requirements for the issuance of fireworks, structural, electrical or any other permit issued by city departments prescribed elsewhere in this code, when such permits are otherwise required because of a particular condition or requirement of the Special Event. The procedures and standards of this section shall be used to the extent practicable or necessary to supplement procedures for the issuance of other permits.

Sec. 16-206. Contents of application.

(a) Application for a permit to hold a Special Event shall be made on forms provided by the city. The application shall include a detailed description of the proposed Special Event, including but not limited to the following:

(1) The name and address of the applicant, and if the same be a corporation, the names of its principal officers, or if the same be a partnership, association, organization or fictitious company, the names of the partners or persons comprising the association, organization or company with the address and telephone number of each;

(2) If such event is designed to be held by, on behalf of, or for any organization or individual other than the applicant, the applicant for such permit shall file a written communication from such organization or individual authorizing the applicant to apply for such permit on its behalf and certifying that it will be responsible for any costs or fees that may be imposed for such event;

(3) The peak number of persons anticipated to be participating, at any point, in the event;

(4) Purpose of the event;

(5) The date, hours and precise location where the event is to be held;

(6) The approximate times when assembly for and disbanding of the Special Event is to take place;

(7) The amount of any spectator, participant, entry or other fee, if any, to be charged in connection with the event;

(8) Type and nature of any vehicles, equipment or other apparatus to be used in connection with the event, including the number of and location for portable sanitation facilities, when appropriate;

(9) The number, location and amplifying range of any sound-amplifying systems to be used in connection with the event;

(10) Type of goods, wares, merchandise, food or beverages to be sold or otherwise provided to persons at the event;

(11) The name and business address of any vendors who will be participating in the event and proof of any required state or county permits. Special Event vendors may operate under the business license of the Special Event applicant;

(12) A copy of the tax exemption letter for any applicant claiming a tax-exempt, nonprofit status;

(13) Provisions for first aid, where appropriate;

(14) Location of the assembly area and, if appropriate, the proposed site or route;

(15) A site plan for the Special Event, to include number and location of available parking;

(16) Any unique requirements that may be imposed or created by virtue of the proposed event.

(b) The application shall be signed by the applicant under penalty of perjury and shall contain an agreement as provided in this Article.

Sec. 16-207. Processing Special Event permit applications.

(a) The Director shall promptly process all applications for a Special Event. An untimely or incomplete application shall be returned to the applicant.

(b) An application for a Special Event permit shall be approved, conditionally approved or denied within thirty (30) days after submission of a complete application. The Director shall provide the applicant a written explanation for any decision to conditionally approve or deny an application.

(c) Priority shall be given in permit issuance to city sponsored events and local nonprofit tax-exempt organizations operating in and providing services to the citizens of the city.

(d) Issuance of a Special Event permit does not obligate or require the city to provide city services, equipment or personnel in support of an event.

(e) No date shall be considered confirmed until a Special Event permit is issued.

(f) No consideration may be given to the message of the event, the content of speech, the identity or associational relationships of the applicant, or to any assumptions or predictions as to the amount of hostility which may be aroused in the public by the content of speech or message conveyed by the Special Event. The Director shall consult with the city attorney whenever a permit involving "expressive activity" is conditionally approved or denied. "Expressive activity" means conduct, the sole or principal object of which is the expression, dissemination or communication by verbal, visual, literary or auditory means, of opinion, views or ideas. Expressive activity includes but is not limited to public oratory, any protest and the distribution of literature.

Sec. 16-208. Reserved.

Sec. 16-209. Surety and insurance.

(a) Prior to the issuance of a permit, the city shall require the following:

(1) The execution of an agreement to compensate the city for any loss or damage to public property that can be directly attributed to the holding of the Special Event or the deposit of a surety bond or cash in an amount sufficient to guarantee the cleaning and restoration of the event site to the condition in which it was found prior to the conduct of the event; and

(2) Proof of public liability and property damage insurance in full force and effect during the Special Event, including products liability coverage, written by an insurance company acceptable to the city in the minimum limits, as set by resolution of the city council, and in a form acceptable to the city attorney, naming the city as additional insured. Each applicant shall execute a hold harmless agreement in a form approved by the city attorney agreeing to defend, indemnify, and hold harmless the city against losses and liabilities incurred solely from the conduct of or operation of the Special Event by the applicant or its officers, employees, volunteers, and agents.

(b) If the Director, in consultation with the city attorney, determines that a particular Special Event does not present significant public liability or property damage exposure for the city or its officers, agents, employees, or volunteers, the city may waive the insurance requirements. The Director may consider the prior history of injury to

persons or property of the group requesting the permit; the prior history of similar groups engaged in similar activities; the scope of the risk; whether the risk can be lessened by adjusting the time, date, place or planned manner of expression; and finally, whether the applicant is willing to make such adjustments.

Sec. 16-210. Conditions for issuing permit.

(a) As a condition to issuing a permit, the Director may impose reasonable terms and regulations concerning the time and place of such event; the area and manner of conducting such event; the maximum number of persons participating therein; the regulation of traffic, if required, including the number and type of signs and barricades to be provided by the applicant, if any, together with a plan of their disposition following the event; reasonable decibel levels; and such other requirements as it may find reasonable and necessary for the protection of persons and property or as is necessary to coordinate multiple uses of public property, to assure preservation and fair allocation of public spaces, to protect the health and safety of the community and to control vehicular and pedestrian traffic in and around the venue.

(b) The Director may require the applicant to compensate the city for any costs associated with the event, including but not limited to, utility charges and any necessary or appropriate fire, police, paramedic, or parking enforcement, or other services directly connected to or made necessary by the event. The applicant, as a condition to issuing the permit, may be required to bear some or all of such costs and to deposit a surety bond or cash in an amount sufficient to pay the cost of providing these services. Such bond or cash must be deposited with the city no later than thirty (30) days prior to the event. No applicant shall be required to provide or pay for the law enforcement costs to protect its attendees from hostile members of the public or counter-demonstrations.

(c) Issuance of any Special Event permit shall be conditioned on and subject to the right of the city to summarily cancel, restrict or modify such permit in order to facilitate or accommodate any other duly approved or permitted Special Event, celebration or activity. The Director shall mail to the applicant a notice of such cancellation, restriction or modification no later than thirty (30) days prior to the Special Event and shall take reasonable and appropriate actions to reduce, minimize, or eliminate any inconvenience, hardship or burden that may result from the city's action.

Sec. 16-211. Termination or restriction of a Special Event.

The city manager or designee may immediately terminate or restrict the conduct of any Special Event if he determines that the public health or safety is in imminent danger because of real or threatened disaster, public calamity, riot or other emergency.

Sec. 16-212. Permit denial or revocation.

(a) A Special Event permit may be denied or revoked on any of the following

grounds:

- (1) The application is not complete or untimely;
- (2) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for a permit;
- (3) The building, structure, equipment or location of such Special Event does not comply with or fails to meet the applicable health, zoning, fire or safety requirements imposed by law;
- (4) The proposed area has been or will be unreasonably impacted by another event within 60 days of the scheduled Special Event;
- (5) The proposed Special Event unreasonably restricts public use or access to public spaces;
- (6) The applicant fails to comply with any conditions of approval, including the provision of sufficient personnel staffing to support the Special Event such as traffic management, crowd control, security, public health, sanitation, or other services.
- (7) The applicant has damaged city property or has unpaid debts related to a prior Special Event.

Sec. 16-213. Display of permit and business license.

All applicants shall have the Special Event permit in their immediate possession and shall display such permit upon demand from any city representative or shall publically display the permit during the Special Event.

Sec. 16-214. Use of city name or logo.

It shall be unlawful for the applicant conducting a Special Event to use the words "the City of Escondido" or "City of Escondido" to suggest or indicate that the event is sponsored by the city or to use facsimile of the seal or logo of the City of Escondido in the promotional material or advertising for the event without the city's written authorization.

Sec. 16-215. Suspension or revocation of permit.

(a) A permit for any event hereunder may be summarily suspended or revoked by the Director at any time when she has reason to believe that:

(1) Any grounds exist for which the original permit application could have been denied; or

(2) The health, safety or welfare of persons or property would be endangered because of real or threatened disaster, public calamity, riot or other emergency; or

(3) The event is deviating or will significantly or materially deviate from the terms of the proposed event as described in the application or in supplemental information provided to the city; or

(4) The applicant cannot or will not satisfy any condition of the permit.

Sec. 16-216 – 16-220. Reserved.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 5

Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Loretta McKinney, Director of Library & Community Services
Amy Shipley, Assistant Director of Community Services

SUBJECT: Community Services Budget Adjustment

DESCRIPTION OF REQUEST:

It is requested that Council approve a budget adjustment of \$5,000 resulting from a grant received from San Diego Gas & Electric (SDG&E) for the Community Services Department Aquatics Program and authorize the City Manager and Director of Administrative Services to make the necessary budget adjustments to the Community Services Department Recreation fund.

RECOMMENDATION:

Approval

FISCAL ANALYSIS:

The \$5,000 budget adjustment to the Recreation 102 budget will enable staff to purchase needed supplies and equipment to support the Aquatics Learn to Swim program with no additional cost to the General Fund.

BACKGROUND:

San Diego Gas & Electric donated \$10,000 to the San Diego Junior Lifeguard Foundation for the Escondido community, of which the Recreation Division received \$5,000. The purpose of the donation is to support the "Waterproofing San Diego" project efforts in Escondido. Specifically, this grant will benefit the Recreation Division's Aquatics Learn to Swim program that aids in making the Escondido community water safe.

Respectfully submitted,



Loretta McKinney
Director of Library and Community Services



Amy Shipley
Assistant Director of Community Services



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: July 8, 2015
Department: Community Services
Division: Recreation Department 102
Project/Budget Manager: Amy Shipley x6269
Council Date (if applicable): July 8, 2015

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

Table with 4 columns: Project/Account Description, Account Number, Amount of Increase, Amount of Decrease. Rows include Office/Operating Supplies and SDG&E Grant.

Explanation of Request:

Requesting an increase to the Recreation budget, department 102 in the amount of \$5,000. This increase of \$5,000 is from a grant from SDG&E that stipulates the usage for the Recreation Division's Aquatic Learn to Swim.

APPROVALS

Department Head signature and date (6.24.15)
Finance signature and date (6/24/15)
City Manager signature and date
City Clerk signature and date

Distribution (after approval): Original: Finance

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 6

Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Loretta McKinney, Director Library and Community Services
Amy Shipley, Assistant Director of Community Services

SUBJECT: Community Services Department Facility Use Policy

RECOMMENDATION:

It is requested that Council approve the revised Community Services Department Facility Use Policy to include the addition of a fee for Classification E (commercial groups, businesses, trade shows, etc.) to rent the Kit Carson Park Fitness Course and park areas as well as the Tennis Courts at Kit Carson, Mountain View, and Washington parks at the rate of \$30 per hour for each amenity.

FISCAL ANALYSIS:

N/A

PREVIOUS ACTION:

On January 11, 2012, City Council approved changes to the Community Services Department Facility Use Policy.

On March 25, 2015, City Council approved revisions to the City Fee Inventory, which included changes the Community Services Department fees and classification of users. Several changes in the fee structure directly relate to the fees charged for facility use.

BACKGROUND:

The Community Services Department Facility Use Policy establishes policies, rules, and fees that are necessary for the operation of City facilities to provide standards for the City's rental of facilities covered in this Policy to the general public.

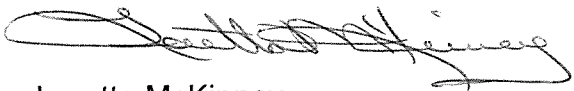
The Policy is intended to facilitate orderly processing of rental applications and to preserve the limited public forum status of the facilities. Responsibility for administering facility use is delegated to the City Manager and is executed by the Community Services Department.

The revised Policy overall has been streamlined for ease of comprehension by eliminating redundant or nonpertinent language. Several other changes in the Policy include, but are not limited to: the use of the City Council Chambers, adjustments to fees resulting from the modifications to the classification of users, and removal of the Queen Califia Magic Circle Garden, which is overseen by the Community Development Department staff.

When the City Fee Inventory was approved by City Council on March 25, 2015, the inclusion of Classification E fees to rent the Kit Carson Park Fitness Course and park areas as well as the Tennis Courts at Kit Carson, Mountain View, and Washington parks was overlooked. Therefore, in order to be able to rent the amenities to commercial businesses, staff requests Council approval to include the Class E fees of \$30 per hour per amenity in this action.

All revisions to the Community Services Department Facility Use Policy have been reviewed and approved by the City Attorney's Office.

Respectfully submitted,



Loretta McKinney
Director of Library and Community Services



Amy Shipley
Assistant Director of Community Services

Escondido Community Services Department Facility Use Policy

Policy Procedures Fees

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PURPOSE

Policies, rules, and fees are necessary for the operation of certain City facilities to provide standards for the City's rental of facilities to the general public. City-sponsored events are exempt from this policy. The City has not designated its rental facilities as a forum for unlimited expression by the general public. This policy is intended to facilitate orderly processing of rental applications and to preserve the limited public forum status of the facilities. Responsibility for administering facility use is delegated to the City Manager and is executed by the Community Services Department.

GENERAL POLICIES

1. Buildings, facilities, and equipment of the City of Escondido are primarily designed to accommodate the programs, activities, and meetings of various City Departments, the City Council, and City boards and commissions. Consequently, all City of Escondido uses shall have first priority. Facilities shall be made available to non-City groups on a first-come, first-served basis, and appropriate fees shall be assessed for all user groups.
2. Fees for the use of City facilities are established to recover operating and maintenance costs for their usage. Specific fees are listed within the attached subsections. Any facilities or equipment not specified may be assessed a reasonable fee. The fee will be determined after reviewing the request.
3. A refundable reservation/cleaning/damage deposit will be required by any person or group using City equipment or offering food and/or beverages. Any damage to equipment or to City facilities or parks shall be the responsibility of the person or group involved. All or a portion of such deposits may be withheld to further comply with established rules, following an inspection, if it is determined that the facility or park was not left in the condition that it was received. Should the cleanup/damage exceed the deposit fee, the group will be held responsible for paying the additional costs.
4. A facility use application must be completed for all reservations of facilities. Only an individual 18 years of age or older can complete and sign a facility use application. Additional permits will be required for special events and/or alcohol service.
5. At all gatherings of young people that are under 18 years of age, one adult for every 20 youth in attendance must be present throughout the activity.
6. Groups must adhere to all City, police, and fire codes during the use of facilities.
7. Smoking is not permitted in City buildings, or within twenty (20) feet outside per state code. Smoking is not permitted between twenty (20) feet and eighty (80) feet from the entrance, exit, or operable window of a City-owned building if signs are posted at the specified distance from the building entrance that indicate such prohibition. No person shall smoke outside of a public place where a sign is posted prohibiting smoking in such area.
8. It shall be unlawful to possess a lighted or burning tobacco product or tobacco-related product at any time within the boundaries of any park, public open space or trail, including designated parking areas of any such city recreational area.

9. In Kit Carson Park and Grape Day Park, dogs must remain on a leash at all times. In Dog Park, dogs must remain on a leash unless in a dog pen. No animals, except service animals, are permitted in any other City facilities or parks without specific authorization by the Department responsible for approving the permit.
10. Amplified music will be allowed within buildings with the written approval of the Community Services Department. Request for use of amplified music within buildings must be submitted at the time an application for use of the building is submitted.
11. No amplified sound is allowed in park areas, excluding the Kit Carson Park Amphitheatre. Each group is responsible for controlling noise that would be disturbing to other facility users or the surrounding neighborhood. Exceptions can be made for special events. Please see "Special Events" for more information.
12. In addition to any permits required for usage of City facilities, a Special Event Permit Application may also be required. The Escondido Municipal Code defines a special event as the temporary use of public property, including but not limited to streets, sidewalks, parks, and lakes for the purpose of conducting a parade or other special enterprise, or any event which significantly impacts or substantially restricts the public's normal, typical, or customary use, level of use, or ability to use such property. An application for a Special Event Permit may be filed as early as 365 days before the event, but it must be received no later than 60 days before the proposed event date. A nonrefundable processing fee must accompany all applications to cover administrative costs. The processing fee is based on User Classification.
13. Any business or individual conducting a commercial activity in City facilities and parks (i.e., vendors, caterers) is required to have an Escondido business license. If such activity is occurring as part of a group's approved usage of City facilities, the group is responsible for ensuring that a business license is obtained by the business or individual at least two business days in advance of the activity.
14. Any usage of special equipment, including but not limited to air jumps, inflatable games, rock climbing walls or dunk tanks, in City parks or facilities may require special permits, liability insurance, etc. It is the applicant's responsibility to notify the Community Services Department at least one week in advance of all such usage.
15. Groups utilizing City facilities may be required to provide liability insurance coverage naming the City of Escondido as an additionally insured party and/or waivers signed by each participant. The additional insurance coverage and/or waivers must meet the standards established by the City Attorney.
16. Any group requesting permission to use any designated facility shall indemnify and hold harmless the City and their officers, employees, and agents from all liability or claim of liability by reason of injury or damage to person (including death) and/or property occurring as a result of their use of said facilities.
17. No advertising or other public notice of a proposed usage of City facilities or parks shall occur without the approval of the facility use permit for the requested facilities and parks.

Any advertising or ticket sales undertaken by the sponsor is undertaken at the sponsor's risk, should the application be disapproved.

18. Admission may not be charged to events scheduled in these facilities or for parking in city lots, nor shall there be auctioning games or selling of merchandise, goods, wares, or activities to raise money without the approval of the Director of Library and Community Services. This paragraph does not apply to the sale of items by a nonprofit organization to members within their own group.
19. Decorations, displays, and exhibits in conjunction with activities are permitted with approval of the Community Services Department staff. Groups using facilities are solely responsible for providing display material, mounting, and removal of material following the activity.
20. Specific fees for the use of City facilities are included in this policy. Any facilities or equipment not specified may be assessed a reasonable fee based upon the intent of the fee schedule. The fee will be determined after reviewing the request.
21. The placement of any advertising, display, or sign within park areas requires approval by the Community Services Department. No banners, signs, flyers, or other advertising that may be detrimental to the public health, safety, or well-being, or which contain products not intended for consumption or use by minors of all ages shall be placed within a park area. This shall include such programs, activities, or products in any form, including organizational logos, characters, or product names. A list of all banners, signs, etc. that will be displayed during any event scheduled in park areas, including details of all pertinent information, shall be submitted to the Director of Library and Community Services or her designated representative prior to the event. The use of the facilities shall be denied to an individual or group who abuses or violates regulations or engages in activities that disturb the operation of the City facilities.
22. The Director of Library and Community Services has the authority to consider a request for an exception to this policy. Requests for exceptions will be evaluated to determine if the request is reasonable in light of the purpose of the specific facility.
23. Under no circumstances will an application or permission be denied due to the viewpoint of speech disseminated by the applicant or the viewpoint associated with the proposed event.

PROCEDURES

Reservations

1. The Community Services Department shall maintain an inventory of City facilities available for use by the public upon request. A signed Facility Use Application must be returned to the Community Services Department by the required minimum days in advance of a reservation, as specified by facility and/or type of event. No reservation shall be approved until the application is submitted, reviewed, and appropriate fees are paid.
2. Appropriate deposits must be submitted with the application. Final payment is due a minimum of thirty (30) days prior to the first use date. All payments should be made payable to the "City of Escondido."
3. In addition to any permits required for usage of City facilities, a Special Event Permit Application may also be required. The Escondido Municipal Code defines a special event as the temporary use of public property, including but not limited to streets, sidewalks, parks, and lakes for the purpose of conducting a parade or other special enterprise, or any event which significantly impacts or substantially restricts the public's normal, typical, or customary use, level of use, or ability to use such property. An application for a Special Event Permit may be filed as early as 365 days before the event, but it must be received no later than 60 days before the proposed event date. A nonrefundable processing fee must accompany all applications to cover administrative costs. The processing fee is determined based on Escondido non-profit, non-profits outside of Escondido, or all other organizations.
4. Permission to sell/serve alcoholic beverages may be granted by the Director of Library and Community Services or her designated representative, with specific conditions outlined on the "Application and Permit for Use and Sale of Alcoholic Beverages" available at the Community Services Department. The request must be submitted a minimum of sixty (60) days in advance of the proposed usage of City facilities. Permission will not be granted to sell/serve alcoholic beverages at events held in City Hall facilities during normal business hours
5. The City may refuse to reserve facilities for the following reasons:
 - Not available.
 - Previous violations of the Facility Use Policy.
 - When a hazardous condition threatens the participants, spectators, staff, facility, equipment, or building.
 - If all requirements of State and local laws, the Facility Use Policy, the City Council, or the Community Services Commission are not met.

Refunds

1. If the application for reservation is not approved or if conditions after approval require cancellation of the reservation by the Department, all fees paid in advance will be refunded.
2. If a group cancels its reservation, a refund of fees paid will be made only if the Department is notified of the cancellation at least thirty (30) days prior to the date of the activity/event. Refunds for cancellation of a permit by the applicant will be assessed 25% handling charge of the total permit fees or a minimum of \$10. Cancellations made less than thirty (30) days before the activity/event date are non-refundable.

Appeal of Aggrieved Parties

The Community Services Commission will review appeals for use of City facilities.

Any person aggrieved by a decision of the Director of Library and Community Services with respect to these policies, rules, and fees governing the use of City facilities may appeal to the Community Services Commission by filing a notice of appeal with the Director of Library and Community Services not later than ten (10) days after said decision has been communicated to the aggrieved party.

For details on the appeal process please contact the Community Services Department at 760-839-4691.

- 1.1. Upon receiving an appeal, the Commission shall fix a time and place for the hearing of such appeal. The time of said appeal shall be within a reasonable time after the filing of the appeal.
- 1.2. The Community Services Director shall give notice to the person making such an appeal of the time and place of hearing by serving it personally or by depositing it in the United States Post Office at Escondido, California, postage prepaid, addressed to such person at his or her last known address.
- 1.3. Any person aggrieved by a recommendation of the Community Services Commission, with respect to these policies, rules, and fees governing the use of all City facilities may appeal to the City Manager by filing a notice of appeal with the City Clerk not later than ten (10) days after said recommendation has been communicated to the aggrieved party.
- 1.4. Upon receiving an appeal, the City Manager's office shall fix a time and place for the hearing of such appeal. The time of said appeal shall be within a reasonable time after the filing of the appeal.
- 1.5. The City Clerk shall give notice to the person making such an appeal of the time and place of hearing by serving it personally or by depositing it in the United States Post Office of Escondido, California, postage prepaid, addressed to such person at his or her last known address.

CLASSIFICATION OF USERS

Any group utilizing City of Escondido facilities and parks will be classified in one of the following categories for the purpose of determining fees. With the exception of City uses, which have first priority, all other applications are considered on a first-come, first-served basis for available space.

Class A –City of Escondido

Events and meetings organized and conducted by the City of Escondido, or events and meetings co-sponsored by the City of Escondido. The request must originate from the sponsoring City department and a minimum of one City employee must attend co-sponsored meetings. No fee is associated with Class A events regardless of facility location.

Class B – Resident Youth and Senior Organizations

These are locally organized non-profit (must be able to show proof of 501(c)(3) status) groups whose membership is comprised of at least seventy-five percent Escondido residents under the age of 17 years or over the age of 50 years.

Examples: *Recognized Escondido-based youth sports organizations, Boy Scouts and Girls Scouts based in Escondido, Senior Anglers, etc.

*In order for an organization to be recognized as a resident youth serving organization, they must meet specific guidelines and submit all requested information. Call the Community Services Department for more information regarding this process.

Class C – Resident Not-for-Profit Organizations and other Governmental Agencies

These are Escondido based not-for-profit organizations (must be able to show proof of 501(c)(3) status) whose membership is comprised of at least seventy-five percent Escondido residents, and other governmental agencies.

Examples: Escondido Kiwanis Club, Escondido school districts, board of directors/coaches/parent meetings held by Escondido-based youth sports organizations, Escondido private schools, Escondido homeowner associations, and the County of San Diego.

Class D – Private and Non-Resident Organizations

These are private parties and non-Escondido based not-for-profit organizations.

Examples: Private parties include, but are not limited to, weddings, birthdays, memorial services, family gatherings, etc.; Vista Boys and Girls Club, San Marcos Kiwanis Club, non-Escondido based schools and school districts.

Class E – Commercial

These are commercial groups, businesses, or users affiliated with commercial industries.

Examples: Profit-making organizations, seminars, trade shows, film companies, network marketing distributors, franchisees, etc.

FEE SCHEDULE

Meeting Rooms General Information

- Reservations for the East Valley Community Center and Mathes Center will be taken up to three months in advance. For other specific facilities, longer advanced reservation periods may be established.
- Fees listed are based on an hourly rate with a two-hour minimum during the normal hours of operation for the requested facility.
- Groups utilizing buildings other than City Hall may reserve the facility for a maximum of two uses per week. A maximum of four meeting dates can be included on one permit. Permits may only be renewed between the third and fourth use.
- Usage of City Hall meeting rooms is restricted to two uses per year by any one organization. Reservations may be made up to 365 days in advance with a minimum of forty-five (45) days in advance. Any exceptions must be approved by the Director of Library and Community Services or his designee. Exceptions will be based up on availability.
- The Council Chambers can only be reserved by user groups classified as Groups A and B.
- When room setup is included as part of the standard room rental fee, the applicant will have the opportunity to select one of the standard room setups for the particular room being reserved. If the applicant desires a special setup or modification of the standard room configuration, a diagram must be submitted at least two weeks in advance of the reservation date and must be approved by City staff.
- An additional fee will be required to cover the operation of the facility if it is used outside of the normal hours of operation. This fee may include staff costs (overtime or holiday pay) in addition to other services required, custodial services, and/or additional garbage services. Any additional fees shall be determined by the Director of Library and Community Services or his designated representative.

City Hall - 201 N. Broadway	Class B	Class C	Class D	Class E
Mitchell Room (includes kitchen/patio)	\$45	\$50	\$75	\$95
Dome Area – Capacity 200	\$150/day	\$150/day	\$60	\$80
Fountain Area – Capacity 200	\$150/day	\$150/day	\$60	\$80
Training Room #1 (includes utility kitchen)	\$40	\$45	\$55	\$65

City Hall - 201 N. Broadway	Class B	Class C	Class D	Class E
*Staff Fees (Non-operational hours)	\$30	\$30	\$30	\$30
*Staff Fees (Holidays)	\$75	\$75	\$75	\$75
AV Staff Fee	\$25	\$25	\$25	\$25
Cleaning/Damage Deposit	Minimum \$250	Minimum \$250	Minimum \$250	Minimum \$250
Laptop/LCD Projector	\$25	\$25	\$25	\$25
Portable PA System	\$25	\$25	\$25	\$25
CD Player with Speakers	\$25	\$25	\$25	\$25
Television & VCR/DVD player	\$25	\$25	\$25	\$25

*Staff fees are per staff person. Larger events may require additional staff.

Mathes Community Center 247 S. Kalmia Street	Class B	Class C	Class D	Class E
Meeting Room	\$15	\$20	\$40	\$65
*Dance/Exercise Room	\$20	\$30	\$55	\$80
Washington Park Rec. Bldg. 501 N. Rose Street	\$15	\$20	\$40	\$65

East Valley Community Center 2245 E. Valley Parkway				
Citrus Room	\$15	\$20	\$40	\$65
Grove Room	\$15	\$20	\$40	\$65
Vineyard Room Kitchen (per use)	\$15	\$20	\$30	\$50
Vineyard Room	\$27	\$35	\$70	\$80
*Dance/Exercise Room	\$20	\$30	\$50	\$80
*Gymnasium (half gym)	\$20	\$30	\$40	\$50
*Gymnasium (full gym)	\$40	\$60	\$80	\$100
Court Setup/Per Court	\$20	\$20	\$20	\$20
Television & VCR/DVD player	\$5	\$10	\$10	\$20
Portable P.A. System - Per Use	\$5	\$10	\$10	\$20
Digital Projector	\$10	\$20	\$20	\$40
Cleaning/Damage Deposit	Minimum \$250	Minimum \$250	Minimum \$250	Minimum \$250
Staff Fee – Per staff (Non-operational hours)	\$25	\$25	\$25	\$25
Staff Fee – Per staff (Holidays)	\$30	\$30	\$30	\$30

*Due to the special flooring, no hard-soled shoes, food, or drink are allowed in these facilities. The Community Services Director or his designated representative will make the final determination as to whether a proposed usage is appropriate for these facilities.

Park Avenue Community Center 210 Park Avenue	Class B	Class C	Class D	Class E
Main Building				
Room 3	\$10	\$25	\$55	\$70
Room 4	\$5	\$20	\$40	\$65
Room 5	\$5	\$20	\$40	\$65
Auditorium (room & patio)	\$20	\$40	\$75	\$100
Auditorium Kitchen	\$5	\$20	\$30	\$50
DEBB Meeting Room	\$10	\$25	\$55	\$70
Joslyn Lounge	\$10	\$25	\$55	\$70
West Court Gazebo	\$10	\$25	\$45	\$70
Television & VCR	\$5	\$10	\$10	\$20
Digital Projector	\$10	\$20	\$20	\$40
P.A. System	\$5	\$10	\$10	\$20
Cleaning/Damage Deposit	Minimum \$250	Minimum \$250	Minimum \$250	Minimum \$250
Staff Fee – Per staff (Non-operational Hours)	\$25	\$25	\$25	\$25
Staff Fee – Per staff (Holidays)	\$30	\$30	\$30	\$30

GROUP PICNIC AREAS

The information below is specific for picnicking. Any use of park lands for activities other than the intended use, will require a completion of a special events permit.

- Any group of 50 or more is required to reserve a specified picnic area.
- Reservations may be made up to 6 months in advance, but no less than 10 business days. To make a reservation you must complete a facility use permit and it must be approved.
- Reservations are only held until 12:00 noon on the day of the reservation. If you do not show up for your reservation, all fees are forfeited.

Refunds

- If the application for reservation is not approved or if conditions after approval require cancellation of the reservation by the Department, all fees paid in advance will be refunded.
- If a group cancels its reservation, a refund of fees paid will be made only if the Department is notified of the cancellation at least thirty (30) days prior to the date of the activity/event. Refunds for cancellation of a permit by the applicant will be assessed 25 percent handling charge of the total permit fees or a minimum of \$10. Cancellations made less than thirty (30) days before the activity/event date are non-refundable.
- Cancellation policy is stated on facility use permit.
- During the period of June 1 through September 30, reservations on Saturdays will be limited to groups no larger than 100 people in Kit Carson Park El Arroyo #1 and El Arroyo #2 picnic areas or a maximum combined limit of 200 people in both areas.
- The use of the gazebo is included in the rental of Kit Carson Park El Arroyo #1. The gazebo cannot be reserved by itself.
- Any person/group renting equipment, hiring a vendor must comply with City regulations.

PICNIC LOCATIONS/AREAS	Class B & C	Class D	Class E
Jesmond Dene Park			
Picnic Areas #1 and #2 12 to 50 people (per area)	\$50	\$70	\$90

PICNIC LOCATIONS/AREAS	Class B & C	Class D	Class E
Kit Carson Park			
El Arroyo Picnic Areas #1 and #2			
12 to 200 people (one area)	\$120	\$150	\$180
201 to 600 people (two areas required)	\$210	\$250	\$350
Tree Lake Picnic Areas			
Tree Lake # 1 - 12 to 80 people	\$120	\$150	\$200
Tree Lake # 2 - 12 to 50 people	\$90	\$130	\$180
Tree Lake #3 - 12 to 50 people	\$90	\$130	\$180
Ray Love Area - 12 to 50 people	\$90	\$130	\$180
Adobe Circle	\$50	\$70	\$90
North Picnic Area	\$120	\$150	\$180
Special Equipment/Inflatable Processing Fee (Per Permit)	\$20	\$20	\$20
Cleaning Deposit	\$100	\$100	\$100

SPECIALIZED PARK FACILITIES

Kit Carson Park - Fitness Course & Park Areas

All applicants, including personal trainers, businesses, and groups using a park area for conducting private group fitness sessions must reserve space for one-hour minimum. Permits will be limited to a three-month term.

Fee	Class B \$10/hour	Class C \$15/hour	Class D \$20/hour	Class E \$30/hour
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Tennis Courts – Kit Carson, Mountain View & Washington Parks

Tennis courts at Kit Carson Park may be reserved for use by a recognized organization or for league or tournament play. Up to three (3) courts may be reserved at one time.

Tennis courts at Mountain View and Washington Park are open for public play at all times.

Fee (per court)	Class B \$5/hour	Class C \$10/hour	Class D \$15/hour	Class E \$30/hour
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Municipal Swimming Pools – James A. Stone & Washington Park

The maximum size of the group permitted in the pool is 185 persons. Fees for use of the pools are listed on an hourly basis for up to 80 participants. A two-hour minimum usage is required.

	Class B	Class C	Class D	Class E
Pool Fee- includes 2 lifeguards	\$110	\$115	\$130	\$165
*Lifeguard Fee – per additional lifeguard	\$20	\$20	\$20	\$20

*A minimum of two lifeguards is required for a maximum of 80 participants. One additional lifeguard per 20 additional participants is required. Special conditions may require a higher lifeguard to participant ratio.

AMPHITHEATRE – Kit Carson Park

The Amphitheatre is a special use facility intended for stage performances which include but are not limited to performing arts such as plays, recitals, concerts. Other appropriate uses of the amphitheatre would be large gatherings that require a stage area such as school graduations, church services, etc.

The Kit Carson Park Amphitheatre includes a ticket office, rest rooms, and a concession area. Special Event Permit Application may be required in addition to the application and permit for the usage of Kit Carson Park Amphitheatre.

- Applications for usage of the Kit Carson Park Amphitheatre shall be filed with the Community Services Department not less than sixty (60) days prior to the proposed date of usage and not more than twelve (12) months in advance. All fees are due no later than 30 days prior to the first proposed date of usage.
- The actual time of performances or events held in the amphitheatre shall be limited to the hours between 10:00 a.m. and 10:00 p.m. Cleanup of the amphitheatre shall be completed by 11:00 p.m. Any special requests for times outside of these hours will require City approval.
- Noise levels in the amphitheatre shall not exceed a one-hour average sound level of 80 db at 50 feet from the noise source.
- During the summer season (May 1 through September 30), priority is given to the lease.
- It shall be up to the Director of Library and Community Services or her designated representative to approve an amphitheatre permit. The decision whether to approve an amphitheatre permit will be based on whether the proposed use is suited to the stated intent of the facility.

Amphitheatre Fees	Class B	Class C	Class D	Class E
Setup/tear down time	\$15	\$15	\$25	\$45
Performance time	\$25	\$30	\$65	\$125
PA system (2-hr. minimum)	\$20	\$20	\$25	\$25
Staff Fee	\$25	\$25	\$25	\$25
Staff Fee (Holidays)	\$30	\$30	\$30	\$30
Cleaning/Damage Deposit	Minimum \$250	Minimum \$250	Minimum \$250	Minimum \$250

*Staff fees are per staff person. Larger events may require additional staff.

ESCONDIDO SPORTS CENTER – Kit Carson Park

The Escondido Sports Center is a special use facility complete with two covered hockey arenas, two arena soccer fields (one large/one small), and a multi-use skate park for in-line skating, skateboarding, scooters, and bikes.

- City operated programs have priority for use, which include hockey and soccer leagues, skate sessions, and special events.
- Specific areas may be reserved for appropriate activities by private parties, groups, and organizations if available. Reservations are taken on a first-come-first-served basis and require a Facility Use Application for Permit. These applications are accepted up to sixty (60) prior to the proposed date of usage and no later than thirty (30) days prior to the date of usage.
- In addition to a Facility Use Application for Permit, a Special Events permit may also be required.

Roller Hockey or Soccer Arena Uses

Following each league registration period, an arena availability schedule will be established and will be available to interested groups/teams. Reservations for the available times will be taken on a first-come, first-served basis. A maximum of thirteen (13) uses per reservation (maximum of one hour each), per team/organization may be made based on these league seasons.

Skate Park Uses

Groups reserving the skate park are restricted to use during non-program hours. All reservations will require a two-hour minimum usage.

Escondido Sport Center	Class B	Class C	Class D	Class E
Soccer/Hockey Arena Daytime Use	\$35/hr.	\$45/hr.	\$55/hr.	\$90/hr.
Soccer/Hockey Arena with lights	\$40/hr.	\$55/hr.	\$65/hr.	\$100/hr.
Mini-Soccer Arena Daytime Use	\$20/hr.	\$30/hr.	\$40/hr.	\$75/hr.
Mini-Soccer Arena with lights	\$30/hr.	\$40/hr.	\$50/hr.	\$85/hr.
Skate Park Daytime	\$50/hr.	\$65/hr.	\$75/hr.	\$150/hr.
Skate Park with lights	\$60/hr.	\$80/hr.	\$90/hr.	\$160/hr.
Cleaning/Damage Deposit	Minimum \$250	Minimum \$250	Minimum \$250	Minimum \$250
*Staff Fees (Non-operational hours)	\$25/hr.	\$25/hr.	\$25/hr.	\$25/hr.
*Staff Fees (Holidays)	\$30/hr.	\$30/hr.	\$30/hr.	\$30/hr.

*Staff fees are per staff person. Larger events may require additional staff.

SPORTS FIELDS - Kit Carson, Ryan, Mountain View, Washington, & Jesmond Dene Parks

City and recognized resident youth sports organizations have priority use of sports fields in Escondido parks for scheduled league play/practices.

Recognized resident youth sports organizations will be allowed to utilize sports fields during daylight hours at no charge. When these youth organizations use the lights, they will be assessed \$5 per hour as determined by City Council action Resolution 2015-26, 3.25.15. Other local youth groups and organizations may use the fields; however, they must pay the Class B fees.

Sports fields in Escondido parks are considered special use facilities. However, when not reserved, these fields are open for public use for appropriate activities.

Reservations by individuals, groups and outside organizations are accepted on a first-come-first-served basis and may be made by completing an Facility Use Application for Permit.

- Groups reserving lighted and unlighted ball fields are restricted to the following times and uses:
 1. Four uses per permit/organization
 2. Maximum of two uses per week
 3. Ball fields may only be reserved on a two-hour minimum/maximum basis.
 4. Groups or individuals that apply to use school facilities, which have been improved and/or lighted by the City, are required to pay the fees listed in the policy.
 5. Permits may only be renewed between the third and fourth use.
- Fees for use of sports facilities are listed as hourly fees, however, permits will only be given on a two-hour minimum/maximum usage. See Tournament Policy for use of facilities for tournament play.

Fields/Lights	Class B	Class C	Class D	Class E
Baseball/Softball Field Daytime Use	\$5	\$10	\$15	\$25
Baseball/Softball Field with lights	\$12	\$17	\$22	\$37
Soccer Field Daytime Use	\$5	\$10	\$15	\$25
Soccer Field with lights	\$12	\$17	\$22	\$37

SCHOOL DISTRICT SPORTS FIELDS –Middle & High Schools

Reserving Fields - Any individual, group, or outside organization wanting to reserved school fields must contact the Escondido Union School District Facility Department by calling 760-432-2400.

Reserving Lights on School Fields - Use of lights on school fields requires a City of Escondido Facility Use Applications for Permits.

Del Dios Middle School	Class B	Class C	Class D	Class E
Baseball Field lights	\$12	\$17	\$22	\$35
Hidden Valley Middle School				
Baseball Field lights	\$12	\$17	\$22	\$35
Football/Soccer Field lights	\$12	\$17	\$22	\$35
Grant Middle School				
Football/Soccer Field lights	\$12	\$17	\$22	\$35
Escondido High School				
Pete Coscaract Varsity Field lights	\$17	\$27	\$32	\$37
Junior Varsity Baseball Field lights	\$17	\$27	\$32	\$37
West Soccer/Football Field lights	\$17	\$27	\$32	\$37

TOURNAMENT POLICY ***Softball and Baseball***

PURPOSE

To establish a policy regulating the utilization of City-owned athletic fields by non-City organizations for tournament play.

The Community Services Department will establish available tournament dates in September of each year for the following 12-month period beginning January 1. The established dates will be made available to groups interested in hosting tournaments. Requests will be taken on a first-come, first-served basis and must be filed a minimum of sixty (60) days prior to the tournament date.

Preference for tournament dates shall be considered in accordance with the following criteria:

1. Community Services Department tournaments or tournaments co-sponsored by the department.
2. Recognized resident youth sports organizations.
3. Charitable, nonprofit organizations servicing primarily the Escondido community or schools serving the Escondido community.
4. Charitable, nonprofit organizations serving areas outside the Escondido community.
5. All others, i.e. for profit businesses.

Tournament Fees – Other than the Reservation Deposit, all other fees are due to the Community Services Department by 12:00 p.m. on the Wednesday prior to the dates permitted for use. Payment can be made with cash, cashier's check, or credit card.

Reservation Deposit – A \$60 per field, non-refundable deposit is required to hold a tournament date. This deposit must be paid at the time a use permit is filed with the Community Services Department. This deposit will be applied to the balance due. However, if one or more of the scheduled fields are not needed for the tournament, the \$60 per field, non-refundable deposit may not be applied toward the remainder of the balance due. If the tournament dates are not approved, this deposit will be refunded.

Damage Deposit – A \$250 refundable damage deposit will be required.

Field Preparation – A \$20/per field fee will be charged. Organizations wanting to prep their own fields must have approval from the Community Services Department.

Tournament Staffing – Tournaments with 18 or more teams will be required to pay a \$25 per hour per staff fee. Staff will supervise the complex, facility access, emergency and injury assistance, opening/closing of facility, and enforce all Department rules and regulations and City ordinances. Staff will be scheduled according to tournament needs. Tournaments under

18 teams will be charged a minimum two (2) hour staff fee for closing/securing fields at the conclusion of the tournament.

Maintenance Staffing – A minimum of \$30 per hour for each park maintenance staff will be charge. Based on the size of the tournament, City supervisory staff will determine the number of maintenance staff that will be required. Assigned hours are at the discretion of the Director Library and Community Services, the Director of Public Works or their designees.

	Class B	Class C	Class D	Class E
Baseball/Softball Field Daytime Use	Free	\$10	\$17	\$25
Baseball/Softball Field with lights	\$10	\$22	\$27	\$35
Cleaning/Damage Deposit	Minimum \$250	Minimum \$250	Minimum \$250	Minimum \$250
Field Preparation (per field)	\$20	\$20	\$20	\$20
Tournament Staff – Per staff	\$25	\$25	\$25	\$25
Maintenance Staff – Per staff	\$30	\$30	\$30	\$30

Policies and Procedures

- A. In the event of cancellation, it is the applicant’s responsibility to notify the Community Services Department (and tournament participants) at least thirty (30) days prior to the permit date if they want a refund. All refundable use fees and deposits will be returned if cancelled at least thirty (30) days prior to reservations. Those dates cancelled less than thirty (30) days in advance will be assessed a 25 percent handling fee.
- B. Special approval must be obtained for activities beyond the park closing time of 10:30 p.m. and for the use of amplified music or a public address system. A letter requesting approval should be addressed to the Director of Library and Community Services and should be submitted a minimum of forty-five (45) days in advance.
- C. The sale of any and all items (i.e., programs, T-shirts, souvenirs, etc.) are not permitted without the express written permission of the Community Services Department. An Escondido Business License shall be required for all onsite selling of items.
- D. The City has contracts with local organizations to provide concession service for all activities within the Kit Carson Park athletic area, and therefore, the sale of any food or drink items will not be allowed.

- E. Alcoholic beverages may not be sold, given away, or consumed within park areas per City ordinance. (see General Policies, item 6)
- F. No glass containers are allowed in the parks, per City ordinance.
- G. Liability and property damage insurance, in the amount of \$1 million or more, is required for each tournament date requested. All applicants must provide a certificate of insurance with a separate endorsement naming the City of Escondido as an additionally insured party to the satisfaction of the City Attorney. Electronic or faxed 1 copies of the insurance certificate/endorsement shall be submitted to the Community Services Department for approval at least thirty (30) days prior to the tournament date.
- H. Violations of City ordinances or permit conditions (i.e., alcohol on the premises, etc.) by any group will result in the immediate revocation of the permit and the cancellation of the remainder of the tournament. Groups shall forfeit **all** deposits, and they will not be allowed to file for future reservations for twelve months from the date of the violation.
- I. Only Community Services Department staff, or an organization or crew approved by the Department prior to the tournament, shall perform field maintenance. A fee will be charged for the use of City staff.

RYAN PARK TOURNAMENT POLICY

PURPOSE

To establish a policy regulating the utilization of City-owned athletic fields by non-City organizations for tournament play.

Preference for tournament dates shall be considered in accordance with the following criteria:

1. Community Services Department tournaments or tournaments co-sponsored by the department.
2. Escondido Youth sports organizations that are recognized in the field allocation process.
3. Charitable, nonprofit organizations servicing primarily the Escondido community, or schools serving the Escondido community.
4. Charitable nonprofit organizations serving areas outside the Escondido community.
5. All other groups.
6. Tournaments will not be scheduled when they interrupt regularly scheduled season games.

The Community Services Department will accept requests for tournament dates starting July 1 through October 30 of each year, for the following 12-month calendar year, January through Dec. 31. Requests will be considered, based on the aforementioned criteria, and must be filed by October 30. Applications submitted after October 30 will not be accepted.

Tournament Fees – Other than the Reservation Deposit, all other fees are due to the Community Services Department by 12:00 p.m. on the Wednesday prior to the dates permitted for use. Payment can be made with cash, cashier's check, or credit card.

Reservation Deposit – A \$100 per field nonrefundable deposit is required to hold a tournament date. This deposit must be paid at the time a use permit is filed with the Community Services Department. This deposit will be applied to the balance due. However, if one or more of the scheduled fields are not needed for the tournament, the \$100 per field nonrefundable deposit may not be applied toward the remainder of the balance due. If the tournament dates are not approved, this deposit will be refunded.

Damage Deposit – A \$500 refundable damage deposit will be required.

Field Preparation – A \$20 per field fee will be charged. Organizations wanting to prep field must have approval from the Community Services Department.

Facility Supervision – The City of Escondido requires supervision of the facility for all soccer tournaments. On behalf of the City facility supervision will be coordinated by the Escondido Soccer Club. Facility supervision includes, but is not limited to, supervision of the complex, facility access, emergency and injury assistance, opening/closing of the facility, and enforcement of all Department rules and regulations and City ordinances during tournaments. Supervisors will be scheduled according to tournament needs by the Escondido Soccer Club. Any fees charged to user groups by Escondido Soccer Club for services must be reviewed by the Director of Library and Community Services or her designee prior to the tournament.

Maintenance Staff – A minimum of \$30 per hour for each park maintenance staff will be charge. Based on the size of the tournament, City supervisory staff will determine the number of maintenance staff that will be required. Assigned hours are at the discretion of the Director Library and Community Services, the Director of Public Works or their designees.

Fees	Class B, C, D	Class E
Daytime use of fields	\$150/field/day	\$200/field/day
Daytime use of fields (Holidays)	\$250/field/day	\$300/field/day
Use of lights	\$30/field/evening	\$30/field/evening
Cleaning/Damage Deposit	\$500	\$500
*Facility Supervision – Per staff	\$25/hour	\$25/hour
**Maintenance Staff – Per staff	\$30/hour	\$30/hour

*Facility Supervision fees reflect City staff, in the case that Escondido Soccer League cannot provide staff.

**Maintenance staff fees are per staff person. Larger events may require additional staff.

Policies and Procedures

A. In the event of cancellation, it is the applicant’s responsibility to notify the Community Services Department (and tournament participants) at least thirty (30) days prior to the permit date if they want a refund. All refundable use fees and cleaning/damage deposits will be returned if cancelled at least thirty (30) days prior to reservations. Those dates cancelled less than thirty (30) days in advance will be assessed a 25 percent handling fee on the refundable fees.

B. The park closes at 10:00 p.m. All activities must end by 10:00 p.m. **No exceptions.**

- C. Amplified music will be allowed within buildings with the written approval of the Community Services Department. Request for use of amplified music within buildings must be submitted at the time an application for use of the building is submitted.
- D. The sale of any and all items (i.e., programs, T-shirts, souvenirs, etc.) is not permitted without the express written permission of the Community Services Department. An Escondido Business License shall be required for all onsite selling of items.
- E. The City has contracts with local nonprofit organizations to provide concession services for all activities within the Ryan Park athletic area, and therefore, the sale of any food or drink items will not be allowed.
- F. Alcoholic beverages may not be sold, given away, or consumed within park areas per City ordinance. (See General Policies, item 6)
- G. No glass containers are allowed in the parks, per City ordinance.
- H. Liability and property damage insurance, in the amount of \$1 million or more, is required for each tournament date requested. All applicants must provide a certificate of insurance with a separate endorsement naming the City of Escondido as an additionally insured party to the satisfaction of the City Attorney. Electronic or fax copies of the insurance certificate/endorsement shall be submitted to the Community Services Department for approval at least thirty (30) days prior to the tournament date.
- I. Cancellations due to inclement weather, etc., shall result in a complete refund or the tournament will be rescheduled to another available date at the applicant's option. The City shall be the final determinant of whether a field is playable during inclement weather.
- J. Violations of City ordinances or permit conditions (alcohol on the premises, etc.) by any group will result in the immediate revocation of the permit and the cancellation of the remainder of the tournament. Groups shall forfeit **all** deposits, and they will not be allowed to file for future reservations for twelve months from the date of the violation.
- K. The City may require organizations to provide portable restrooms for the tournament. The cost for the restrooms shall be paid for by the organizations requesting use of the fields. The number of units required will be at the City's discretion.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 7
Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council
FROM: Christopher W. McKinney, Utilities Director
SUBJECT: Notice of Completion: Corrosion Control System for the Escondido Sewer Outfall

RECOMMENDATION:

The Utilities Department requests that Council adopt Resolution No. 2015-119 authorizing the Director of Utilities to file a Notice of Completion for the Corrosion Control System for the Escondido Sewer Outfall ("the Project").

FISCAL ANALYSIS:

The Project was completed for \$253,368.

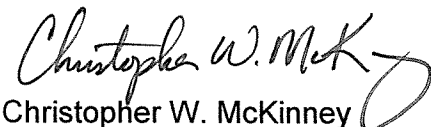
PREVIOUS ACTION:

On December 4, 2013, Council approved Resolution No. 2013-161 authorizing the award of a Public Improvement Agreement with American Construction & Supply, Inc. in the amount of \$230,335.

BACKGROUND:

The existing 14-mile long cement mortar coated steel land outfall pipeline extends from the Hale Avenue Resource Recovery Facility to the Pacific Ocean. The outfall was constructed in 1972. A cathodic protection system was installed to protect the outfall (from the San Elijo Water Reclamation Facility to El Camino del Norte) from corrosion. The existing cathodic protection system exceeded its service life and was in need of replacement. This project replaced the four rectifiers and corresponding deep well anode beds.

Respectfully submitted,


Christopher W. McKinney
Director of Utilities

RESOLUTION NO. 2015-119

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE DIRECTOR OF UTILITIES
TO FILE A NOTICE OF COMPLETION FOR THE
CORROSION CONTROL SYSTEM FOR THE
ESCONDIDO SEWER OUTFALL

WHEREAS, the City Council of the City of Escondido authorized the award of a Public Improvement Agreement with American Construction & Supply, Inc. on December 4, 2013, in the amount of \$230,335; and

WHEREAS, the City of Escondido Staff and the Director of Utilities deems the filing of the Notice of Completion to be valid and recommends approval; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the filing of the Notice of Completion; and

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

1. That the above recitations are true.
2. That the City Council accepts the recommendation of the Director of Utilities.
3. That the City Council hereby approves the request to file Notice of Completion for the Corrosion Control System for the Escondido Sewer Outfall.

CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 8
Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council
FROM: Sheryl Bennett, Director of Administrative Services
SUBJECT: Memorandum of Understanding between the City of Escondido and the Escondido City Employees' Association – Administrative, Clerical and Engineering (ACE) Bargaining Unit

RECOMMENDATION:

City Council adopt Resolution No. 2015-125, approving the execution of a Memorandum of Understanding between the City of Escondido and the Escondido City Employees' Association ACE Bargaining Unit for a one-year term commencing July 1, 2015 through June 30, 2016.

It is also requested that City Council approve a budget adjustment appropriating \$229,165 to cover increased contract costs. Of this estimated increase, \$120,680 is General Fund monies. The Fiscal Year 2015-16 General Fund Operating Budget did not allocate funds for contract increases, but it is anticipated that budgetary saving at year end will cover these increased costs.

FISCAL ANALYSIS:

Cost to the General Fund for Fiscal Year 2015-16 is \$120,680. Funds to cover this expense have not yet been built into the General Fund multi-year Financial Plan.

PREVIOUS ACTION:

On September 24, 2014, the City Council voted to adopt the Memorandum of Understanding between the Escondido City Employees' Association ACE Bargaining Unit and the City of Escondido, for a one-year term that expired on June 30, 2015.

BACKGROUND:

City staff has met with the Escondido City Employees' Association ACE Bargaining Unit, regarding terms and conditions of Employment that expired on June 30, 2015. The attached resolution outlines changes to working conditions and compensation that the Escondido City Employees' Association ACE Bargaining Unit has agreed to during this negotiation process. Members of the ACE Bargaining Unit voted in support of the agreement on June 29, 2015. The base salary range for all represented classifications shall be increased by two percent (2%) effective pay period beginning July 5, 2015.

Respectfully submitted,

Sheryl Bennett
Director of Administrative Services

RESOLUTION NO. 2015-125

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE EXECUTION OF A
MEMORANDUM OF UNDERSTANDING WITH
THE ESCONDIDO CITY EMPLOYEES'
ASSOCIATION, ADMINISTRATIVE, CLERICAL
AND ENGINEERING BARGAINING UNIT

JULY 1, 2015 – JUNE 30, 2016

WHEREAS, negotiating teams from the City of Escondido and the Escondido City Employees' Association, Administrative, Clerical and Engineering Bargaining Unit have been duly appointed and have been conducting meet-and-confer sessions with respect to matters affecting both parties; and

WHEREAS, a successor Memorandum of Understanding ("MOU") by the City of Escondido ("City") and the Escondido City Employees' Association, Administrative, Clerical and Engineering Bargaining Unit ("Association") is necessary as a result of meeting and conferring in good faith concerning wages, hours, and other terms and conditions of employment; and

WHEREAS, it is the intent of the successor MOU to provide for continuation of the harmonious relationship between the City and the Association; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve a successor MOU and certain other modifications.

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

1. That the above recitations are true.
2. The City's negotiating team is authorized to execute, on behalf of the City, a successor MOU extending the term of the MOU through June 30, 2016, and also including

terms as set forth in Exhibit "A" attached to this Resolution and incorporated by this reference.

**City of Escondido
Escondido City Employees' Association
Administrative, Clerical and Engineering Bargaining Unit
Successor Memorandum of Understanding
July 1, 2015 – June 30, 2016**

1. **Term:** July 1, 2015 – June 30, 2016. None of the terms are retroactive. All changes take effect upon the agreed effective date after City Council adoption of the Memorandum of Understanding (MOU).

2. **Article IV, Salary, Wages:**

Effective pay period beginning July 5, 2015, the base salary range for all represented classifications shall be increased by two percent (2.0%).

3. **Article IV, Salary, Equity Adjustments:**

The following classifications will receive a five percent (5.0%) salary equity adjustments effective pay period beginning July 5, 2015:

- Associate Chemist
- Environmental Compliance Inspector I/II
- Laboratory Technician I/II

4. **MOU Language Clean-Up:**

General MOU Language clean-up was provided to the ECEA for review and feedback, and subsequently agreed upon during negotiations.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 9
Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council
FROM: Sheryl Bennett, Director of Administrative Services
SUBJECT: Memorandum of Understanding between the City of Escondido and the Escondido City Employees' Association – Supervisory (SUP) Bargaining Unit

RECOMMENDATION:

City Council adopt Resolution No. 2015-126, approving the execution of a Memorandum of Understanding between the City of Escondido and the Escondido City Employees' Association SUP Bargaining Unit for a one-year term commencing July 1, 2015 through June 30, 2016.

It is also requested that City Council approve a budget adjustment appropriating \$106,905 to cover increased contract costs. Of this estimated increase, \$47,170 is General Fund monies. The Fiscal Year 2015-16 General Fund Operating Budget did not allocate funds for contract increases, but it is anticipated that budgetary saving at year end will cover these increased costs.

FISCAL ANALYSIS:

Cost to the General Fund for Fiscal Year 2015-16 is \$47,170. Funds to cover this expense have not yet been built into the General Fund multi-year Financial Plan.

PREVIOUS ACTION:

On September 24, 2014, the City Council voted to adopt the Memorandum of Understanding between the Escondido City Employees' Association SUP Bargaining Unit and the City of Escondido, for a one-year term that expired on June 30, 2015.

BACKGROUND:

City staff has met with the Escondido City Employees' Association SUP Bargaining Unit, regarding terms and conditions of Employment that expired on June 30, 2015. The attached resolution outlines changes to working conditions and compensation that the Escondido City Employees' Association SUP Bargaining Unit has agreed to during this negotiation process. Members of the SUP Bargaining Unit voted in support of the agreement on June 29, 2015. The base salary range for all represented classifications shall be increased by two percent (2%) effective pay period beginning July 5, 2015.

Respectfully submitted,

Sheryl Bennett
Director of Administrative Services



RESOLUTION NO. 2015-126

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE EXECUTION OF A
MEMORANDUM OF UNDERSTANDING WITH
THE ESCONDIDO CITY EMPLOYEES'
ASSOCIATION, SUPERVISORY BARGAINING
UNIT

JULY 1, 2015 – JUNE 30, 2016

WHEREAS, negotiating teams from the City of Escondido and the Escondido City Employees' Association, Supervisory Bargaining Unit have been duly appointed and have been conducting meet-and-confer sessions with respect to matters affecting both parties; and

WHEREAS, a successor Memorandum of Understanding ("MOU") by the City of Escondido ("City") and the Escondido City Employees' Association, Supervisory Bargaining Unit ("Association") is necessary as a result of meeting and conferring in good faith concerning wages, hours, and other terms and conditions of employment; and

WHEREAS, it is the intent of the successor MOU to provide for continuation of the harmonious relationship between the City and the Association; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve a successor MOU and certain other modifications.

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

1. That the above recitations are true.
2. The City's negotiating team is authorized to execute, on behalf of the City, a successor MOU extending the term of the MOU through June 30, 2016, and also including terms as set forth in Exhibit "A" attached to this Resolution and incorporated by this reference.

**City of Escondido
Escondido City Employees' Association
Supervisory Bargaining Unit
Successor Memorandum of Understanding
July 1, 2015 – June 30, 2016**

1. **Term:** July 1, 2015 – June 30, 2016. None of the terms are retroactive. All changes take effect upon the agreed effective date after City Council adoption of the Memorandum of Understanding (MOU).

2. **Article IV, Compensation Policy, Section 1A, Wages:**

Effective pay period beginning July 5, 2015, the base salary range for all represented classifications shall be increased by two percent (2.0%).

3. **Article IV, Compensation Policy, Section 9, Certification Pay:**

Effective pay period beginning July 5, 2015, the Maintenance Supervisor assigned to the Tree Trimming Crew will receive specialty pay of five percent (5%) for possessing a valid Arborist Certification from the International Society of Arboriculture.

4. **MOU Language Clean-Up:**

General MOU Language clean-up was provided to the ECEA for review and feedback, and subsequently agreed upon during negotiations.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 10

Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Edward N. Domingue, Public Works Director/City Engineer
Matthew Souttere, Associate Engineer

SUBJECT: Bid Award for the FY 2014/2015 Street Maintenance Project

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2015-127 authorizing the bid award to American Asphalt South, determined to be the lowest responsive and responsible bidder; and authorizing the Mayor and City Clerk to execute a Public Improvement Agreement in the amount of \$1,261,332.18 for the FY 2014/2015 Street Maintenance Project.

FISCAL ANALYSIS:

The lowest responsive bid is 10% lower than the Engineers estimate of \$1,400,000. There are funds available in the project budget.

BACKGROUND:

This project is the second of our two part, Annual Pavement Maintenance Program. The project includes minor patching, application of crackseal and pavement surface treatments to selected City streets, and restriping to accommodate bike lanes in compliance with the City's Bike Path Master Plan. Combined, the two projects will maintain over 3.5 million square feet of pavement.

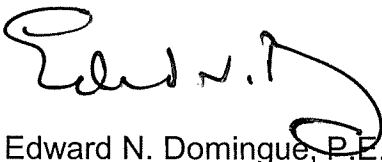
This year's Pavement Maintenance Program has focused on residential streets located in Zone CN, which includes the area south of Lincoln Parkway, east of the Interstate 15 freeway, 5th Avenue on the south side, and Ash Street on the east side. In addition, substantial work will take place on Centre City Parkway and Mission Avenue.

On June 25, 2015, the City of Escondido received four (4) sealed bids in response to its advertised request for bids on this project. The bid results are listed below:

American Asphalt So.:	\$1,261,332.18
All American Asphalt:	\$1,420,820.73
Intermountain Slurry Seal:	\$1,464,646.00
Pavement Coatings:	\$1,479,659.10

Staff recommends that the bid submitted by American Asphalt South be considered the lowest responsive and responsible bid, and that the contract be awarded in the amount of \$1,261,332.18.

Respectfully submitted,



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



Matthew C. Souttere
Associate Engineer

RESOLUTION NO. 2015-127

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AWARDING A BID FOR THE FY 2014/2015 STREET MAINTENANCE PROJECT AND AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A PUBLIC IMPROVEMENT AGREEMENT WITH AMERICAN ASPHALT SOUTH

WHEREAS, the City Council has allocated funding for the FY 2014/2015 Street Maintenance Project ("Project"); and

WHEREAS, a notice inviting bids for said improvements was duly published; and

WHEREAS, pursuant to said notice, four (4) sealed bids for the Project were opened and evaluated on June 25, 2015; and

WHEREAS, American Asphalt South was determined to be the lowest responsive and responsible bidder; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to award this contract to American Asphalt South in the amount of \$1,261,332.18; and

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 the City Clerk are authorized to execute, on behalf of the City, a Public Improvement Agreement with American Asphalt South in substantially similar form to that which is attached and incorporated to this Resolution as Exhibit "1," and subject to final approval as to form by the City Attorney.

PUBLIC IMPROVEMENT AGREEMENT

This "Agreement", dated the _____ day of _____, 20____, in the County of SAN DIEGO, State of California, is by and between **THE CITY OF ESCONDIDO** (hereinafter referred to as "CITY"), and _____ (hereinafter referred to as "CONTRACTOR").

The CITY and the CONTRACTOR, for the consideration stated herein, agree as follows:

1. The complete contract includes all of the Project Documents described in the General Conditions, which are incorporated by reference. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.
2. CONTRACTOR shall perform, within the time set forth in Paragraph 4 of this Agreement, everything required and reasonably inferred to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the complete contract and required for construction of

FY 2014/2015 STREET MAINTENANCE PROJECT

All of said work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications and all provisions of the complete contract as hereinabove defined. The CONTRACTOR shall be liable to the CITY for any damages and resulting costs, including consultants' costs, arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the Architect, Engineer, Inspector, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project Documents, and unless the CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing the CONTRACTOR from fully complying with the Project documents. Such protest shall not be effective unless reduced to writing and filed with the CITY within **three (3) working days** of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Project documents.

3. CITY shall pay to the CONTRACTOR, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the Project documents, the sum of _____ Dollars (\$_____).

4. The work shall be commenced on or before the twenty-first (21st) day after receiving the CITY'S Notice to Proceed and shall be completed within **FORTY (40) working days** from the date specified in the Notice to Proceed.
5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage(s), in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to CITY as fixed and liquidated damages, and not as a penalty, the sum(s) indicated in the LIQUIDATED DAMAGES SCHEDULE below for each calendar day of delay until work is completed and accepted. This amount shall be deducted from any payments due

or in any way connected with the work covered by this Agreement, whether said injury or damage occurs on or off City property.

- (c) Any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01), and updates or renewals, of the California Regional Water Quality Control Board Region 9, San Diego, which the CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction, reconstruction, maintenance, and/or repair of the work under this Agreement.

The CONTRACTOR, at CONTRACTOR's own expense, cost, and risk shall defend any and all actions, suit, or other proceedings that may be brought or instituted against the CITY, its governing board, officers, agents or employees, on any such claim, demand or liability, and shall pay or satisfy any judgment that may be rendered against the CITY, its governing board, officers, agents or employees in any action, suit or other proceedings as a result thereof.

- 8. CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this contract, and shall require all subcontractors, if any, of every tier, to take out and maintain:
 - (a) General Liability and Property Damage Insurance as defined in the General Conditions in the amount with a combined single limit of not less that **\$3,000,000 per occurrence**.
 - (b) Course of Construction / Builder's Risk Insurance. See Article 5.2 of General Conditions.
 - (c) Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to the above-mentioned public liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance in amounts as follows:
 - (1) Automotive and truck where operated in amounts as above
 - (2) Material hoist where used in amounts as above
 - (d) Workers' Compensation Insurance.
 - (e) Each insurance policy required above must be acceptable to the City Attorney, as follows:
 - (1) Each policy must name the CITY specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation and the Errors and Omissions policies.
 - (2) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
 - (3) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
 - (f) In executing this Agreement, CONTRACTOR agrees to have completed insurance documents on file with the CITY within 14 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.

9. This Agreement is subject to California Public Contract Code Section 22300, which permits the substitution of securities for any monies withheld by the City under this Agreement, and permits the CONTRACTOR to have all payments of earned retentions by the City paid to an escrow agent at the expense of the CONTRACTOR.
10. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.
11. The complete contract as set forth in Paragraph 1 of this Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Escondido City Council.
12. CONTRACTOR shall comply with those provisions of the Labor Code requiring payment of prevailing wages, keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions, and shall file the required workers' compensation certificate before commencing work.
13. The terms "Project Documents" and/or "Contract Documents" where used, shall refer to those documents included in the definition set forth in the General Conditions made a part hereof.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of CITY by its officers thereunto authorized and by CONTRACTOR, the date and year first above written.

CITY OF ESCONDIDO
a municipal corporation
201 North Broadway
Escondido, CA 92025

By: _____
Diane Halverson, City Clerk

By: _____
Sam Abed, Mayor

APPROVED AS TO FORM:

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

By: _____

CONTRACTOR

By: _____
Signature

By: _____
Signature*

Print Name

Print Name

Title

Title

(Second signature required only for corporation)

By: _____
Signature**

Print Name

Title

(CORPORATE SEAL OF CONTRACTOR, if corporation)

Contractor's License No.

Tax ID/Social Security No.

*If CONTRACTOR is a corporation, the first signature must be by one of the following officers of the corporation: Chairman of the Board, President, or any Vice President.

**If CONTRACTOR is a corporation, the second signature must be by a different person from the first signature and must be by one of the following officers of the corporation: Secretary, any Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.



CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 11
Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey R. Epp, City Attorney
Samantha Foulke, Deputy City Attorney

SUBJECT: Amendment of Escondido Municipal Code Sections 17-5 and 18-107

RECOMMENDATION:

It is requested that Council introduce Ordinance No. 2015-15.

BACKGROUND:

The City Attorney's Office and Police Department have reviewed our local regulations to address pedestrian safety concerns in light of the recent death of a pedestrian who fell from a median into moving traffic while soliciting money at the intersection of Quince St. and Mission Avenue. This Ordinance would amend Escondido Municipal Code ("EMC") Section 17-5 to prohibit a person from remaining on a median except when waiting to cross the roadway at the next pedestrian signal. This amendment is very narrowly tailored to address only safety related conduct, and does not impact First Amendment related activities or prevent pedestrians from remaining in areas historically used for public discourse.

This Ordinance differs from existing regulations under the California Vehicle Code. Regarding crosswalks, the Vehicle Code regulates right of way as between a pedestrian and a motor vehicle and also prohibits jaywalking when the adjacent intersections are controlled by traffic signals or police officers, but it does not address the safety concerns presented by pedestrian use of medians.

Currently, Escondido Municipal Code Section 18-107 prohibits abusive solicitation in recreational areas, but similar activities can occur in other public places. This Ordinance would amend Section 17-5 to prohibit abusive solicitation on public sidewalks, walkways or passageways in public places within the City. Certain editorial changes have also been suggested to clean up EMC 18-107, dealing with the recreational areas of the City.

Amendment of Escondido Municipal Code Sections 17-5 and 18-107
July 8, 2015
Page 2

Overall, these amendments will improve the tools available to law enforcement in dealing with this safety issue. The proposed language for Sections 17-5 and 18-107 of the Escondido Municipal Code will be adopted by Ordinance No 2015-15.

Respectfully submitted,



JEFFREY R. EPP
City Attorney



SAMANTHA FOULKE
Deputy City Attorney

Attachments: Escondido Municipal Code Chapter 17, Article 1, Section 17-5 (Attachment A)
 Escondido Municipal Code Chapter 18, Article 4, Section 18-107 (Attachment B)

Attachment A

Sec. 17-5. ~~Obstructing u~~Use of streets, sidewalks, public places.

- (a) It shall be unlawful for any person to sit, lie, recline, kneel or otherwise restrict or obstruct the free use of any public sidewalk, walkway, passageway, or any public place, or for any number of persons to congregate in such manner as to obstruct or interfere with the free movement and passage of persons or vehicles in any public street or any other public place within the city.
- (b) It shall be unlawful for any person to engage in abusive solicitation, as defined in Section 18-107, on any public sidewalk, walkway or passageway in any public street or any other public place within the city.
- (c) It shall be unlawful for any person to stop or remain in a painted or raised traffic island or median except to wait to cross the roadway at the next pedestrian signal or, in the absence of a pedestrian signal, when traffic has cleared or yielded. Subsection (c) shall not apply to those persons occupying a median while conducting activities related to maintenance, surveying, construction, landscape maintenance, landscape improvements, law enforcement, responding to an emergency, or as otherwise permitted by law.
- (d) A violation of this section shall be a misdemeanor.

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Attachment B

Sec. 18-107. Solicitation of alms, contributions.

It is the intent of this section to impose reasonable place and manner limitations on solicitation, as defined herein, in order to protect safety of the general public against "abusive solicitation" while respecting the constitutional right of free speech.

The following words or phrases as used in this section shall have the following meanings:

Abusive solicitation means to do one or more of the following while engaging in solicitation or immediately thereafter:

- (1) Coming closer than three feet to the person solicited unless and until the person solicited indicates that he or she wishes to make a donation;
- (2) Blocking or impeding the passage of the person solicited;
- (3) Following the person solicited by processing behind, ahead or alongside of him or her after the person solicited declines to make a donation;
- (4) Threatening the person solicited with physical harm by word or gesture;
- (5) Abusing the person solicited with words which are offensive and inherently likely to provoke an immediate violent reaction;
- (6) Touching the solicited person without the solicited person's consent; or
- (6)(7) ~~Attempt to solicit~~ Soliciting from any person traveling in a vehicle along the public right of way.

No person shall engage in abusive solicitation. Any person who engages in abusive solicitation as defined herein shall be guilty of a misdemeanor.

Donation means a gift of money or other item of value and shall also include the purchase of an item for an amount far exceeding its value under circumstances where a reasonable person would understand that the purchase is in substance a gift.

Solicitation means any request made in person seeking an immediate donation of money or other item of value. A person shall not be deemed to be in the act of solicitation where he or she passively displays a sign or gives any other indication that he or she is seeking donations without addressing his or her solicitation to any specific person, other than in response to an inquiry by that person.

ORDINANCE NO. 2015-15

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING ESCONDIDO MUNICIPAL CODE
CHAPTER 17, ARTICLE 1, SECTION 17-5
AND CHAPTER 18, ARTICLE 4, SECTION 18-
107

WHEREAS, the City of Escondido wishes to improve the tools available to law enforcement in dealing with safety issues surrounding the use of medians and public sidewalks, walkways and passageways; and

WHEREAS, the City of Escondido seeks to address these pedestrian safety concerns by amending Escondido Municipal Code Section 17-5 to prohibit a person from remaining on a median except when waiting to cross the roadway at the next pedestrian signal; and

WHEREAS, Escondido Municipal Code Section 18-107 currently prohibits abusive solicitation in recreational areas and the City of Escondido seeks to apply that prohibition to public sidewalks, walkways or passageways in other public places within the City by amending Section 17-5; and

WHEREAS, the City of Escondido also seeks to make certain editorial changes to Section 18-107.

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

SECTION 1. That Escondido Municipal Code Chapter 17, Article 1, Section 17-5, is hereby amended to read as follows:

Sec. 17-5. Use of streets, sidewalks, public places.

- (a) It shall be unlawful for any person to sit, lie, recline, kneel or otherwise restrict or obstruct the free use of any public sidewalk, walkway, passageway, or any public place, or for any number of persons to congregate in such manner as to obstruct or interfere with the free movement and passage of persons or vehicles in any public street or any other public place within the city.
- (b) It shall be unlawful for any person to engage in abusive solicitation, as defined in Section 18-107, on any public sidewalk, walkway or passageway in any public street or any other public place within the city.
- (c) It shall be unlawful for any person to stop or remain in a painted or raised traffic island or median except to wait to cross the roadway at the next pedestrian signal or, in the absence of a pedestrian signal, when traffic has cleared or yielded. Subsection (c) shall not apply to those persons occupying a median while conducting activities related to maintenance, surveying, construction, landscape maintenance, landscape improvements, law enforcement, responding to an emergency, or as otherwise permitted by law.
- (d) A violation of this section shall be a misdemeanor.

SECTION 2. That Escondido Municipal Code Chapter 18, Article 4, Section 18-107, is hereby amended to read as follows:

Sec. 18-107. Solicitation of alms, contributions.

It is the intent of this section to impose reasonable place and manner limitations on solicitation, as defined herein, in order to protect the safety of the general public against "abusive solicitation" in recreational areas within the city while respecting the constitutional right of free speech.

The following words or phrases as used in this section shall have the following meanings:

Abusive solicitation means to do one or more of the following while engaging in solicitation or immediately thereafter:

- (1) Coming closer than three feet to the person solicited unless and until the person solicited indicates that he or she wishes to make a donation;
- (2) Blocking or impeding the passage of the person solicited;
- (3) Following the person solicited by processing behind, ahead or alongside of him or her after the person solicited declines to make a donation;

- (4) Threatening the person solicited with physical harm by word or gesture;
- (5) Abusing the person solicited with words which are offensive and inherently likely to provoke an immediate violent reaction;
- (6) Touching the solicited person without the solicited person's consent; or
- (7) Soliciting from any person traveling in a vehicle.

No person shall engage in abusive solicitation in any recreational areas within the city. Any person who engages in abusive solicitation as defined herein shall be guilty of a misdemeanor.

Donation means a gift of money or other item of value and shall also include the purchase of an item for an amount far exceeding its value under circumstances where a reasonable person would understand that the purchase is in substance a gift.

Solicitation means any request made in person seeking an immediate donation of money or other item of value. A person shall not be deemed to be in the act of solicitation where he or she passively displays a sign or gives any other indication that he or she is seeking donations without addressing his or her solicitation to any specific person, other than in response to an inquiry by that person.

SECTION 3. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 4. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published in accordance with California Government Code Section 36933.

ORDINANCE NO. 2015-14

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
APPROVING AN AMENDMENT TO ARTICLE
49 OF THE ESCONDIDO ZONING CODE
REGARDING AIR SPACE CONDOMINIUMS
AND COMMUNITY APARTMENT PROJECTS

PLANNING CASE NO.: AZ 15-0001

WHEREAS, the City Council desires to promote condominium and community apartment projects that are well-designed and in excellent physical condition, while streamlining the approval process and reducing costs for commercial and industrial condominium projects that can be processed administratively with a tentative parcel map and public noticing; and

WHEREAS, the Escondido General Plan was adopted on May 23, 2012, by the City Council, and includes Small Business and Entrepreneurialship Policy 3.2 regarding the identification and removal of obstacles to the formation and expansion of local businesses;

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 2. That the City Council has reviewed and considered the Notice of Exemption prepared for this project on May 21, 2015, in conformance with Title 14 California Code of Regulation, California Environmental Quality Act ("CEQA") Section

**A COMPLETE COPY OF THIS ORDINANCE
IS ON FILE IN THE OFFICE OF THE CITY
CLERK FOR YOUR REVIEW.**

RENT REVIEW BOARD

For City Clerk's Use:

APPROVED **DENIED**

Reso No. RRB _____ File No. _____

Ord No. RRB _____

Agenda Item No.: 13

Date: July 8, 2015

TO: Honorable Chairman and Members of the Rent Review Board

FROM: Barbara Redlitz, Director of Community Development

SUBJECT: Short-form Rent Increase Application for Carefree Ranch (File Number 0697-20-10036)

RECOMMENDATION:

- Consider the short-form rent increase application submitted by Carefree Ranch.
- If approved, adopt Rent Review Board Resolution No. 2015-04 granting an increase of seventy-five percent (75%) of the change in the Consumer Price Index, or 0.963% (an average of \$4.70) for the period of December 31, 2013 to December 31, 2014.

INTRODUCTION:

Carefree Ranch ("Park"), located at 211 N. Citrus Avenue, has filed a short-form rent increase application. The Board is asked to accept the staff report, hear public testimony, and make a determination concerning the request in accordance with the Escondido Rent Protection Ordinance and the short-form procedures as outlined in the Rent Review Board Guidelines. The application and the staff report have been made available to the Board for review and consideration prior to the hearing.

THE RENT INCREASE APPLICATION:

Carefree Ranch is a senior park which has a total of 184 spaces with 95 spaces subject to rent control. The Park is requesting an increase for the 90 rent controlled spaces. The other spaces not included in this application are on long-term leases, occupied as rentals or by management, or are vacant, or have recently received rent increases due to expiring long term leases. The amenities available for the residents include a furnished clubhouse with kitchen, a pool with spa, work-out room, shuffleboard court, a guesthouse and coin laundry facilities.

The application meets all the eligibility criteria for submittal of a short-form rent increase application.

July 8, 2015

Short-form Rent Increase Application for Carefree Ranch

Page 2

PARK OWNER'S REQUEST:

The Park is requesting an increase of 75% of the change in Consumer Price Index for the period of December 31, 2013, to December 31, 2014. Seventy-five percent of the change in the CPI for the period of consideration is 0.963%. The average monthly rent for the 90 residents that are affected by this application is \$487.60. The average monthly increase requested is \$4.70 per space, per month.

This is the nineteenth rent increase request filed by this Park since the Ordinance was implemented. The last increase was granted in June 2014 for an average amount of \$6.16, per space, per month.

RESIDENT MEETING AND COMMENTS:

All residents affected by this request were invited to attend a meeting in their clubhouse on June 8, 2015 at 4:00 p.m. Two residents attended the meeting, an additional resident called to discuss the rent increase. The meeting was also attended by the Park Manager and City staff. A discussion regarding the role and scope of rent control code inspections ensued. Residents noted that the park was generally in less good condition than it had been when they moved in and requested that management uphold individual maintenance and appearance standards on all residents. They also requested a one year hiatus for rent increases. Other issues mentioned included intermittent water pressure irregularities, the length of time Park maintenance/repair projects take to be resolved, communication with management, and the water conservation of Park landscaping. No one volunteered to serve as resident representative this year.

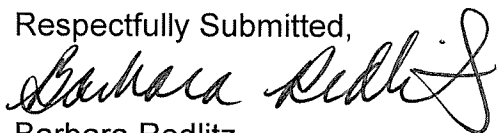
CODE ENFORCEMENT INSPECTION:

An inspection of the common areas of the Park by the Code Enforcement Division of the City noted some violations of the Health and Safety Code. A copy of the Code Report ("Report") is attached as "Exhibit A." The Owner and Park Manager received a copy of the Report, and were made aware that no rent increase, if granted, may be implemented until the Health and Safety Code violations have been cleared.

ADDITIONAL FACTORS AFFECTING THE APPLICATION:

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

Respectfully Submitted,



Barbara Redlitz
Director of Community Development




Karen Youel
Management Analyst



DATE: JUNE 11, 2015

TO: HONORABLE CHAIRMAN AND MEMBERS OF THE RENT CONTROL BOARD

FROM: BRIAN GUSTAFSON, CODE ENFORCEMENT MANAGER 

SUBJECT: CAREFREE RANCH MOBILEHOME PARK RENT CONTROL

Carefree Ranch Mobilehome Park was inspected on June 11, 2015, with the lighting inspection conducted the prior evening. This inspection was a result of an application for a rent increase having been filed. Six general violations and five lighting violations were found and noted in the attached inspection report.

The resident meeting was held June 8, 2015 and was attended by two residents. There was no resident representative appointed for this park.

There were no code enforcement cases in this park during the past year.

CC: Barbara Redlitz, Director of Community Development
Karen Youel, Rent Control Administration

June 11, 2015

MOBILEHOME PARK RENT CONTROL
CODE ENFORCEMENT INSPECTION REPORT

Park Name: Carefree Ranch Mobile Home Park
211 N. Citrus Ave.
Escondido, CA. 92027

Park Owner: Carefree Ranch LLC
c/o Bart J. Thomsen
8 Pinehurst Ln.
Newport Beach, Ca. 92660

Park Manager: Jim Younce **Phone:** (760) 207-9727

Inspection Date: 6/11/2015 **Inspector:** Andrew Modglin
Art Stephens

The following report is based on the inspection of the mobile home park conducted under provisions outlined in the California Code of Regulations, Title 25, Division I, Chapter 2 and the Escondido Zoning Code, Article 45. This inspection report only addresses health and safety issues that are related to areas for which maintenance, repair and operations is the responsibility of the owners and managers of the park.

General Violations:

1. The front park announcement sign is broken. **25 CCR 1608 (b) (4)** Remove or replace the broken sign.
2. Repair the loose handrails on the Spa ladder. **25 CCR 1608 (a) (6), 25 CCR 1608 (i) & 25 CCR 1102 (a).**

3. The electrical breaker box cover plate in the pool equipment room has been altered and does not properly cover the switches. **25 CCR 1605(d) (1)**. Replace the cover plate.
4. The light pole located at space 130 is blocked by a large tree. **25 CCR 1108** Trim the tree so that it is no longer blocking the light.
5. There is a depression in the ground on the north side of the guest house. **25 CCR 1116**. Fill in the hole by the guest house so that it does not present a trip hazard.
6. The rear door landing to the back of the rental guest house unit has been removed for maintenance repairs and has not been replaced. **25 CCR 1605 (b) (2)** Replace the landing to a minimum of 3' x 3'.

Areas of the park requiring illumination per 25 CCR 1108:

(Lighting Inspection conducted the evening of 6-10-2015)

Five exterior lights were found inoperable during my lighting inspection. Determine the cause of the non-working lights and repair as necessary.
CCR 1605 (d) (2).

Shuffleboard area light

Exterior light for storage room – w side of structure

Light post behind space 7

Exterior light by the front office door

Exterior light by the front door of the guest house

RESOLUTION NO. RRB 2015-04R

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

(File Number: 0697-20-10036)

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

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

WHEREAS, a short-form Rent Increase Application was filed pursuant to Section 12 of the Rent Review Board Guidelines and accepted on May 6, 2015, and revised on May 26, 2015, by Bart Thomsen/Carefree Ranch LLC, the owner of Carefree Ranch Mobilehome Park ("Park"). The Park is located at 211 N. Citrus in Escondido. The rent increase applies to 95 of the 184 spaces in the Park; and

WHEREAS, this is the nineteenth rent increase application filed by the Park since the Ordinance became effective in 1988. The last rent increase was granted by the board at a Rent Review Board Hearing held on June 25, 2014, and formally adopted by Rent Review Board Resolution 2014-06. The increase requested was for 1.281%, or approximately \$6.16 per space, per month; and

WHEREAS, at the time of the current application, the average monthly space rent was \$492.76 for the 95 spaces subject to rent control. The Park owner requested a

rent increase in the amount of 75% of the change in the Consumer Price Index (CPI) for the period of December 31, 2013, through December 31, 2014, in accordance with the Rent Review Board short-form policy guidelines. The application estimated this amount to be an average of \$4.75 (0.963%) per space, per month; and

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

WHEREAS, on June 11, 2015, a Mobilehome Park Rent Control Code Enforcement Inspection Report ("Inspection Report") was completed. The Inspection Report noted Health and Safety Code violations in the Park; and

WHEREAS, on July 8, 2015, the Board held its public hearing. After an initial presentation, the Board invited testimony from Park ownership, residents of the Park and other residents of the community at large; and

WHEREAS, after all present had been given an opportunity to speak, the hearing was closed. Following an opportunity for discussion among the Board members and clarifying questions to the parties and Staff, the Board voted to grant an average rent increase of \$4.75 per space, per month, for the 95 spaces receiving rent increases under this application;

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

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

3. That following the Guidelines, an increase based on 75% of the change in the Consumer Price Index ("CPI") for San Diego County from December 31, 2013, through December 31, 2014, amounted to 0.963%, which averaged \$4.75 per space, per month, for the 95 spaces subject to rent control.

4. The Board concluded that an increase of \$4.75 per space, per month, is consistent with the Guidelines, and is fair, just, and a reasonable increase in light of the information presented by all parties.

5. Notwithstanding the above, Spaces 27, 115, 121, 241, and 243 which are among the 95 spaces in this increase, are entitled to credits for increases erroneously given subsequent to the expiration of long term leases on said spaces. No new rent increase may be effective for any of these listed spaces until such time as credit has been given for all such erroneous rent increases.

6. That the increase may not be implemented until after the health and safety code violations noted in the Inspection Report have been corrected, signed off, and are in compliance with the various state and local code sections as noted in the Inspection.

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

CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 14

Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Michael Lowry, Fire Chief
Marlene Donner, Fire Marshal

SUBJECT: Cost Report for 2015 Weed Abatement Program

RECOMMENDATION:

It is requested that Council receive the 2015 Weed Abatement Report, consider objections, and adopt Resolution No. 2015-100 confirming the Fire Chief's 2015 Weed Abatement Report.

FISCAL ANALYSIS:

There are no City costs associated with this Council action. In September 1996 the City of Escondido executed a contract with Fire Prevention Services, Inc. to provide a comprehensive year-round weed and rubbish abatement program. Fire Prevention Services, Inc. performs the agreed upon weed and rubbish abatement services and bills property owners directly.

PREVIOUS ACTION:

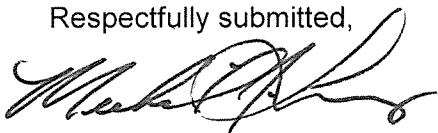
On July 24, 2013, Council approved Resolution 2013-93 confirming the 2013 Weed Abatement Report. There were no unpaid abatement services in 2014.

BACKGROUND:

Escondido's weed abatement ordinance designates responsibility to property owners for the elimination of hazardous weeds and rubbish on their property. If after receiving initial notices and a certified final notice, the property owner fails to take appropriate action, the ordinance authorizes the removal of hazardous weeds and rubbish by the City at the expense of the property owner.

Fire Prevention Services, Inc. has provided weed abatement services to the property listed in the 2015 Weed Abatement Report and has invoiced the property owner. Fire Prevention Services has been unable to collect the amount incurred for the abatement provided. Confirming the 2015 Weed Abatement Report, will allow the property owner to be assessed for the amount owed to the contractor for removal of the hazardous weeds and rubbish.

Respectfully submitted,



Michael Lowry, Fire Chief



Marlene Donner, Fire Marshal

RESOLUTION NO. 2015-100

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
CONFIRMING THE FIRE CHIEF'S COST
REPORT FOR THE 2015 WEED ABATEMENT
PROGRAM FOR A PARCEL OF LAND

WHEREAS, Chapter 11 Division 2 of Article 2 of the Escondido Municipal Code declares weeds and rubbish to be a public nuisance and fire hazard and orders the weeds and rubbish to be abated; and

WHEREAS, the City of Escondido ("City") is under contract with Fire Prevention Service, Inc. ("Contractor") to provide weed abatement services; and

WHEREAS, the Contractor has provided the necessary weed abatement services to the property listed on the 2015 Weed Abatement Report ("Report") and has yet to receive payment for the rendered services; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to confirm the Fire Chief's Cost Report for the 2015 Weed Abatement Program, which will allow the property on the Report to be assessed for the outstanding payment owed to Contractor.

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 confirms the Report of the Fire Chief showing costs

of weed abatement against a parcel of land. A copy of the Report is on file in the Office of the City Clerk.

3. That this City Council hereby adopts the Escondido Fixed Charge Special Assessments Tax Year 2015/2016 Table, a copy of which is attached to this Resolution as Exhibit "A" and is incorporated by this reference.

Escondido Fixed Charge Special Assessments Tax Year 2015/2016

Parcel	Assd Amt	Site Address	Owner	City	ST	Zip
235 050 58 00	\$ 5,576.84	1925 Harmony Grove Road, Escondido 92029	Berghuis Freerk Family Trust 08-08-02	Edinberg	VA	22824
Total Parcels	1					
Total Assmnt	\$ 5,576.84					

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 15
Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Christopher W. McKinney, Utilities Director

SUBJECT: Declaration of a Utility Emergency and Award of Contract to Repair the Escondido Sewer Outfall in the Escondido Creek

RECOMMENDATION:

The Utilities Department requests that Council adopt Resolution No. 2015-128 declaring that, pursuant to the terms of Section 22035 of the California Public Contract Code, the City Council may forego normal bidding procedures and pass a resolution by four-fifths vote declaring that public interest and necessity demand the immediate expenditure to safeguard life, health, or property.

FISCAL ANALYSIS:

Funding for this emergency sewer outfall work is available in the Wastewater Fund. The contract is a Time and Materials contract, meaning that the contractor will bill for staff time, equipment, and construction materials necessary to complete the repairs. The contract value is not to exceed \$350,000 without further City approval. The "not to exceed" value is based on a preliminary estimate of the work required. However, given the urgent nature of the project, a detailed engineering analysis has not been completed. When work begins, the contractor and staff will be able to better assess conditions around the pipeline and refine the cost estimate.

BACKGROUND:

The existing Escondido Sewer Outfall (Outfall) is a 14-mile long cement mortar coated steel pipeline that carries treated wastewater from the Hale Avenue Resource Recovery Facility (HARRF) to the Pacific Ocean. The Outfall was constructed in 1972.

During recent inspections, staff observed that the wire mesh and rock protecting a section of the Outfall crossing Escondido Creek (Creek) had been dislodged by storm water flow and washed away. The location is in Escondido Creek adjacent to the intersection of Harmony Grove Road and Wilgen Drive (between Manhole 15 and Manhole 16 on the attached aerial photograph). The Outfall is currently exposed within the Creek and creek flow is undermining the supporting soil.

Immediate action is required to replace the wire mesh and rock to prevent failure of the pipeline. Such failure could result in discharge of millions of gallons of secondary treated wastewater into Escondido Creek which would violate terms of our existing discharge permits and expose the City to significant

Declaration of a Utility Emergency and Award of Contract to Repair the Escondido Sewer Outfall in the Escondido Creek

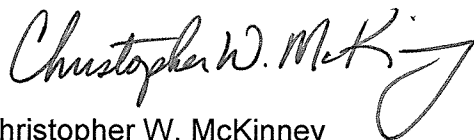
July 8, 2015

Page 2

liability. An emergency currently exists because existing flow in the Creek continues to remove supporting material from beneath the pipeline. Although the pipeline is not presently leaking, support and protection of it must be restored as quickly as possible to prevent failure.

TC Construction Company, Inc. has staff expertise and equipment to design and immediately mobilize to repair for the Outfall on a time and material basis. City staff are working under an existing contract with HELIX Environmental Planning, Inc. to insure compliance with environmental regulations and proper notification of natural resource agencies as the work will progress in Escondido Creek.

Respectfully submitted,

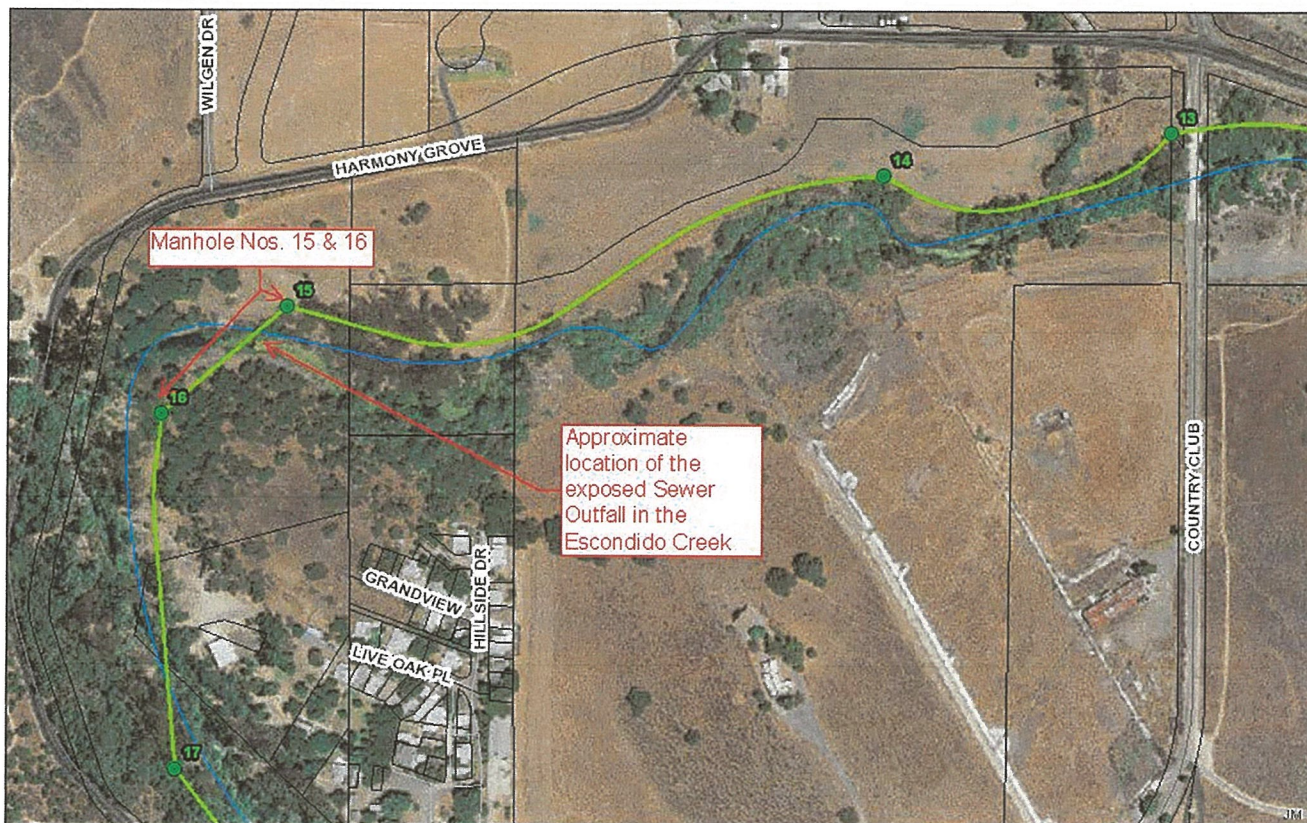
A handwritten signature in black ink that reads "Christopher W. McKinney". The signature is written in a cursive style with a large, sweeping flourish at the end.

Christopher W. McKinney
Director of Utilities

Declaration of a Utility Emergency and Award of Contract to Repair the Escondido Sewer Outfall in the Escondido Creek

July 8, 2015

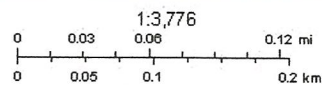
Page 3



June 30, 2015

- Escondido City Boundary
- Blue: Band_3
- Red: Band_1
- Green: Band_2

Escondido Sewer Outfall



DISCLAIMER: This Map is provided without warranty of any kind, either expressed or implied. By accepting this material you agree the City of

RESOLUTION NO. 2015-128

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
ACCEPTING THE RECOMMENDATION OF THE
DIRECTOR OF UTILITIES THAT AN
EMERGENCY REQUIRES THE IMMEDIATE
REPAIR OF THE ESCONDIDO SEWER
OUTFALL IN THE ESCONDIDO CREEK

WHEREAS, the City Council recognizes that the existing protective mesh and rock installed around the Escondido Sewer Outfall ("Outfall") is deteriorated and no longer exists causing the Outfall to be exposed and subject to a catastrophic failure; and

WHEREAS, the water flowing down Escondido Creek is undermining the supporting soil around the Outfall and creating a potential point of failure; and

WHEREAS, pursuant to California Public Contract Code Section 22035 and Section 10-131 of the Escondido Municipal Code, when repairs or replacements are necessary to permit the continued conduct of the operation or services of the city, or to avoid danger to life or property, the City Manager or his or her designee may proceed at once to purchase services without adopting plans, specifications, working details, or giving notice of bids to award contracts; and

WHEREAS, the Director of Utilities, in consultation with the City Manager, has determined that the potential failure of the Outfall constitutes an immediate risk to the health of the public and the continued services of the Outfall, requiring immediate action that will not permit the delay that would result from a competitive bidding process; and

WHEREAS, TC Construction Company, Inc. has the ability and expertise to design and construct the repair for the Outfall; and

WHEREAS, the Director of Utilities has recommended that emergency funds be expended on the immediate design and repair of the Outfall by TC Construction Company, Inc. and a Public Improvement Agreement (“Agreement”) has been entered into with TC Construction in an amount not to exceed three hundred fifty thousand dollars (\$350,000); and

WHEREAS, pursuant to Section 22050 of the Public Contract Code, the City Council must review the emergency action at its next regularly scheduled meeting and determine by a four-fifths vote there is a need to continue the action; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to accept the recommendation of the Director of Utilities and authorize the emergency expenditure of an amount not to exceed three hundred fifty thousand dollars (\$350,000);

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 Council accepts the determination by the Director of Utilities that the loss of mesh and rock around the Outfall and the undermining of the Outfall is a public health and safety emergency, that this emergency will not permit the delay that would result from a competitive bidding process and that the proposed action is necessary to respond to the emergency requiring immediate repair of the Outfall.
3. That the Mayor and City Council accepts the recommendation of the Director of Utilities and that it is in the best public interest to authorize the Director of

Finance to issue a Purchase Order to TC Construction, Inc., in an amount not to exceed \$350,000, to fund this emergency repair. A copy of the Agreement is attached as Exhibit "A" to this Resolution and is incorporated by this reference.

PUBLIC IMPROVEMENT AGREEMENT

This "Agreement", dated the 30th day of June, 2015, in the County of SAN DIEGO, State of California, is by and between **THE CITY OF ESCONDIDO** (hereinafter referred to as "CITY"), and **TC Construction Company, Inc.** (hereinafter referred to as "CONTRACTOR").

The CITY and the CONTRACTOR, for the consideration stated herein, agree as follows:

1. The complete contract includes all of the Project Documents described in the General Conditions, which are incorporated by reference. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.
2. CONTRACTOR shall perform, within the time set forth in Paragraph 4 of this Agreement, everything required and reasonably inferred to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the complete contract and required for construction of

EMERGENCY ESCONDIDO SEWER OUTFALL REPAIR IN THE ESCONDIDO CREEK

All of said work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications and all provisions of the complete contract as hereinabove defined. The CONTRACTOR shall be liable to the CITY for any damages and resulting costs, including consultants' costs, arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the Architect, Engineer, Inspector, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project Documents, and unless the CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing the CONTRACTOR from fully complying with the Project documents. Such protest shall not be effective unless reduced to writing and filed with the CITY within **three (3) working days** of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Project documents.

3. CITY shall pay to the CONTRACTOR, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the Project documents, the sum of **the TIME AND MATERIALS COSTS NOT TO EXCEED THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000)**.
4. The work shall commence **IMMEDIATELY** until the **Escondido Sewer Outfall repair is complete**.
5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage(s), in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to CITY as fixed and liquidated damages, and not as a penalty, the sum(s) indicated in the **LIQUIDATED DAMAGES SCHEDULE** below for each calendar day of delay until work is completed and accepted. This amount shall be deducted from any payments due to or to become due to CONTRACTOR. CONTRACTOR and CONTRACTOR'S surety shall be

liable for the amount thereof. Time extensions may be granted by the CITY as provided in the General Conditions.

Liquidated damages schedule:

If the overall project is delayed **one (1) calendar day or more through the fault of the contractor in the opinion of the CITY'S UTILITIES CONSTRUCTION MANAGER, the CITY will mobilize another contractor to continue with the work.**

Acknowledged:

Initials of Principal

- 6. In the event CONTRACTOR, for a period of **ten (10) calendar days** after receipt of written demand from CITY to do so, fails to furnish tools, equipment, or labor in the necessary quantity or quality, or to prosecute said work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said **ten (10) calendar days**, fails to continue to do so, then the CITY may exclude the CONTRACTOR from the premises, or any portion thereof, and take possession of said premises or any portion thereof, together with all material and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work, either by furnishing the tools, equipment, labor or material necessary, or by letting the unfinished portion of said work, or the portion taken over by the CITY to another contractor, or demanding the surety hire another contractor, or by any combination of such methods. In any event, the procuring of the completion of said work, or the portion thereof taken over by the CITY, shall be a charge against the CONTRACTOR, and may be deducted from any money due or to become due to CONTRACTOR from the CITY, or the CONTRACTOR shall pay the CITY the amount of said charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment should CONTRACTOR fail to pay in full any said cost incurred by the CITY. The permissible charges for any such procurement of the completion of said work should include actual costs and fees incurred to third party individuals and entities (including, but not limited to consultants, attorneys, inspectors, and designers) and actual costs incurred by CITY for the increased dedication of time of CITY employees to the Project.

- 7. To the fullest extent permitted by law, the CONTRACTOR agrees to and does hereby agree to fully defend, indemnify and hold the CITY, its governing board, officers, agents, Project design team members (architect and consulting engineers), consultants, attorneys, and employees harmless of and from each and every claim, assertion, action, cause of action, arbitration, suit, proceedings, or demand made, and every liability, loss, judgment, award, damage, or expense, of any nature whatsoever (including attorneys' fees, consultant costs), which may be incurred by reason of:
 - (a) Asserted and/or actual liability arises from claims for and/or damages resulting from damages for:
 - (1) Death or bodily injury to persons.
 - (2) Injury to, loss or theft of tangible and/or intangible property/ e.g. economic loss.
 - (3) Any other loss, damage or expense arising under either (1) or (2) above, sustained by the CONTRACTOR upon or in connection with the work called for in this Project, except for liability resulting from the sole active negligence, or willful misconduct of the CITY.

 - (b) Any injury to or death of any person(s) or damage, loss or theft of any property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm, or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of,

or in any way connected with the work covered by this Agreement, whether said injury or damage occurs on or off City property.

- (c) Any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01), and updates or renewals, of the California Regional Water Quality Control Board Region 9, San Diego, which the CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction, reconstruction, maintenance, and/or repair of the work under this Agreement.

The CONTRACTOR, at CONTRACTOR's own expense, cost, and risk shall defend any and all actions, suit, or other proceedings that may be brought or instituted against the CITY, its governing board, officers, agents or employees, on any such claim, demand or liability, and shall pay or satisfy any judgment that may be rendered against the CITY, its governing board, officers, agents or employees in any action, suit or other proceedings as a result thereof.


8. CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this contract, and shall require all subcontractors, if any, of every tier, to take out and maintain:
- (a) General Liability and Property Damage Insurance as defined in the General Conditions in the amount with a combined single limit of not less than \$3,000,000 per occurrence.
 - (b) Course of Construction / Builder's Risk Insurance. See Article 5.2 of General Conditions.
 - (c) Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to the above-mentioned public liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance in amounts as follows:
 - (1) Automotive and truck where operated in amounts as above
 - (2) Material hoist where used in amounts as above
 - (d) Workers' Compensation Insurance.
 - (e) Each insurance policy required above must be acceptable to the City Attorney, as follows:
 - (1) Each policy must name the CITY specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation and the Errors and Omissions policies.
 - (2) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
 - (3) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
 - (f) In executing this Agreement, CONTRACTOR agrees to have completed insurance documents on file with the CITY within 14 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.

9. This Agreement is subject to California Public Contract Code Section 22300, which permits the substitution of securities for any monies withheld by the City under this Agreement, and permits the CONTRACTOR to have all payments of earned retentions by the City paid to an escrow agent at the expense of the CONTRACTOR.
10. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.
11. The complete contract as set forth in Paragraph 1 of this Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Escondido City Council.
12. CONTRACTOR shall comply with those provisions of the Labor Code requiring payment of prevailing wages, keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions, and shall file the required workers' compensation certificate before commencing work.
13. The terms "Project Documents" and/or "Contract Documents" where used, shall refer to those documents included in the definition set forth in the General Conditions made a part hereof.

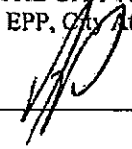
IN WITNESS WHEREOF, this Agreement has been executed on behalf of CITY by its officers thereunto authorized and by CONTRACTOR, the date and year first above written.

CITY OF ESCONDIDO
a municipal corporation
201 North Broadway
Escondido, CA 92025

By: 
Clay Phillips, City Manager

APPROVED AS TO FORM:

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

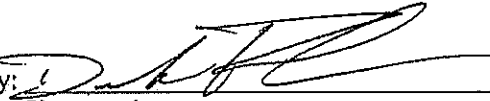
By: 

CONTRACTOR

By: _____
Signature

Print Name

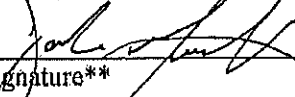
Title

By: 
Signature*

Derek Franken
Print Name

Vice President
Title

(Second signature required only for corporation)

By: 
Signature**

Jack Gieffels
Print Name

Secretary
Title

(CORPORATE SEAL OF CONTRACTOR, if corporation)

402459
Contractor's License No.

95-3646005
Tax ID/Social Security No.

*If CONTRACTOR is a corporation, the first signature must be by one of the following officers of the corporation: Chairman of the Board, President, or any Vice President.

**If CONTRACTOR is a corporation, the second signature must be by a different person from the first signature and must be by one of the following officers of the corporation: Secretary, any Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

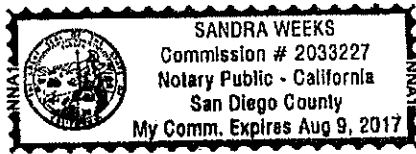
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)
On July 7, 2015 before me, Sandra Weeks, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Derek Franken and Jack Gieffels
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Sandra Weeks
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Public Improvement Agreement Document Date: _____
Number of Pages: 1 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Derek Franken Signer's Name: Jack Gieffels
 Corporate Officer — Title(s): Vice President Corporate Officer — Title(s): Secretary
 Partner — Limited General Partner — Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____

Signer Is Representing: TC Construction Signer Is Representing: TC Construction

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 16

Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council
FROM: Christopher W. McKinney, Director of Utilities
SUBJECT: Clean Water State Revolving Fund Loan Application for Frequent Financer Program

RECOMMENDATION:

The Utilities Department requests that the City Council adopt Resolution No. 2015-108, which authorizes the Director of Utilities or his designee to sign, on behalf of the City, applications to the Clean Water State Revolving Fund (SRF) Loan Frequent Financer Program for future loans to fund the Recycled Water and Potable Reuse Program. The Resolution also provides commitment to reimbursement of said loans once loan funds are actually disbursed. Each SRF loan for a particular project requires four distinct packages (General, Technical, Environmental, and Financial). This action will help staff streamline the Financial package for future loan applications. The remaining packages (General, Technical, and Environmental) will be submitted for individual projects only with Council approval, which is consistent with existing practice. This action will not increase the Utilities Department debt obligations without future authority from the City Council, but it will authorize staff to submit streamlined financial packages to save future staff time and reduce application costs.

FISCAL ANALYSIS:

The Frequent Financer Program streamlines the Financial Package of the application process by reducing the number of attachments needed when applying for funding for individual projects. Each project will submit an abbreviated version of the financial application, with an annual submission of the City's Comprehensive Annual Financial Report (CAFR) and rolling five year projections. All other sections of the loan application will be submitted on a project-by-project basis and only with Council approval, so the City Council will retain its oversight of new borrowing obligations.

PREVIOUS ACTION:

The Wastewater Fund has outstanding SRF loans with a current principal balance of \$17.6 M. Council has approved applications, which are now pending, for additional SRF loans totaling \$34.3 M for the Wastewater Fund.

BACKGROUND:

Applications for SRF Loans require four component packages to be submitted for each project seeking funding: General, Financial, Technical, and Environmental. When Council authorizes staff to submit an

SRF application for an individual project, preparation by staff and review by the Department of Water Resources (DWR) typically takes six to nine months.

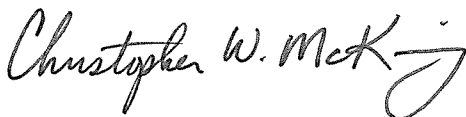
Escondido's Utilities Department plans to submit, with future Council approval, several SRF loan applications for projects included in the Recycled Water and Potable Reuse Program. Each of these applications would normally require a separate financial application and up-to-date financial figures, thus generating new tasks for staff that fall outside their normal workload. Depending on the time of year (e.g. Budget, year-end close-out), this work load may force other important work to be delayed, or the SRF Financial application may be delayed.

Based on feedback from many agencies, including Escondido, with large water infrastructure capital programs, DWR developed the Frequent Financer Program to streamline the financial application required for SRF loans. To participate, an agency must submit an application very similar to the application submitted for a single project. One significant difference is that this application references all projects projected as part of a future infrastructure expansion. If approved, the agency need only submit its annual CAFR to the DWR to satisfy the financial application requirement for future SRF loans. Given the Wastewater Fund's credit rating (AA-) and its exceptional repayment history with SRF loans, staff believe that the Recycled Water and Potable Reuse Program would be approved for Frequent Financer status with DWR.

The application for Frequent Financer status will include all projects in the Recycled Water and Potable Reuse Program. The projects that will be submitted with the application, pending Council approval, total approximately \$180 million over the next 15 years. If the Council approves this financial application, the Council will still have oversight to approve SRF applications (General, Technical, and Environmental only) as it does now for each project proposed for funding. Therefore, the requested action will not increase the Wastewater Fund's debt obligations or debt service requirements. These obligations and requirements will only increase as individual projects are approved by the Council for SRF application. The advantage of Frequent Financer status is reduced staff time for preparation of the financial application. In fact, no time will be required other than the time already allotted to the CAFR.

There will be no change as a result of this action to the number of future actions required by the Council to apply for SRF loans. Each project will still require Council approval for the initial application (General, Technical, and Environmental only) and subsequent approval to accept the loan after it is approved.

Respectfully submitted,



Christopher W. McKinney
Director of Utilities

RESOLUTION NO. 2015-108

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, PLEDGING CERTAIN REVENUES AND FUNDS, AND DESIGNATING AN AUTHORIZED REPRESENTATIVE TO THE CLEAN WATER STATE REVOLING FUND AND WATER RECYCLING FUNDING PROGRAM FOR THE AGRICULTURE RECYCLED WATER AND POTABLE REUSE PROGRAM

WHEREAS, by means of this Resolution, the City Council confirms the City of Escondido's ("City's") commitment to addressing water shortage by requesting Clean Water State Revolving Fund ("CWSRF") financing for construction of projects within its Agricultural Recycled Water and Potable Reuse Program; and

WHEREAS, the City is required by the ("SWRCB") to designate and authorize by resolution a specific representative to act on the City's behalf for this financing program; and

WHEREAS, the State desires to enumerate the specific duties of this representative as part of this resolution.

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

1. That the City Council of the City of Escondido authorizes the Director of Utilities or his designee to sign and file, for and on behalf of the City, a Financial Assistance Application for a financing agreement from the SWRCB for construction of projects within the Agricultural Recycled Water and Potable Reuse Program.

2. That the Director of Utilities, or his designee, is designated to provide the assurances, certifications, and commitments required for the Financial Assistance Application, including executing a Financing Agreement from the SWRCB and any amendments or changes thereto.

3. That the Director of Utilities or his designee is designated to represent the City in carrying out the City's responsibilities under the Financing Agreement, including certifying disbursement requests on behalf of the City and compliance with applicable state and federal laws.

4. That all the recitals in this Resolution are true and correct and the City so finds, determines and represents.

5. That the City Council of the City of Escondido hereby dedicates and pledges its wastewater enterprise revenues and its Wastewater Enterprise Fund to payment of any and all Clean Water State Revolving Fund and/or Water Recycling Funding Program financing to the extent such financing is used for all or a portion of the projects listed on the Capital Improvement Plan, attached as Exhibit "A" to this Resolution and incorporated by this reference, adopted by the City and dated April 2, 2014.

6. The City commits to collecting such revenues and maintaining such fund(s) throughout the term of such financing and until the City has satisfied its repayment obligation thereunder unless modification or change is approved in writing by the State Water Resources Control Board. So long as the financing agreement(s) are outstanding, the City's pledge hereunder shall constitute a lien in favor of the State Water Resources Control Board on the foregoing fund(s) and revenue(s) without any

further action necessary. So long as the financing agreement(s) are outstanding, the City commits to maintaining the fund(s) and revenue(s) at levels sufficient to meet its obligations under the financing agreement(s).

City of Escondido - Potable Reuse Program
Project Cost Summary Table - Prepared by Black & Veatch
January 2015 - Costs Presented in 2013 Dollars

New Capital	Status	Description	Cost Incl C & SC	Amt to Borrow	Construction	
					Start	End
Reuse Program						
NPR/Agriculture System RW Easterly Main Extension						
Pipeline - Brine, B1B	In construction	16"; 14,000 ft; Citrus to Broadway along channel	\$3,800,000	NONE- already in construction	2015	2017
Pipeline - RW Transmission, T1A RW Easterly Main Tank & PS	In construction	24"; 14,000 ft; Broadway to Citrus along channel	\$5,400,000		2015	2017
Pipeline - Brine, B1A	In Design	16"; ~1,600 ft; from Citrus to MFRO	\$600,000		2016	2017
Pipeline - RW Transmission, T1B	In Design	24"; ~1,600 ft; from Citrus to MFRO	\$800,000		2016	2017
Pipeline - RW Transmission, T2A	In Design	24"; ~1,600 ft; from MFRO to Citrus	\$800,000	\$8,000,000	2016	2017
Pipeline - RW Transmission, T2B	In Design	24"; 15,600 ft; from MFRO to 1.2 mg RW tank	\$5,900,000		2016	2017
Reservoir - RW	In Design	Convert existing 1.2 mg Hogback tank to RW; construct new 400k gal steel PW tank; new piping	\$3,100,000		2016	2017
Pump Station - NPR @ MFRO Facility RW Easterly Ag Distribution, Phase 1	In Design	New ~10.5 mgd	\$4,800,000		2016	2017
Pipeline - RW, D1A	In Design (submitted PDR)	16"; 2,600 ft; just south of 1.2 mg RW tank	\$600,000		2016	2017
Pipeline - RW, D1B	In Design (submitted PDR)	12"; 9,700 ft; just south of D1A	\$1,900,000	\$3,300,000	2016	2017
Pipeline - RW, D2	In Design (Submitted PDR)	8" to 12"; 10,300 ft; east of 1.2 mg RW tank towards Eagle Crest	\$1,900,000		2016	2017
Ponds (+ Simple Pump Back)		Hillebrecht, A2 & Grangetto, B1 (~7 mg + ~3 mg)	\$4,400,000		2016	2017
RW Easterly Ag Distribution, Phase 2						
Pipeline - RW, D1C	Future	6" to 8"; 2,100 ft; east of T2B north of 1.2 mg RW tank	\$400,000	\$0	2017	2018
T130/850 Pressure Reducing Station	Future		\$500,000		2016	2017

RW Easterly Ag Distribution, Phase 3										
Pipeline - RW, D3A	Future	16"; 5,800 ft; east of Citrus along channel	\$1,500,000	\$4,100,000		2018	2019			
Pipeline - RW, D3B	Future	8" to 16"; 10,900 ft; north of channel along Citrus and El Norte	\$2,600,000			2018	2019			
Brine- Broadway to HARRF	In Design	16"; 14,000 ft; Broadway to HARRF along channel	\$4,000,000	\$4,000,000		2016	2017			
HARRF Step 1 Improvements										
HARRF Step 1 - RW Pump Station	(to be completed before AWP)	Allowance for increasing capacity of existing RW pump station	\$3,100,000			2017	2019			
HARRF Step 1 - Tertiary Improvements, Phase 1	(to be completed before AWP)	New 12 mgd filters with clearwell and mudwell; FIPS expansion; no demo of exist filters (part of Step 2)	\$9,900,000	\$16,900,000		2017	2019			
HARRF Step 1 - Tertiary Improvements, Phase 2	(to be completed before AWP)	New CCB and dechlor; no demo of exist CCB and UV facility (part of Step 2)	\$4,600,000			2018	2019			
HARRF Step 1 - Standby Power		Expand existing standby power capacity	\$1,900,000			2018	2019			
HARRF Step 1 - Drainage Channel Undergrounding			\$700,000			2018	2019			
MFRO Facility for Agriculture			\$21,000,000	\$19,000,000		2016	2017			
AWPF Pilot @ HARRF and MFRO			\$3,500,000	\$3,500,000		2018	2019			
Potable Reuse, Phase 1										
Pump Station - IPR @ HARRF		New 12 mgd	\$5,300,000			2023	2024			
Pipeline - IPR, HARRF to AWPF		24"; 29,000 ft	\$10,900,000	\$19,200,000		2023	2024			
Pump Station - IPR @ AWPF		New 8 mgd	\$3,500,000			2023	2024			
Pipeline - IPR, AWPF to Dixon		20"; 10,700 ft	\$3,400,000	\$0		2023	2024			
HARRF Step 2 - Secondary Improvements - IPR, Phase 1		6 mgd BNR-MBR upgrade (one new BNR- MBR, one basin converted to BNR-MBR, new fine screens, new CIP area, new MBR RAS PS, new blower building, and demo exist CCB and filter/UV facility)	\$47,700,000	\$40,000,000		2023	2026			
AWPF (IPR), Phase 1		4 mgd (operating 3 mgd average); incl. aesthetic allowance	\$38,100,000	\$32,000,000		2023	2026			
Potable Reuse, Phase 2										
HARRF Step 3 - Secondary Improvements - IPR, Phase 2		6 mgd BNR-MBR upgrade (three basins converted to BNR-MBR, 2 duty / 1 standby; 8 mgd N-CAS upgrade (one new N-CAS basin and all remaining CAS basins converted to N-CAS); new blowers in Step 2 blower building	\$57,000,000	\$20,000,000		2028	2031			

HARRF Step 3 - Primary Clarifier		Additional primary clarifier, match existing (uncovered)	\$1,700,000	2028	2029
HARRF Step 3 - Secondary Clarifier		New 110' dia circular secondary clarifier (possible future)	\$3,400,000	2028	2029
AWPF (IPR), Phase 2		4 mgd (operating 7 mgd average); incl. aesthetic allowance	\$38,100,000	2028	2029
		Total	\$296,800,000		
			\$180,000,000		

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 17
Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council
FROM: Christopher W. McKinney, Utilities Director
SUBJECT: Bid Award for the Cemetery Area Water Pipeline Replacement Project

RECOMMENDATION:

The Utilities Department requests that Council adopt Resolution No. 2015-120 authorizing the Mayor and City Clerk to execute a Public Improvement Agreement with MNR Construction Inc., the lowest responsive and responsible bidder, in the amount of \$6,790,250 for the Cemetery Area Water Pipeline Replacement Project and authorize a budget adjustment in the amount of \$2,550,000. The competitive bids were publicly opened by the City Clerk's representative on Thursday, June 18, 2015.

FISCAL ANALYSIS:

Competitive bids were opened by the City Clerk's representative on June 18, 2015, with the following results:

- | | |
|---|-----------------|
| 1) MNR Construction, Inc., Baldwin Park, CA | \$6,790,250.00 |
| 2) CCL Contracting, Inc., Escondido, CA | \$6,938,870.00 |
| 3) Kana Pipeline, Inc., Placentia, CA | \$7,479,000.00 |
| 4) Lonerock, Inc., Irvine, CA | \$7,519,595.00 |
| 5) Ortiz Corporation, National City, CA | \$7,921,823.92 |
| 6) W.A. Rasic Construction Co., Inc., Long Beach, CA | \$7,946,250.00 |
| 7) TC Construction Co., Santee, CA | \$8,984,680.00 |
| 8) Vido Artukovich & Son, Inc. / Vidmar, Inc. a J.V.,
El Monte, CA | \$9,519,820.00 |
| 9) Southland Paving, Inc., Escondido, CA | \$10,786,675.00 |

July 8, 2015

Bid Award for the Cemetery Area Water Pipeline Replacement Project

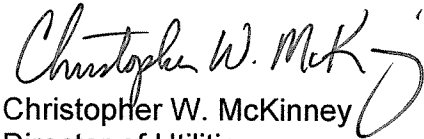
Page 2

This project is funded from CIP 704911. A budget adjustment of \$2,550,000 from Lindley Reservoir Replacement CIP (704201) to Cemetery Area Waterline CIP (704911) will be required to fund the project.

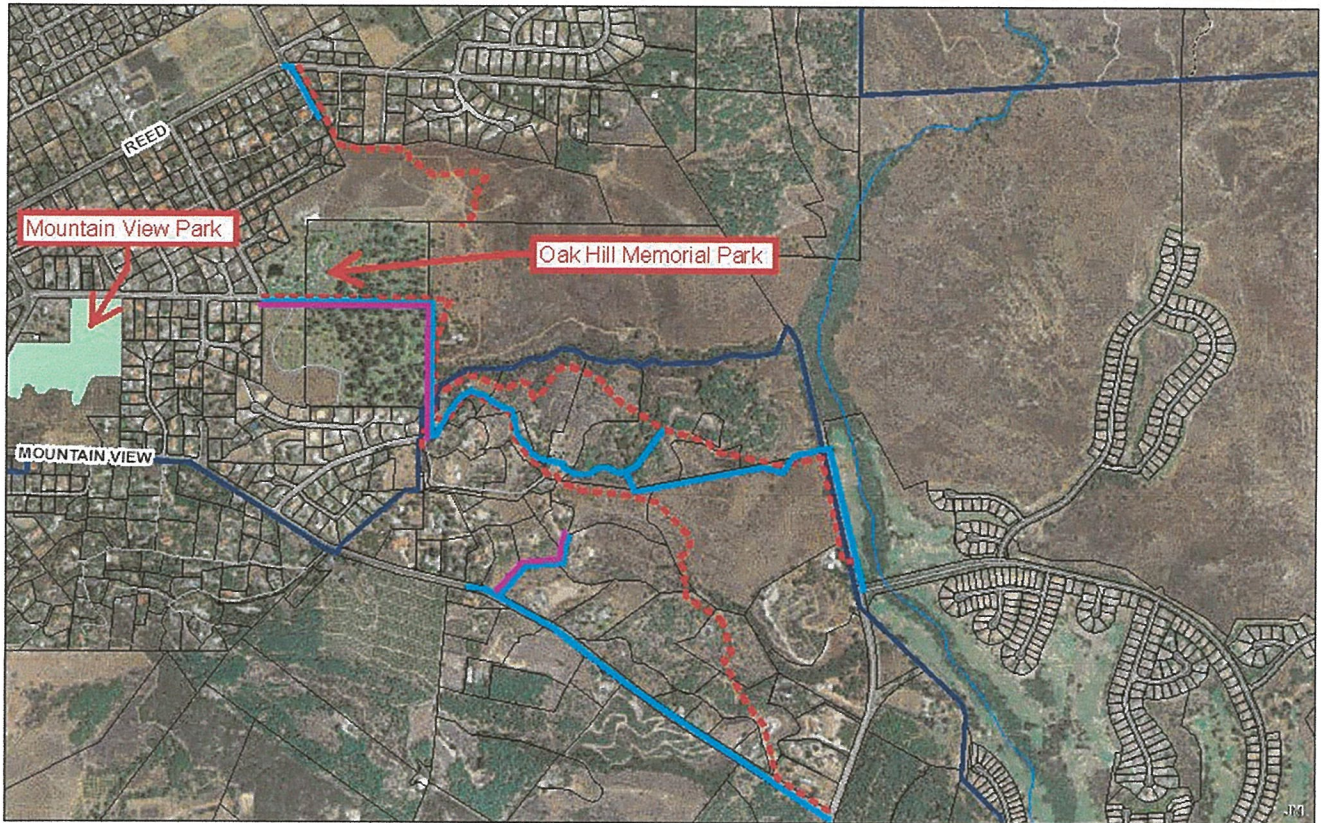
BACKGROUND:

This Project will replace approximately 3.5-miles of old water mains in areas located in and near the Oak Hill Memorial Park (see attached map). These old water mains were installed in the 1950's and 1960's and have had numerous leaks and repairs. Approximately 2.5-miles of new potable water transmission and distribution piping will be installed. This Project will provide improved water main reliability and fire flow in the area. In addition, approximately .5-miles of recycled water pipeline will be installed with this project.








Respectfully submitted,

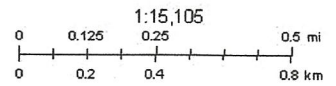
A handwritten signature in black ink that reads "Christopher W. McKinney". The signature is written in a cursive style with a large, stylized "J" at the end.

Christopher W. McKinney
Director of Utilities



June 29, 2015

- | | |
|---|--|
|  Escondido City Boundary |  Existing Waterlines to be Replaced |
|  Lakes |  New Potable Waterlines |
|  Rivers |  New Recycled Waterlines |
|  Freeway | |



DISCLAIMER: This Map is provided without warranty of any kind, either expressed or implied. By accepting this material you agree the City of



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: June 24, 2015
 Department: Utilities, Wastewater Division
 Division: Capital Projects
 Project/Budget Manager: Nelson Nuezca 4284
 Name Extension
 Council Date (if applicable): July 8, 2015
 (attach copy of staff report)

For Finance Use Only

Log # _____

Fiscal Year _____

_____ Budget Balances

_____ General Fund Accts

_____ Revenue

_____ Interfund Transfers

_____ Fund Balance

ML
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Project/Account Description	Account Number	Amount of Increase	Amount of Decrease
Cemetery Area Waterline	556-704911	\$2,550,000	
Lindley Reservoir Replacement	556-704201		\$2,550,000

Explanation of Request:
 To fund the Cemetery Area Water Pipeline Replacement Project.

APPROVALS

<i>Christophe W. McKay</i>	<u>06.30.2015</u>		
Department Head	Date	City Manager	Date
<i>Jodi Low</i>	<u>7/1/15</u>		
Finance	Date	City Clerk	Date

Distribution (after approval): Original: Finance

RESOLUTION NO. 2015-120

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 PUBLIC IMPROVEMENT AGREEMENT WITH MNR CONSTRUCTION INC. FOR THE CONSTRUCTION OF THE CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT

WHEREAS, the Escondido City Council authorized an invitation for bids for the construction of the Cemetery Area Water Pipeline Replacement Project (the "Project"); and

WHEREAS, the City of Escondido opened sealed bids for the Project on June 18, 2015; and

WHEREAS, the Director of Utilities has determined MNR Construction Inc. to be the lowest responsive and responsible bidder and recommends awarding the bid in the amount of \$6,790,250 to MNR Construction Inc.; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to award this contract to MNR Construction Inc.

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 Council accepts the recommendations of the Director of Utilities and finds MNR Construction Inc. to be the lowest responsive and responsible bidder.

2. That the Mayor and City Clerk are authorized to execute, on behalf of the City, a Public Improvement Agreement (“Agreement”) with MNR Construction Inc. A copy of the Agreement is attached as Exhibit “A” and is incorporated by this reference.

PUBLIC IMPROVEMENT AGREEMENT

This "Agreement", dated the _____ day of _____, 20____, in the County of SAN DIEGO, State of California, is by and between **THE CITY OF ESCONDIDO** (hereinafter referred to as "CITY"), and **MNR CONSTRUCTION, INC.** (hereinafter referred to as "CONTRACTOR").

The CITY and the CONTRACTOR, for the consideration stated herein, agree as follows:

1. The complete contract includes all of the Project Documents described in the General Conditions, which are incorporated by reference. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.
2. CONTRACTOR shall perform, within the time set forth in Paragraph 4 of this Agreement, everything required and reasonably inferred to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the complete contract and required for construction of

CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT

All of said work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications and all provisions of the complete contract as hereinabove defined. The CONTRACTOR shall be liable to the CITY for any damages and resulting costs, including consultants' costs, arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the Architect, Engineer, Inspector, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project Documents, and unless the CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing the CONTRACTOR from fully complying with the Project documents. Such protest shall not be effective unless reduced to writing and filed with the CITY within **three (3) working days** of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Project documents.

3. CITY shall pay to the CONTRACTOR, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the Project documents, the sum of Six Million Seven Hundred Ninety Thousand and Two Hundred Fifty Dollars (\$6,790,250).
4. The work shall be commenced on or before the twenty-first (21st) day after receiving the CITY'S Notice to Proceed and shall be completed within **Three Hundred Sixty Five (365) calendar days** from the date specified in the Notice to Proceed.
5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage(s), in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to CITY as fixed and liquidated damages, and not as a penalty, the sum(s) indicated in the LIQUIDATED DAMAGES SCHEDULE below for each calendar day of

City of Escondido
Cemetery Area Water Pipeline Replacement
Project

PUBLIC IMPROVEMENT AGREEMENT

except for liability resulting from the sole active negligence, or willful misconduct of the CITY.

- (b) Any injury to or death of any person(s) or damage, loss or theft of any property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm, or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with the work covered by this Agreement, whether said injury or damage occurs on or off City property.
- (c) Any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01), and updates or renewals, of the California Regional Water Quality Control Board Region 9, San Diego, which the CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction, reconstruction, maintenance, and/or repair of the work under this Agreement.

The CONTRACTOR, at CONTRACTOR's own expense, cost, and risk shall defend any and all actions, suit, or other proceedings that may be brought or instituted against the CITY, its governing board, officers, agents or employees, on any such claim, demand or liability, and shall pay or satisfy any judgment that may be rendered against the CITY, its governing board, officers, agents or employees in any action, suit or other proceedings as a result thereof.

- 8. CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this contract, and shall require all subcontractors, if any, of every tier, to take out and maintain:
 - (a) General Liability and Property Damage Insurance as defined in the General Conditions in the amount with a combined single limit of not less that **\$3,000,000 per occurrence**.
 - (b) Course of Construction / Builder's Risk Insurance. See Article 5.2 of General Conditions.
 - (c) Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to the above-mentioned public liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance in amounts as follows:
 - (1) Automotive and truck where operated in amounts as above
 - (2) Material hoist where used in amounts as above
 - (d) Workers' Compensation Insurance.
 - (e) Each insurance policy required above must be acceptable to the City Attorney, as follows:
 - (1) Each policy must name the CITY specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation and the Errors and Omissions policies.
 - (2) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage

must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.

- (3) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
- (f) In executing this Agreement, CONTRACTOR agrees to have completed insurance documents on file with the CITY within 14 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.
9. This Agreement is subject to California Public Contract Code Section 22300, which permits the substitution of securities for any monies withheld by the City under this Agreement, and permits the CONTRACTOR to have all payments of earned retentions by the City paid to an escrow agent at the expense of the CONTRACTOR.
10. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.
11. The complete contract as set forth in Paragraph 1 of this Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Escondido City Council.
12. CONTRACTOR shall comply with those provisions of the Labor Code requiring payment of prevailing wages, keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions, and shall file the required workers' compensation certificate before commencing work.
13. The terms "Project Documents" and/or "Contract Documents" where used, shall refer to those documents included in the definition set forth in the General Conditions made a part hereof.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of CITY by its officers thereunto authorized and by CONTRACTOR, the date and year first above written.

CITY OF ESCONDIDO
a municipal corporation
201 North Broadway
Escondido, CA 92025

By: _____
Diane Halverson, City Clerk

By: _____
Sam Abed, Mayor

APPROVED AS TO FORM:

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

By: _____

CONTRACTOR

By: _____
Signature

By: _____
Signature*

Print Name

Print Name

Title

Title

(Second signature required only for corporation)

By: _____
Signature**

Print Name

Title

(CORPORATE SEAL OF CONTRACTOR, if
corporation)

Contractor's License No.

Tax ID/Social Security No.

*If CONTRACTOR is a corporation, the first signature must be by one of the following officers of the corporation: Chairman of the Board, President, or any Vice President.

**If CONTRACTOR is a corporation, the second signature must be by a different person from the first signature and must be by one of the following officers of the corporation: Secretary, any Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.

SECTION A-00610 - FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENT,

That _____ ("Contractor") and _____ ("Surety") are held and firmly bound unto the CITY OF ESCONDIDO ("Owner") in the sum of _____ Dollars, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has been awarded and is about to enter into a contract with Owner to perform all work required under the Bid Schedule(s) of the Owner's specifications entitled,

CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT

WHEREAS, the provisions of the Contract are incorporated by reference into this Faithful Performance Bond and shall be part of Surety's obligation hereunder.

NOW THEREFORE, if Contractor shall perform all the requirements of said contract required to be performed on his part, at the times and in the manner specified herein, then this obligation shall be null and void, otherwise, it shall remain in full force and effect.

PROVIDED, that

- (1) Any alterations in the work to be done or the materials to be furnished, which may be made pursuant to the terms of the Contract, shall not in any way release Contractor or Surety thereunder;
- (2) Any extensions of time granted under the provisions of Contract shall not release either Contractor or Surety from their respective obligations to Owner;
- (3) Notice of any such alterations or extensions of the Contract is hereby waived by Surety;
- (4) Any payments (including progress payments) made on behalf of Owner to Contractor after the scheduled completion of the work to be performed pursuant to the Contract shall not release either Contractor or Surety from any obligations under the Contract or this Faithful Performance Bond, or both, including any obligation to pay liquidated damages to Owner; and
- (5) To the extent Owner exercises its rights pursuant to this Bond, Owner shall be entitled to demand performance by the surety and be further entitled to recover, in addition to all other remedies afforded by law, its reasonably incurred costs to complete the work,

attorneys fees and consultant costs, as well as actual costs incurred by OWNER for the increased dedication/commitment of time of OWNER employees to the Project.

SIGNED AND SEALED, this _____ day of _____, 20__.

Contractor

Surety

Address

Phone No.

(SEAL)

BY _____
Signature

Signature

(SEAL AND NOTARIAL ACKNOWLEDGEMENT OF SURETY)

APPROVED AS TO FORM:

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

By: _____

SECTION A-00620 - LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENT,

That _____ as Contractor, and _____ as Surety, are held and firmly bound unto the CITY OF ESCONDIDO, hereinafter called Owner, in the sum of _____ dollars, for the payment of which sum well and truly to be made, we bind ourselves our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Contractor has been awarded and is about to enter into the annexed contract with said Owner to perform all work required under the Bid Schedule(s) of the Owner's specifications entitled,

CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT

NOW THEREFORE, if said Contractor, or subcontractor, fails to pay for any materials, equipment, or other supplies, or for rental of same, used in connection with the performance of work contracted to be done, or for amounts due under applicable State law for any work or labor thereon, or for amounts due under the Unemployment Insurance Code, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such labor, said Surety will pay for the same in an amount not exceeding the sum specified above, and, in the event suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court. This bond shall inure to the benefit of any persons, companies or corporations entitled to file claims under applicable State law.

PROVIDED, that any alterations in the work to be done or the materials to be furnished, which may be made pursuant to the terms of said contract, shall not in any way release either said Contractor or said Surety thereunder, nor shall any extensions of the time granted under the provisions of said contract release either said Contractor or said surety, and notice of such alterations or extensions of the contract is hereby waived by said Surety.

SIGNED AND SEALED, this _____ day of _____, 20__.

Contractor

Surety

Address

Phone No.

(SEAL)

BY _____
Signature

Signature

(SEAL AND NOTARIAL ACKNOWLEDGEMENT OF SURETY)

APPROVED AS TO FORM:

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

By: _____

SECTION A-00630 - CITY OF ESCONDIDO BUSINESS LICENSE

In accordance with Municipal Code Section 16, the successful bidder is required to obtain a City of Escondido Business License prior to execution of contract.

The following information must be submitted to the City Clerk prior to execution of contract:

City of Escondido Business License No. _____

Expiration Date _____

Name of Licensee _____

SECTION A-00660 - WORKERS' COMPENSATION INSURANCE CERTIFICATE

If self-insured for Workers' Compensation, the Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, Sections 1860 and 1861, and I will comply with such provisions before commencing the performance of the work of the contract.

Dated: _____

Contractor

By: _____
Signature

SAMPLE NOTICE
(REQUIRED UNDER GENERAL CONDITIONS, ARTICLE 6.1.B)
TO THE PEOPLE ON THIS STREET:

WITHIN THE NEXT FEW DAYS, WORK WILL BE STARTED ON THE FOLLOWING PROJECT:

CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT

The work may cause some inconvenience, but will be of permanent benefit.

We shall appreciate your cooperation in the following matters:

1. Please be alert when driving or walking in the construction area.
2. Tools, materials and equipment are attractive to children. For the safety of the children, please keep them away.
3. Please report all inconvenience to the Foreman on the job, or to the City of Escondido Utilities Construction Manager, 760-839-4078. The name and phone number of the contractor are given below.

This work is being performed for the City of Escondido by:

We will endeavor to complete this work as rapidly as possible and with a minimum of inconvenience to you.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 18

Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Christopher McKinney, Director of Utilities

SUBJECT: Power Purchase Agreement at the Hale Avenue Resource Recovery Facility with Escondido Bioenergy Facility, LLC

RECOMMENDATION:

The Utilities Department requests that Council adopt Resolution No. 2015-107 authorizing the Mayor and City Clerk to execute, on behalf of the City, a twenty-year Power Purchase Agreement (PPA) with Escondido Bioenergy Facility, LLC and authorizing the Director of Utilities to execute, on behalf of the City, a Site License Agreement with Escondido Bioenergy Facility, LLC for constructing and operating a cogeneration facility at the Hale Avenue Resource Recovery Facility (HARRF).

FISCAL ANALYSIS:

The proposed PPA is projected to reduce both electric and natural cost costs at the HARRF. Assuming that electric rates will escalate by an average of 5% annually and that natural gas rates will escalate by an average of 2.5% annually, the agreement will save the Wastewater Fund approximately \$980,000 over the first five years, and approximately \$3 million over the first 10 years. These projections include the 2% annual price escalation included in the PPA price paid by the City. Over the twenty-year term of the agreement, total savings could be in excess of \$10 million (depending on the actual energy prices charged by San Diego Gas and Electric).

BACKGROUND:

The Utilities Department operates the HARRF to provide wastewater treatment and recycled water production for the City. Solids removed from the wastewater stream in the primary and secondary treatment processes are processed in onsite sludge digesters. The digestion process generates large quantities of biogas, with methane being a large component of this gas. Currently, all of this methane is disposed with no beneficial use through a flare. The total volume of biogas flared each year is approximately 100 million cubic feet, which represents a large missed opportunity to offset energy use at the HARRF. It is also more environmentally prudent to beneficially use the gas rather than simply flaring it.

The Utilities Department issued a Request for Proposals (RFP) for the beneficial use of the digester biogas produced at the HARRF. A total of five proposals were received with two considered the most

viable. Escondido Bioenergy Facility, LLC, a subsidiary of Anaergia Services, of Carlsbad was selected from among the viable proposals.

The proposed PPA will grant Escondido Bioenergy Facility rights to build, own, and operate two Combined Heat and Power (CHP) units (reciprocating gas engines), electrical interconnections, biogas conditioning equipment and exhaust treatment on HARRF property. The Escondido Bioenergy Facility would own and operate the project for the duration of the proposed 20 year term. Escondido Bioenergy Facility assumes all the risk in the capital and operational costs for the facility constructed at the HAARF. The Wastewater Fund will only pay for the energy generated by the facility.

The HARRF will provide Escondido Bioenergy Facility with fuel in the form of 75% biogas and 25% natural gas. The plant will accept a minimum of 8,146 MWh of electricity each year, or about 70% of the HARRF's electricity use. Heat generated by the engines will be provided to the HARRF at no cost, which will displace most of the plants natural gas demand. This offset in natural gas demand will account for \$1.8 million of the total projected savings over 20 years.

Electricity produced by the Escondido Bioenergy Facility will be sold to the HARRF during the first year of operation for \$0.129/kWh, with an annual escalation of 2%. This initial cost is more than 1 cent less than the current SDGE price per kWh, when standby and demand charges are accounted. The projected savings in the first year of operation is \$130,000, with savings projected to increase each year because the historic escalation of SDGE rates is more than 2%. Total projected savings over the course of the 20 year PPA are over \$10 million, assuming an average SDGE price escalation of 5% annually.

UNCERTAINTY OF PROJECTED COST SAVINGS

The price paid to the Escondido Bioenergy Facility escalates at 2% annually. When projecting cost savings, SDGE prices are assumed to escalate at 5% annually for electric, and 2.5% annually for natural gas. If these projected price escalations are accurate, then all the savings projections presented earlier will be realized. However, if SDGE energy prices escalate more slowly, savings from the agreement will be less that those projected.

For example, if SDGE electric prices escalate as predicted (5% annually), savings will amount to \$980,000 over five years and \$3.0 million over ten years.

If SDGE electric prices escalate at 4% annually, savings will amount to \$875,000 over five years and \$2.4 million over ten years.


If SDGE electric prices escalate at 2% annually, savings will amount to \$670,000 over five years and \$1.4 million over ten years.

If SDGE electric prices escalate at 1% annually, savings will amount to \$568,000 over five years and \$942,000 over ten years. However, the agreement begins to cost the City more money than SDGE rates after year 15 of 20. Total savings over 20 years would be \$968,000 in this case.

If SDGE electric prices escalate at 0.52% annually, savings will amount to \$521,000 over five years and \$724,000 over ten years. However, the agreement begins to cost the City more money than SDGE rates after year 10 of 20. In this unlikely event (that is, that energy prices escalate at only 0.52% per year), the agreement will result in no net savings over the 20 year term.

Since the agreement is projected to save money over time for the City's Wastewater Fund for any SDGE price escalation greater than 0.52% annually, staff recommends approving this PPA. The probability is very low that SDGE prices will escalate at less than 0.5% annually over the next twenty years. Therefore, the financial risk of this PPA is very low and the probability of saving several million dollars is high.

Respectfully submitted,



Christopher W. McKinbey
Director of Utilities

RESOLUTION NO. 2015-107

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 POWER PURCHASE AGREEMENT WITH ESCONDIDO BIOENERGY FACILITY, LLC AND AUTHORIZING THE DIRECTOR OF UTILITIES TO EXECUTE, ON BEHALF OF THE CITY, A SITE LICENSE AGREEMENT WITH SAME AT THE HARRF

WHEREAS, the treatment at the HARRF includes anaerobic digesters for the processing of solids removed through the treatment process; and

WHEREAS, a natural byproduct of the digestion process is methane gas, and historically, the methane produced has been burned in a flare; and

WHEREAS, Utilities staff has evaluated the cost saving potential of a cogeneration facility utilizing the digester methane; and

WHEREAS, Utilities staff has previously received proposals to provide the HARRF electrical power through onsite cogeneration; and

WHEREAS, the Director of Utilities recommends the Power Purchase Agreement ("Agreement") with Escondido Bioenergy Facility, LLC be approved; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest, to approve said Agreement with Escondido Bioenergy Facility, LLC.

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

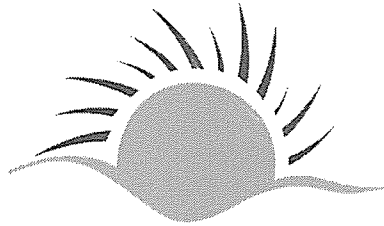
1. That the above recitations are true.

2. That the City Council accepts the recommendation of the Director of Utilities to approve the Agreement with Escondido Bioenergy Facility, LLC.

3. That the Mayor and City Clerk are hereby authorized to execute, on behalf of the City, an Agreement with Escondido Bioenergy Facility, LLC. A copy of the Agreement is attached as Exhibit "1" and is incorporated by this reference.

4. That the Director of Utilities is hereby authorized to execute, on behalf of the City, a Site License Agreement with Escondido Bioenergy Facility, LLC for constructing and operating a cogeneration facility at the HARRF. A copy of the Site License Agreement is attached as Exhibit "2" and is incorporated by this reference.

POWER PURCHASE AGREEMENT



Escondido Bioenergy Facility, LLC

by and between

Escondido Bioenergy Facility, LLC as "Provider"

and

City of Escondido, California as "Customer"

at

Escondido HARRF

1521 South Hale Avenue

Escondido, CA 92029

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT, dated as of _____, 2015, ("Effective Date") (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Agreement"), is by and between Escondido Bioenergy Facility LLC, a Limited Liability Company formed under the laws of the State of Delaware ("Provider" or "EBF"), and the City of Escondido, in the County of San Diego, State of California ("Customer.")

RECITALS

WHEREAS, Customer owns real property located in California, as more fully described in Exhibit A hereto ("Site"); and

WHEREAS, Customer desires that Provider install, maintain, operate and own, and Provider desires to install, maintain, operate and own Systems (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, Services (as hereinafter defined), consisting of the delivery of electrical energy (the "Energy") generated by the System to the Site and other services pursuant to the terms and conditions set forth herein.

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

Section 1. Definitions

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, *inter alia* and without limitation", (d) references to "Sections" and "Exhibits" shall be to sections and exhibits hereof; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; and (g). The definitions set forth below apply to the exhibits, attachments or schedules hereto.

"Acceptable Digester Gas" Acceptable Digester Gas means digester gas that meets the specifications set forth in Exhibit D.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" shall have the meaning set forth in the preamble.

"Annual Rate Escalator" shall mean the annual percentage increase in kWh Rates as set forth in Section 6.2.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

"Appraised Value" means the value as determined an appraisal conducted by an MAI¹ or equivalent Appraiser chosen by Provider and Customer. The Appraised Value shall be the greater value established by either of the two methods below:

A. Replacement cost; or

B. A method that establishes value by determining capacity to produce income.

"Business Day" means each Day of the year excluding federal government holidays and weekends.

"Change in Law" means any of the following acts, events or circumstances to the extent that compliance therewith materially expands the scope of the obligations of either party hereunder, materially interferes with, materially delays or materially increases the cost of performing the obligations of either party hereunder:

(a) except as provided below with respect to the exclusions from the definition of "Change in Law", the adoption, amendment, promulgation, issuance, modification, repeal or written change in any Applicable Law, or the administrative or judicial interpretation thereof on or after the Effective Date unless such Applicable Law was on or prior to such date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any governmental body;

(b) the order or judgment of any governmental body issued on or after the Effective Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of such date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Provider or of the Customer, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

¹ An MAI Appraiser is a member of the Appraisal Institute. the Appraisal Institute explains: "The MAI membership designation is held by appraisers who are experienced in the valuation and evaluation of commercial, industrial, residential, and other types of properties, and advise clients on real estate investment decisions." Retrieved from <http://www.appraisalinstitute.org/designations/>

(c) the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination, or interruption of any governmental approval, or the imposition of new or increased permitting fees, or the imposition of a term, condition or requirement which is more stringent or burdensome than these contract standards on or after the Effective Date in connection with the issuance, renewal or failure of issuance or renewal of any governmental approval, to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Provider or of the Customer.

"Claim Notice" shall have the meaning set forth in Section 14.1.

"Commercial Operation Date" shall have the meaning set forth in Section 3.4.

"Confidential Information" shall have the meaning set forth in Section 15.1.

"CPI" shall have the meaning set forth in Section 6.2.

"Customer" shall have the meaning set forth in the preamble.

"Customer Default" shall have the meaning set forth in Section 11.1.

"Day" means each day of the year including holidays and weekends.

"Digester Gas" means low BTU gas produced by the process of anaerobic digestion at the HARRF.

"Digester Gas Interconnection Point" shall mean a point at the periphery of the System where the Digester Gas is delivered by the Customer to the Provider as mutually agreed in Exhibit A. Provider has responsibility of ownership and maintenance on the System side of the Digester Gas Interconnection Point. The Customer shall have ownership and maintenance responsibility on the other side of the Digester Gas Interconnection Point up to and including the Digester Gas Interconnection Point.

"Effective Date" shall have the meaning set forth in the preamble.

"Electrical Interconnection Point" shall mean a point at the periphery of the System where electricity is interconnected as mutually agreed in Exhibit A. Provider has responsibility of ownership and maintenance on the System side of the Electrical Interconnection Point. The Customer shall have ownership and maintenance responsibility on the other side of Electrical Interconnection Point up to and including the Electrical Interconnection Point.

"Energy" shall have the meaning set forth in the recitals.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to an operation or process, including but not limited to renewable energy credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or

otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, including the right of a party to report the ownership of accumulated offsets, green tags, or Renewable Energy Credit ("RECs") reporting rights under any present or future federal, state, or local law, regulation, bill or Applicable Law and international or foreign emissions trading program (which, as of the Effective Date include certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions).

"Environmental Financial Incentives" shall mean all rights, credits, benefits, reductions, offsets, allowances and entitlements of any kind, howsoever entitled or named, whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the Environmental Attributes of the System or the Energy generated thereby or otherwise from the development or installation of the System or the production, sale, purchase, consumption or use of the Energy generated thereby. Without limiting the foregoing, "Environmental Financial Incentives" includes, but is not limited to, each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future, (excluding, however, any Environmental Attributes) (i) State or federal investment tax credits or grants, state or federal production tax credits or grants, or other tax benefits, and accelerated depreciation (collectively, "allowances"), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of the System or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such allowances.

"Expiration Date" shall have the meaning set forth in Section 10.1.

"Force Majeure Event" shall mean, when used in connection with the performance of a Party's obligations under this Agreement, any of, but not limited to, the following events to the extent not caused by such Party or its agents or employees:

(a) war, riot, acts of a public enemy, terrorism or other civil disturbance;(b)acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement; and(c) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

"Fuel" shall mean Acceptable Digester Gas or pipeline quality Natural Gas

"Governmental Authority" or "Governmental Authorities" shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government, acting alone, in parallel or in concert.

"HARRF" shall mean Hale Avenue Resource Recovery Facility.

"Heat Transfer Interconnection Point" shall mean a point at the periphery of the System where the city hot water loop interfaces with the System as further described in Exhibit A. The Customer shall have ownership and maintenance responsibility for the Host heat transfer loop. Provider will be responsible for necessary mechanical and electrical interfaces at the Heat Transfer Interconnection Point with the exception of pumping, which is the responsibility of Customer.

"Indemnified Party" shall have the meaning set forth in Section 14.1. "Indemnifying Party" shall have the meaning set forth in Section 14.1.

"Installation Work" shall mean all work performed by Provider in connection with the furnishing, installation, testing and commissioning of the System.

"Interconnection Points" shall mean the Process Water Return Point, Electrical Interconnection Point, Digester Gas Interconnection Point, Heat Transfer Interconnection Point, Natural Gas Interconnection Points, Process Water Interconnection Point.

"kWh" shall have the meaning set forth in Section 6.

"kWh Rates" shall have the meaning set forth in Section 6.

"License Agreement" means that Site License Agreement in respect to the Site(s) entered into by Provider and Customer as of the date hereof.

"Liens" shall have the meaning set forth in Section 7.1.4.

"Meter" shall have the meaning set forth in Section 4.3.1.

"Monthly Period" shall mean the period commencing on the Commercial Operation Date and ending on the last Day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1)-month periods during the Term.

"Monthly Production" shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

"Natural Gas" shall have the meaning set forth in Section 4.7.

"Natural Gas Interconnection Point" shall mean a point at the periphery of the System where natural gas is delivered by the Customer to the Provider as further described in Exhibit A. The Provider has responsibility of ownership and maintenance on the System side of the interconnect. The Customer shall have ownership and maintenance responsibility on the other side of interconnect up to and including the Natural Gas Interconnection Point.

"O&M Work" shall have the meaning set forth in Section 4.1.1.

"Party" shall mean each of Customer and Provider. The Parties shall be collectively referred to herein as the "Parties".

"Person" shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

"Process Water Interconnection Point" shall mean a point at the periphery of the System where process water is delivered from the Customer to the Provider as mutually agreed in Exhibit A. The Provider has responsibility of ownership and maintenance on the System side of the interconnect. The Customer shall have ownership and maintenance responsibility on the other side of the Process Water Interconnection Point up to and including the Process Water Interconnection Point.

"Process Water Return Point" shall mean a point at the periphery of the System where liquid streams produced by the System are returned from the Provider to the Customer as further described mutually in Exhibit A. The Provider has responsibility of ownership and maintenance on the System side of the interconnect. The Customer shall have ownership and maintenance responsibility on the other side of the Process Water Return Point.

"Provider" shall have the meaning set forth in the preamble. For purposes of access rights and other rights necessary for Provider to perform its obligations hereunder, the term "Provider" shall include Provider's authorized agents, contractors and subcontractors.

"Provider Default" shall have the meaning set forth in Section 11.2.

"Rebates" shall mean any and all state or utility rebates or other funding offered for the development of generation projects, including, but not limited to the California Self-Generation Incentive Program Rebate.

"Renewal Rate" shall have the meaning set forth in Section 10.3.1.

"Reporting Rights" means the right of Provider to report to any federal, state, or local agency, authority or other party, including such rights under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Provider owns the Environmental Financial Incentives associated with the Energy, and the right to payment or SGIP Amount as additional price for Energy.

"Representatives" shall have the meaning set forth in Section 15.1. "Services" shall mean all services provided to Customer by Provider hereunder, including the provision of Energy, including building, owning and operation of the System, providing heat for the heat transfer loop, associated maintenance of System, conditioning digester gas, billing, O&M Work, customer service operations, associated financing activities including monetization of environmental incentives and credits, and associated coordination with regulatory and legislative bodies.

"Service Provider" shall mean EBF, its Affiliate, or such other qualified independent service provider that Provider may engage from time to time to provide the O&M Work or perform other Services in connection with this Agreement.

"Site" shall have the meaning set forth in the first recital.

"SGIP Amount" means all amounts paid by the SGIP Program Administrator under the California Self-Generation Incentive Program with respect to the System.

"State Incentive" means revenue originating from state legislation and typically administered by electric utilities, such as the Self Generation Incentive Program.

"System" shall mean the gas conditioning equipment, engine generators, and all ancillary components up to but not including the Interconnection Point of any such System as more fully described in Exhibit C.

"Term" shall have the meaning set forth in Section 10.1.

"Termination Date" shall have the meaning set forth in Section 10.1.

"Termination Value" means:

A. The greater of:

(i) The Appraised Value; or

(ii) The amount shown in the Termination Value Schedule set forth in Exhibit E for the year in which the termination occurs;

PLUS

B. Any reasonable costs incurred by Provider due to termination of this agreement.

"Transfer Taxes" shall have the meaning set forth in Section 6.3.1.

Section 2. Purchase and Sale of Services

Customer engages Provider to provide the Services to Customer at the Site and Customer shall pay for and accept services in the form of Energy produced by the System in the quantities defined in Section 5.1. Provider agrees to provide the Services to Customer in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of the Site License Agreement. In the event that Customer engages Provider to provide the Services to more than one Site, the Parties acknowledge and agree that (a) any reference in this Agreement to (i) the "Site" shall mean each Site, as applicable, (ii) to the "Site" shall mean to a given Site, as applicable (iii) to the "System" shall mean to the Systems furnished and installed at all Sites, as applicable and to the "System" shall mean to a given System furnished and installed at a given Site, as applicable; (b) except to the extent expressly provided, all provisions of the Agreement shall apply in respect of all such Site, as applicable; and (c) this Agreement shall remain in full force and effect until terminated with respect to each and every Site to which Services are provided hereunder. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance hereunder.

Customer acknowledges and agrees that Provider may export a portion of the electricity produced, if an export tariff is available, to the Utility grid during the Term. Provider reserves

the right to execute this option at its sole discretion, with reasonable notice to be provided to Customer prior to the export of such power. Any benefit of such export of energy will be accrued to the Provider.

Section 3. Construction, Installation and Testing of Systems

With respect to each Site on which a System is to be installed:

3.1 Installation. Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with the terms of this Agreement, the Site License Agreement and the General Design and Construction Provisions contained in Exhibit B. Customer shall have the right to review and approve, with such approval not to be unreasonably withheld or delayed, all construction plans. Provider shall organize the procurement of all materials and equipment for the Installation Work and maintain the same at the applicable Site.

3.2 Conditions Precedent to Commencement of Construction and Installation. Prior to commencement by the Provider of construction and installation activities with respect to the Site, Provider shall have:

3.2.1 Reserved

3.2.2 Obtained all necessary insurance for construction and installation of the System(s), subject to the terms of this Agreement and terms of the applicable financing, if any;

3.2.3 Obtained all necessary and required permits required for the performance of the construction and installation of the System under this Agreement. Customer agrees to assist Provider in obtaining necessary permissions in connection with the installation, operation and maintenance of the Systems;

3.2.4 Provider and Customer shall have executed a Site License Agreement for the Site and, with respect to the Site, where the Customer's interest is a leasehold interest, the consent of the Customer's landlord shall have been obtained in accordance with such Site License Agreement; and

3.2.5 Entered into the applicable contract(s) for construction and installation of the System(s), subject to the terms of the applicable financing, if any; and obtained all permits, licenses and other approvals required by Applicable Law, including any and all applicable environmental laws, including but not limited to, the California Environmental Quality Act, and shall retain the services of qualified consultants to provide all required research and documentation required for such compliance. To this end, if required Provider shall be solely responsible for the costs of the initial study required for environmental compliance. The initial study will be performed under the direction and control of Provider, subject to the requirements of this Section. Provider, following the completion of such initial study, may terminate this Agreement by written notice to Customer should environmental compliance measures or unforeseen site conditions render the Agreement economically disadvantageous for Provider or the time required to implement any environmental compliance measures or remediation exceed

Provider's reasonable expectations. If Provider does not obtain all required environmental approvals in form and substance acceptable to Provider, Provider may terminate this Agreement by written notice to Customer. Nothing set forth herein shall be interpreted to require either Party to undertake environmental remediation or additional studies at the Site if mandated by law, regulation or as a condition of regulatory approval prior to the construction of the System.

The governing board of the Customer shall be the lead agency for the purposes of filing any and all required documents and obtaining the relevant approvals. Customer shall bear its own costs incurred as the lead agency and for review of environmental compliance.

3.2.6 Provider or Customer shall have received an SGIP reservation confirmation from SGIP administrator for the full incentive amount for which the project is eligible.

3.2.7 Successful completion of the Conditions in Sections 3.2.1 - 3.2.6 above and Section 3.3 below shall be conditions precedent to Provider's obligations under this Agreement. If the activities contemplated in Sections 3.2.1 - 3.2.6 above and Section 3.3 are not completed by the construction start date, Provider shall have the option to terminate the Agreement without triggering the default provisions of this Agreement and neither party shall have any further liability under this Agreement. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement as necessary and to revise the Commercial Operation Date and term of this Agreement.

3.3 Utility Approvals. Notwithstanding that Provider shall have the primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at any Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System with respect to a Site or require equipment in addition to the equipment set forth in Exhibit B in connection with such Site, Provider may, at Provider's option, terminate this Agreement with respect to such Site immediately subsequent to notification from the local utility. The Parties shall not be obligated to provide Services if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site is eligible for state rebate funding.

3.4 Energy Delivery. The date on which the deliveries of Energy to the applicable Site commence (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer that the System is substantially complete and available for commercial operation, (b) necessary permits and licenses required to be obtained under Applicable Law to start operation of the System shall have been obtained

and(c) Customer shall have entered into an interconnection agreement with the local electricity utility. Customer shall take all required actions expeditiously to obtain the interconnection agreement in a timely manner. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date.

3.4.1 Customer Rebate Assistance. Customer shall take all reasonable measures to assist Provider in obtaining all Rebates currently available or subsequently made available in connection with the System installed at the Site. Provider and Customer shall work together to obtain all Rebates.

3.5 Risk of Loss; Exclusive Control. As between the Parties, except as set forth in paragraphs 4.3.2, or 7.2.4, or if customer exercise its right of entry pursuant to Section 11, or otherwise assumes control over the Site, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of Energy and all other inputs and outputs of the System on Provider's side of but excluding the Interconnection Points and Customer will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy all other and inputs and outputs of the System at and from the Interconnection Points. For all purposes of this Agreement Interconnection Points shall be owned, controlled and maintained by Customer. Risk of loss related to Energy will transfer from Provider to Customer at the Interconnection Point. Nothing in this Section 3.5 shall be construed to make Provider responsible for the actions (or failure to act) of third parties who gain access to the site through the invitation or forbearance of Customer.

Section 4. Operation and Maintenance of Systems

4.1 O&M Work; Phone/Data Line

4.1.1 O&M Work. Provider, at its sole cost and expense, shall provide or cause to be provided operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of the metering equipment determining the quantity of electricity produced by the System (collectively, the "O&M Work"). Provider shall perform or cause to be performed the O&M Work to ensure that each System is capable of delivering Energy in accordance with the specifications set forth in Exhibit C. Any repair or maintenance costs incurred by Provider as a result of Customer's negligence or breach of its obligations hereunder shall be reimbursed by Customer.

4.1.2 Service Provider. The Parties agree that if Provider has arranged for an independent, third party Service Provider to conduct the O&M Work and certain other Services, Service Provider shall have the same rights described in this Agreement as are granted to Provider related to the O&M Work. Customer hereby acknowledges that performance by Service Provider of any Provider obligations in accordance with this Agreement is deemed to be performed on behalf of Provider and in satisfaction of such obligations. Invoicing, requests, reviews, delivery of reports, notices or other communications, management and/or other coordination contemplated under this Agreement may be made by Service Provider on behalf of Provider as if made directly by Provider.

4.1.3 Phone/Data Line. Customer shall provide Provider access for necessary phone, computer, or other communication lines necessary to permit Provider to monitor the System, maintain the System and to keep records of the System, and Provider shall properly maintain and pay for such lines for the entire Term.

4.1.4 Utilities. Customer shall provide Provider access to utilities, including but not limited to electrical and water connection, at Customer's expense. Additionally, any and all Digester Gas not used by the System will be disposed of by Customer at Customer's cost, whether by a flare or other applicable means.

4.2 Malfunctions and Emergencies

4.2.1 Each of Customer and Provider shall notify the other within forty-eight (48) hours following the discovery by it of (a) any material malfunction in the operation of the System or (b) an interruption in the supply of System Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider's or Customer's repair or corrective action at all times, twenty-four (24) hours per Day, including weekends and holidays. Provider and Customer each shall notify the other Party immediately upon the discovery of an emergency condition in a System.

4.2.2 Provider shall commence repairs to any malfunctioning System and restore the supply of Energy as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner for routine and emergency repairs, the Parties shall contact the persons set forth below:

	CUSTOMER	PROVIDER
Name	City of Escondido	Escondido Bioenergy Facility LLC
Address	201 N Broadway, Escondido, CA 92025	5780 Fleet Street, Suite 310, Carlsbad, CA 92008
Phone	(760) 839-4090	(760) 436-8870
Fax		(740) 448-6847
e-mail	cmckinney@escondido.org	operations-usa@anaergia.com

4.3 Metering.

4.3.1 Maintenance and Testing. On Site where a System is installed, Provider shall install and maintain a utility-grade kilowatt-hour ("kWh") meter ("Meter") for the measurement of Energy provided to Customer at such Site, which shall measure the kWh output of such System on a continuous basis. Upon Customer's written request, Provider shall furnish a copy of

all technical specifications and accuracy calibrations for each Meter, as well as all Metering data and energy production calculations. Provider shall test the Meters on a reasonably frequent basis.

4.3.2 Customer Audits and Inspections. Up to twice per calendar year, Customer shall have the right to audit all such Meter data upon reasonable notice and mutually agreed upon time, and any such audit shall be at Customer's sole cost. Customer shall have a right of access to all Meters at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of a Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that such Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace such Meter. Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date the Meter was placed into service; provided, that such period shall in no case exceed two (2) years.

4.4 Title to Systems. Provider, or Provider's permitted assigns, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider's assigns. Customer warrants and represents that it shall keep the System free from all liens, claims and encumbrances of its lenders existing and future and any other third parties (other than those created by Provider or its creditors). Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, memorandum of license agreement, and any other filings as may be applicable, in such jurisdictions as it deems appropriate with respect to the System in order to protect its rights in the System. System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. Neither Customer nor any party related thereto shall have the right or be deemed to operate any System.

4.5 Customer Outages. In the event of a scheduled or unscheduled outage, when Customer is unable to take delivery of electricity or deliver Digester Gas at a given Site other than as a result of a Force Majeure Event, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during such outage and shall invoice Customer for such amount, which shall be due and payable in accordance with Section 6.4. Notwithstanding the foregoing, Customer shall be allowed four outages up to 8 hours each in a calendar year ("Scheduled Downtime"), for which the Customer shall not be required to pay Provider for lost electricity production.

4.6 Compliance with Utility Specifications. Provider shall ensure that all Energy generated by each System conforms to applicable utility specifications for energy being generated and delivered to the applicable Site's electric distribution system, which shall include the installation

of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

4.7 Fuel Delivery Obligations. For the duration of the Term and for test period prior to commencement of Term, the Customer at its sole expense is obligated to deliver adequate Fuel to Provider to operate the System at the gross rated capacity of 1.2MW in the form of Acceptable Digester Gas or pipeline quality natural gas ("Natural Gas"). Due to SGIP requirements, production of Acceptable Digester Gas shall support at least 600 kW of Energy production on a yearly basis.

Provider will keep records of Natural Gas usage during the term of commercial operations and will reimburse the Customer for any incremental volume of Natural Gas used during any downtime of the gas conditioning system provided that Acceptable Digester Gas was available. Customer acknowledges that System may use 100% Natural Gas during the startup period at Customer's expense.

4.8 Data Signals. During the Term, if needed, Customer and Provider shall maintain and grant each other access to the necessary data signals to ensure the optimal performance of the System and related equipment including the gas delivery equipment, gas conditioning equipment, or the cogeneration equipment. Customer and Provider shall install, maintain such signals and provide the interconnect that provides access to such signals. Data signals are further defined in Exhibit C

4.9 Heat Transfer. As part of the System, Provider will furnish and maintain according to manufacturer's specifications, a heat recovery system. Provider shall not be responsible for degradation in heat transfer capacity due to conditions outside Provider's control such as and including, the water quality in the circulation loop, incoming water temperature and ambient temperature. Customer agrees and acknowledges that Provider has the option, but not the obligation, to upgrade the system to improve performance and output and to reduce cost as and when technology upgrades are available. As a sole owner and operator of the system Provider does not need Customer consent for system upgrades.

4.10 System Disruptions. Customer acknowledges and agrees that, if for reasons other than Provider's breach of its obligations hereunder, Customer withholds from Provider or otherwise interferes with or terminates the access rights to the Site necessary for Provider to operate the System prior to Expiration Date, a Customer Default will be deemed to have occurred. Customer further acknowledges and agrees that if for reasons *other than* the following: a) damage caused by the Provider's operation of the System; or b) a Force Majeure Event; or c) any Customer Outages allowed by Section 4.5; Provider shall reasonably estimate the amount of Energy which would have been delivered to Customer during such disruption period and shall invoice Customer for such amount, which shall be due and payable in accordance with Section 6.

Customer further acknowledges and agrees that any loss of revenue to Provider due to disruption of Services caused by malfunctions on Customer's side of Interconnection Points, relocation or modification of the System at Customer's request during the Term other than Customer Outages allowed by Section 4.5, shall be at the sole cost and responsibility of Customer. Provider shall

reasonably estimate the amount of Energy that would have been delivered to Customer during such disruption period and shall invoice Customer for such amount, which shall be due and payable in accordance with Section 6.

Section 5. Purchase of Services

With respect to a System installed on a Site pursuant to this Agreement:

5.1 Purchase Requirement. Customer agrees to purchase one hundred percent (100%) of the Energy up to 8,146 MWh per year delivered or deemed delivered under Section 6 and by such System during the Term of this Agreement. While the Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6, Customer acknowledges and agrees that such Services represent a package of services including the production and supply of electrical energy output from the System together with O&M Work, insurance, training, building energy conservation, demand reduction and any other associated services that Provider may provide under this Agreement to Customer. The payment for Services is calculated to include all of the above services in the price per kWh of Energy provided to the Site through the System. Neither Party may claim by this Agreement that Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy hereunder.

5.2 Environmental Attributes / Environmental Financial Incentives. Provider shall retain sole ownership of all present and future rights, titles and interest in any Environmental Financial Incentives arising from the operation of the System. Customer shall cooperate with Provider in all matters related to the Environmental Attributes and Environmental Financial Incentives and take reasonable measures to assist Provider in obtaining, using, selling, transferring, holding, and certifying them. Provider shall pay any costs and expenses associated with the foregoing. If the standards used to qualify the Environmental Attributes or Environmental Financial Incentives including for this purpose the amounts paid under California SGIP to which a Party is entitled under this Agreement are changed or modified, the other Party shall, at the entitled Party's request and expense, use all reasonable efforts to cause the Environmental Attributes or Environmental Financial Incentives including for this purpose the amounts paid under California SGIP, as applicable, to comply with new standards as changed or modified.

5.3 Rebates. Provider shall retain sole ownership of all present and future, now known or unknown, tax incentives and Rebates available in connection with the System. Customer shall take reasonable measures to assist Provider in obtaining all tax incentives and Rebates currently available or subsequently made available in connection with the System.

5.3.1 Customer shall not take any action or suffer any omission at any Site that would have the effect of impairing the value to the Provider of the Environmental Attributes,

Environmental Financial Incentives, or SGIP Amount. Customer shall be solely responsible for notifying the Provider of any action or omission that could impair such value and for consulting with the Provider as necessary to prevent impairment of the value of Environmental Attributes, Environmental Financial Incentives or SGIP Amount.

5.3.2 Provider will at all times retain all tax credits and depreciation associated with the Systems.

Section 6. Price and Payment

6.1 Price. Pursuant to the terms of this Agreement starting at the Commercial Operation Date, Customer will pay Provider \$0.129per kWh (the "kWh Rate") for all Energy delivered or deemed delivered hereunder. This amount is to be paid on a monthly basis. Customer will pay Provider the amounts due within 30 Days of the end of the month for which such payment is due. As a prepayment of an additional amount for the price of Energy delivered hereunder, Customer agrees to assign, and to the extent legally permissible hereby assigns, to Provider the value of the SGIP Amount to which Customer would otherwise be entitled. It is the intent of the Parties that Customer make a prepayment for the price of Energy equal to the SGIP Amount, although Customer may be designated as the "incentive payee" or "host customer" on any forms or applications related to such SGIP Amount, and Provider and Customer shall work together in good faith to cause an amount equal to such SGIP Amount to be paid to Provider simultaneously with such amount being released by the SGIP Program Administrator and shall endeavor to have such amount paid directly to Provider or its designee as Customer's assignee. Other than as set forth in the immediately preceding sentence, Customer shall not be responsible for securing any SGIP grant moneys and makes no representation as to the amount of the SGIP payment that will actually be realized. Each of Customer and Provider agrees that it shall take no position on any tax return or otherwise that is inconsistent with the treatment of the SGIP Amount as a prepayment by Customer for Energy. Notwithstanding the foregoing, in the event that Customer elects to extend this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during the Extension Term.

6.2 Price Adjustments. The kWh Rate is applicable through the first anniversary of the Commercial Operation Date. The kWh Rate for periods beginning on the first anniversary of the Commercial Operation Date, and for each twelve month period thereafter during the Term, shall be the amount determined as provided in this Section 6.2. For each such twelve month period, the kWh Rate shall be determined by escalating the previous year kWh Rate by 2% ("Annual Rate Escalator"). If however, between the Commercial Operation Date and the tenth anniversary of the commercial operation date, the average "CPI", the Consumer Price Index as published by Bureau of Labor Statistics of United States Department of Labor exceeded 3.25%, the Annual Rate Escalator will be adjusted to the trailing 10 year average for the remainder of the Term. Annual Rate Escalator will be capped at 4% and shall not be below 2% for the duration of the Term.

The Parties believe it improbable that the CPI will be discontinued during the Term. It is agreed, however, that in the event that the CPI is discontinued, the Parties shall accept comparable

statistics on the purchasing power of the consumer dollar, as computed and published at the time of any such discontinuation by a responsible financial periodical of recognized authority to be then chosen by the Parties.

Additionally, Customer agrees that the pricing includes only the cost of all mandatory requirements from various permitting, legislative and regulatory agencies as of the Effective Date of the Agreement. If the Provider is required to make any additional improvements or modifications to the System or change its operation from that contemplated by this Agreement (collectively, "Additional Improvements") as a result of any change in law, Applicable Law, regulation, or permit after the Effective Date, Customer shall be responsible for half of the costs associated with such Additional Improvements. Compensation can be made either as a lump sum payment or equivalent price adjustments to the kWh Rate.

In the event of a Change in Law, Provider shall submit a written notice to Customer for a Change in Law reimbursement that shall include fully documented cost substantiation, and such other information as may be reasonably necessary for the Customer to evaluate the Change in Law reimbursement.

6.3 Taxes. Provider and Customer shall each pay any taxes due in accordance with the following:

6.3.1 Customer Taxes. Customer shall pay (and shall indemnify and hold Provider harmless on an after-tax basis from and against) all sales, use, excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of System Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes. If Customer shall be required by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed by a taxing authority on the Systems.

6.3.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.3.1, including but not limited to Provider's manufacture, installation and ownership of the Systems. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider's use of the Site, to the extent described in the Site License Agreement; (ii) the System or Provider's ownership, installation or use thereof; or (iii) any other aspect of this Agreement. If Provider shall be required by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after making all required deductions, Customer shall have received an amount equal to the sum it would have received had no such deductions been made. Notwithstanding the foregoing,

Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the Systems to Customer pursuant to this Agreement.

6.4 Billing and Payment. Billing and payment for the Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as follows:

6.4.1 Payments. Subject to adjustment in accordance with the terms of this Agreement, specifically including, but not limited to, set-offs for Natural Gas purchases made under the provisions of Section 4.7 above, Customer shall pay Provider for each Monthly Period during the Term within thirty (30) Days following the last Day of each such Monthly Period a payment for the Energy delivered by each System during each such Monthly Period equal to the product of;

(a) Monthly Production for such System for the relevant month multiplied by (b) the applicable kWh Rate for Energy relating to such System, which payment shall be made by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.4.2 Invoice Errors. Within thirty (30) Days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein. Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with Section 6.1 by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. If Provider notifies Customer in writing within thirty (30) Days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) Days of Customer's response for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) Days after such initial meeting, the Parties may avail themselves of any remedies they may enjoy under applicable laws.

6.4.3 Late Payments. Any payment not made within the time limits specified in Section 6.1 or Section 6.4, shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

Section 7. General Covenants

7.1 Covenants of Provider. As a material inducement to Customer's execution and delivery of this Agreement, Provider covenants and agrees to the following:

7.1.1 Permits and Approvals. While providing Services, Provider shall obtain and maintain all approvals, consents, licenses, permits, and inspections from relevant Governmental Authorities, utility personnel, and the Site's owners, if Customer is not the owner of such Site,

and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such Services. Upon written request, Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer. Customer shall cooperate in an expedited manner with any permit and approval processes as may be needed or requested by Provider.

7.1.2 Security. Any security measures in addition to those supplied under normal operations by Customer shall be the sole cost of the Provider. Customer shall not be obligated by this Agreement to patrol or otherwise undertake security measures beyond those that are a part of normal operation.

7.1.3 Health and Safety. Provider shall take all reasonably necessary safety precautions in providing the Services and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.4 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics' liens, labor liens or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.4 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.5 Provider Records. Provider or Service Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

7.2 Customer's Covenants. As a material inducement to Provider's execution of this Agreement, Customer covenants and agrees as follows:

7.2.1 Notice of Damage. Customer shall promptly notify Provider of any matters it is aware of pertaining to any damage to or loss of the use of the System or that could adversely affect the System.

7.2.2 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any encumbrances and/or Liens on or with respect to any System or any interest therein. Customer also shall pay promptly before a fine or penalty may attach to any System any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.3.1. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and shall indemnify Provider against

all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.2.3 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of all consents, approvals, permits, licenses, and authorizations relating to the performance of Customer's obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer's local electric utility. Customer shall proceed expeditiously, using its best efforts to assist Provider in fulfilling Provider's responsibilities under Sections 3.3 and 7.1.1.

7.2.4 Maintenance of Interconnection. Customer shall not interfere with the interconnection of the Systems to the electrical grid and to the extent required by the Site License Agreement. Customer shall ensure that all of the facilities to which Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.5 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy of any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

Section 8. Insurance Requirements.

Provider shall procure and maintain the insurance set forth below. The cost of such insurance shall be included in the cost of Energy with exception of property insurance, which will be procured and maintained by Customer under which circumstances Provider will directly reimburse Customer for additional cost of procuring and maintaining the property insurance. Customer's property insurance shall be primary and shall afford coverage for claims related to Provider's property or the System. Provider shall be responsible to pay the entire amount of any deductible in the event of any claim on this insurance related to the System. Provider shall pay Customer any increase of insurance premium due to a claim against the System.

8.1 Minimum Scope of Provider Insurance. Coverage shall be at least as broad as:

- a) The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001), including products and completed operations, and X, C, U (Explosion, Collapse and Underground); and
- b) The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall include all owned, non-owned and hired automobile; and
- c) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance; and

d) **Property Insurance:** Customer has a property insurance policy that covers the Site and improvements and betterments placed thereupon, including those of Provider. Host maintains a retention or deductible in the amount of \$500,000.00. Provider shall place a policy, endorsement, rider or other insurance vehicle ("Vehicle") that will provide coverage to Provider within Customer's retention or deductible with respect to property Provider brings or causes to be brought upon the Site. The Vehicle will provide a retention or deductible to Provider in an amount that is similar to the retention or deductible in Providers property insurance policies. Provider's Vehicle will respond first if an insured loss occurs.

8.2 Minimum Limits of Provider Insurance. Provider shall maintain limits no less than:

- a) **General Liability:** \$5,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage and
- b) **Workers' Compensation and Employers' Liability:** Workers' Compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$1,000,000 per accident; and

8.3 In the event of a Customer Default or exercise of Customer options defined in Section 10, Provider shall continue such insurance in effect only for as long as Provider continues to conduct activities at the Site.

8.4 Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

8.4.1 Commercial General Liability.

8.4.1.1 The Customer, its officials, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of, the Provider; products and completed operations of the Provider; premises owned, leased or used by the Provider; or automobiles owned, leased, hired or borrowed by the Provider. The coverage shall contain no special limitations on the scope of protection afforded to the Customer, its officials, employees, agents and contractors

8.4.1.2 The Provider's insurance coverage shall be primary insurance with respect to the Customer, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the Customer, its officials, employees, agents or contractors shall be in excess of the Provider's insurance and shall not contribute with it.

8.4.1.3 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Customer, its officials, employees, agents or contractors.

8.4.1.4 Coverage shall state that the Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

8.4.2 All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced, or modified except after thirty (30) days' prior written notice has been given to the Customer, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium.

8.5 Acceptability of Insurers. Insurance is to be placed with insurers acceptable to the Customer's Risk Manager.

8.6 Verification of Coverage. Provider shall furnish Customer with certificates of insurance and with original endorsements affecting coverage required by this Section 8 – Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: cmckinney@escondido.org, or mailed to the following postal address:

City of Escondido
Utilities Department
201 N. Broadway
Escondido, CA 92025

ADDRESS

8.8 Subcontractors. Provider shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

8.9 Customer's Insurance Requirements

Provider shall be named as an additional insured by Customer on Customer's Hazardous Materials Handling Insurance policy.

Section 9. Force Majeure Events

Neither Party will be considered in default in the performance of its obligations set forth in this Agreement when and to the extent failure of performance is caused by a Force Majeure Event. If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such claiming Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event has interfered with such performance. The suspension of the claiming Party's performance due to a Force Majeure Event will be of no greater scope and of no longer duration than is required by the Force Majeure. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform. In case a Force Majeure Event continues for at least one year with respect to a System at a Site, then either Party may terminate this

Agreement with respect to such Site by written notice to the other. In such case, Customer shall not be subject to any liability to Provider for the Termination Value of the System.

Section 10. Term; Customer Options; Termination

10.1 Term. The term of this Agreement shall commence on the Commercial Operation Date and shall expire on the date (the "Expiration Date") that is (a) twenty (20) years after the Commercial Operation Date (the "Term"), or (b) the last Day of the Extension Term if effective in accordance with Section 10.3.1; each unless and until terminated earlier pursuant to Sections 3.2, 9, 10.2., 10.6, 12 or 13 (the date of any such termination, the "Termination Date").

10.2 Customer Options Upon Cessation of Business Operations at Site(s). If, prior to the end of the Term, Customer ceases to conduct business operations at a Site, vacates such Site, or is prevented from allowing operation of the System(s) on such Site, then Customer shall so notify Provider, Provider shall remove the applicable System(s) and Customer shall pay to Provider the then-applicable Termination Value in respect of such System(s) as damages, whereupon this Agreement shall terminate with respect to the applicable Site(s). The Parties agree that actual damages to Provider if this Agreement is terminated with respect to a Site or Sites as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value will accurately reflect the damages suffered by Provider as a result of early termination of this Agreement with respect to such Site or Sites.

10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one- hundred eighty (180) Days prior to the Expiration Date, Customer shall have the option to renew the term of this Agreement for one (1) additional five (5)-year period (the "Extension Term"); provided, however that the Parties mutual agreement on a kWh Rate for the Extension Term ("the Renewal Rate") and other terms and conditions will be a condition precedent to the effectiveness of the Extension Term.

10.4 Provider Options Upon Expiration of Term.

10.4.1 Removal of System. At the expiration of the Term, if Customer has not exercised an extension under Section 10.3.1, Provider has the option, but not an obligation, to remove the System to grade at Provider's expense.

10.5 Payment of Termination Value on Termination Date. In the event that the Termination Date has occurred for reasons attributable to Customer default or breach, Customer shall be required to pay to Provider the Termination Value as damages.

10.6 Provider Termination. Provider shall have the right, in Provider's sole and absolute discretion without any further obligations, to terminate this Agreement upon written notice:

10.6.1 at any time until construction of the System at the Site commences;

10.6.2 if a court or administrative agency issues an order having the effect of subjecting the sales of Energy to federal or state regulation of prices and/or Services, and the order has not been stayed; ;

10.6.3 upon the elimination or alteration of one or more Environmental Financial Incentives or other Change in Law, including a significant change in California SGIP that results in a material adverse economic impact on Provider; or

10.6.4 Intentionally Left Blank

10.6.5 if the Parties are unable, despite commercially reasonable efforts, to secure a confirmed reservation of the anticipated SGIP Amount through Utility's Self Generation Incentive Program before System construction commences.

10.7 Customer Option to Relocate/Modify the System within Site during the Term. Customer may request that Provider relocate or modify the System from the installed location at any time (but only once) during the Term. Customer shall pay for all costs and expenses associated with moving the System (including but not limited to construction activity, permits and government approvals, insurance, equipment changes and related attorney's fees and other professional fees). Provider shall reasonably approve or decline the replacement site, or the System modification. The Parties will use best efforts to minimize the downtime due to such relocation or modification to two (2) weeks, during which time Customer will not be required to pay for deemed output. If the downtime exceeds two (2) weeks, due to no fault of Provider, Customer shall pay for deemed output for the excess downtime.

Section 11. Defaults

11.1 Customer Default. The occurrence at any time of any of the following events shall constitute a "Customer Default":

11.1.1 Failure to Pay. The failure of Customer to pay on any three separate occasions during the Term any amounts owing to Provider on or before the Day following the date on which such amounts are due and payable under the terms of this Agreement and Customer's failure to cure each such failure within fifteen (15) Days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Perform Other Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to perform or cause to be performed any other obligation required to be performed by Customer under this Agreement, or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) Business Days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional Days; provided, finally, that in any event if such failure

shall continue for at least five (5) Days and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer and Customer shall pay therefore;

11.1.3 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within 90 Days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within 90 Days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within 90 Days from the date of assumption of such custody or control; or

11.1.4 Site License Agreement Default. A material default by Customer under the Site License Agreement.

11.2 Provider Default. The occurrence at any time of one of the following events shall constitute a "Provider Default:"

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business Days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional Days;

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within 90 Days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set

aside or stayed within 90 Days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within 90 Days from the date of assumption of such custody or control; or (d) A material default by Provider under the Site License Agreement occurs, and remains uncured following expiry of any applicable cure periods.

Section 12. Remedies Following Default

12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default as described in the Section above has occurred and is continuing, and if Provider fails to correct or cure the conditions causing such Provider Default within thirty (30) Days after Provider has received Customer's written notice of Customer's intent to terminate this Agreement as a result of such Provider Default, then this Agreement shall terminate and be of no further force or effect as of the last Day of such thirty (30) Day period.

12.2 Provider's Remedies Upon Customer Default. If a Customer Default as described in Section 11.1 through 11.1.4 has occurred and is continuing on or after the Commercial Operation Date, and if Customer fails to correct or cure the conditions causing such Customer Default within five(5) Days for monetary defaults and thirty (30) Days for non-monetary defaults after the date on which Provider gives Customer written notice of Provider's intent to terminate this Agreement as a result of such Customer Default, then this Agreement shall terminate and be of no further force or effect as of the last Day of such applicable period and Provider shall have the right to demand the applicable Termination Value. Upon full payment of Termination Value, title in and to the System shall transfer to Customer within 30 days.

12.2.1 If a Customer Default as described in Section 11.1 through 11.1.4 has occurred and is continuing before the Commercial Operation Date, and if Customer fails to correct or cure the conditions causing such Customer Default within ten (10) Days after the date on which Provider gives Customer written notice of Provider's intent to terminate this Agreement as a result of such Customer Default, then this Agreement shall terminate and be of no further force or effect as of the last Day of such ten (10) Day period and Provider shall have the right to demand that Customer pay all (a) costs incurred by Provider in connection with this Agreement and Provider's performance hereunder up to the Termination Date, (b) contract termination or assignment fees or penalties (including financing prepayment or termination fees) incurred by Provider as a result of the termination of this Agreement, (c) Provider's transaction costs and expenses incurred as a result of the termination of this Agreement.

12.3 No Consequential Damages. Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for Energy or any other amount specified as payable by Customer to Provider under

the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages. The Parties also expressly provide that all expenses included in "Termination Value" as defined, and those items contained in Exhibit E hereof are direct damages or liquidated damages, but are not consequential damages. Provider's total aggregate maximum liability hereunder shall be in all respects limited to amounts paid to it hereunder during the most recent twenty-fourth (24)-month period.

12.4 Warranty. NEITHER PARTY MAKES ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE SERVICES, PRODUCTS, MATERIALS OR INFORMATION PROVIDED HEREUNDER, AND EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR ANY PARTICULAR PURPOSE.

12.5 Effect of Termination of Agreement. Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 14). Such termination shall not relieve either Party from obligations accrued prior to the Termination Date or Expiration Date.

Section 13 Utility Interconnection Cost

13.1 The Parties recognize that Provider has made diligent, good faith efforts to obtain a reliable estimate of costs related to connection of the HARRF Energy to the SDG&E utility system. However, such costs are under the exclusive control of SDG&E, who may require Provider to incur costs that are substantially greater than it has estimated or budgeted. Provider has provided for the following components of Utility Interconnection Cost:

- (2) Synchronizing relays
- (2) Synchronizing breakers
- (2) Protective relays
- (2) sets of PT's and CT's

Enclosures for these components

13.2 If the requirements imposed by SDG&E, including the Utility Approvals set forth in section 3.3, cause Provider to incur costs in excess of those it has budgeted for such costs, Provider shall determine the difference between the amount it has budgeted and the anticipated cost of complying with SDG&E requirements, the "Excess Cost." Provider shall present the Excess Cost to Customer. Customer may:

- A. Reimburse Provider for the entire Excess Cost in a manner acceptable to Provider; or

B. Negotiate an increased price (as described in Section 6.1 and 6.2) to Provider's reasonable satisfaction to be paid by Customer. If the costs are excessive, the Parties shall negotiate a settlement of the project.

C. If such negotiations are not successful, Provider may terminate the project.

Section 14. Indemnification.

To the extent it may lawfully do so, Provider and Customer hereby indemnify, defend (with counsel of its choosing), and hold harmless the other party and its directors, agents, officers, employees from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from or connected with an act or omission of the indemnifying party, or the indemnifying party's agent or employee engaged in an activity with respect to the Site or the operations of services under this Agreement, including, but not limited to, liability, expense, and claims for: bodily injury, death, personal injury, or property damage caused by negligence, creation or maintenance of a dangerous condition of property, breach of express warranty of product, or intentional infliction of harm, including any workers' compensation suits, liability, or expense, arising from or connected with Services performed on behalf of the indemnifying party by any person pursuant to this Agreement; nonpayment for labor, materials, appliances, teams, or power, performed on, or furnished or contributed to the Site. Notwithstanding the above, neither the Provider nor the Customer shall be required to defend, indemnify and hold harmless the other for its own negligent acts and omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

14.1 Notice of Claims. Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 14, except to the extent that such Indemnifying Party has been prejudiced by such failure.

14.2 Defense of Action. The Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party subject to the cooperation of the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 14 applies, and the Indemnifying

Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

14.3 Survival of Provisions. The provisions of this Section 14 shall survive the expiration or termination of this Agreement.

Section 15. Confidential Information

15.1 Confidentiality Obligation. If either Party provides information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information or technical information regarding the design, operation and maintenance of the Systems, or of the other Party's business ("Confidential Information") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information except in negotiating or performing under this Agreement. Notwithstanding the foregoing, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants (collectively "Representatives"), and Affiliates, lenders, and potential assignees of this Agreement (provided that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature, and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. All Confidential Information shall remain the property of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

15.2.1 becomes publicly available other than through the receiving Party;

15.2.2 is required to be disclosed by a Governmental Authority or under Applicable Law or pursuant to a validly issued subpoena or pursuant to its legal obligations as a publicly held company, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;

15.2.3 is independently developed by the receiving Party without reference to, misappropriation of, reliance upon or use of disclosing Party's Confidential Information

15.2.4 becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 Goodwill and Publicity. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement. At no time will the Provider or Customer acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other party. Customer shall have the right to publicize that it is serving as a "host" for the System and to display photographs of the System(s) in its advertising and promotional materials; provided that any such materials identify Provider as the owner and developer of the System.. On all signage at Site, and in all publicly distributed materials and other public communications issued by either Party that refer to a System by name, such name shall be followed by a statement to the effect that Provider owns, and Provider operates, such System. Notwithstanding the foregoing and subject only to the provisions on confidential information set forth in this Section 15 of this Agreement, Provider shall have the right to publish factual information related to the System(s) on its website and through other forms of electronic media. Such information may include, but is not limited to, the location of any System, the name of the Customer, and other features of any System.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 15 by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Section 15. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 15, but shall be in addition to all other remedies available at law or in equity.

Section 16. Miscellaneous Provisions

16.1 Notices. All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the Parties to this Agreement shall designate in a written notice to the other Party:

	CUSTOMER	PROVIDER
Name	City of Escondido	Escondido Bioenergy Facility LLC
Address	201 N Broadway, Escondido, CA 92025	5780 Fleet Street, Suite 310, Carlsbad, CA 92008
Phone	(760) 839-4090	(760) 436-8870

Fax		(740) 448-6847
e-mail	cmckinney@escondido.org	operations-usa@anaergia.com

All notices sent pursuant to the terms of this Section 16.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next Business Day immediately following the Day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) Business Day following the Day sent or when actually received.

16.2 Authority.

16.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the Effective Date , no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

16.2.1 Customer Representations. Customer hereby represents and warrants that:

- (a) it is a general law city duly organized and validly existing under the Constitution and laws of the State of California.;

- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
- (d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally and may be subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and public policy, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against cities in the State of California;
- (e) there is no litigation, action, proceeding or investigation pending with service of process accomplished or notice provided that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and
- (f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it is a party or by which it or any Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

16.3 Assignment

16.3.1 Generally. Customer shall not assign this Agreement without the prior written consent of Provider and any such attempted assignment shall be void *ab initio*. Provider shall be permitted to assign this Agreement upon written notice thereof to Customer, including making an assignment in connection with financing of the System or to an entity owned in whole or in part by an Affiliate or a third party.

16.3.2 Assignment by Provider for Financing Purposes. In the event Provider assigns its rights under this Agreement as security in connection with any financing transaction entered into by Provider, Provider may mortgage or grant a security interest in this Agreement and the System, and may assign this Agreement and the System to any mortgagees or holders of security interests, including their successors or assigns, (hereinafter collectively referred to as "Secured Parties"), provided such Secured Parties agree to be bound by the terms and provisions of this Agreement. Customer agrees to execute any consent or estoppel agreement related to such financing transaction as may reasonably be required by such Secured Parties. Customer agrees to notify Provider and any Secured Parties simultaneously of any default by Provider and to give Secured Parties the same right to cure any default as Provider or to remove any property of Provider located on the Premises, if such rights are requested. Any such notices to Secured Parties shall be sent to Secured Party at the address specified in writing to Customer by Provider or any Secured Parties.

Failure by Customer to give Secured Party such notice shall not diminish Customer's rights against Provider, but shall preserve all rights of Secured Party to cure any default and to remove any property of Provider located on the Premises.

16.4 Successors and Assigns. The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

16.5 Entire Agreement. This Agreement (including all exhibits attached hereto) and the Site License Agreement represent the entire agreement between the Parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements. In the event of any conflict between the provisions of this Agreement and the provisions of the Site License Agreement, the provisions of this Agreement shall govern and control.

16.6 Amendments to Agreement. This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

16.7 Waivers; Approvals. No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

16.8 Partial Invalidity. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

16.9 Execution in Counterparts. This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

16.10 Governing Law; Jurisdiction; Forum. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, San Diego County, or the Federal Court for the Southern District of California, has subject matter jurisdiction over the dispute and

waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, *forum non conveniens* or on any other ground. Customer irrevocably consents to the service of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law. Customer further agrees that final judgment against it in any action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or outside the State of California by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of such judgment.

16.11 No Third Party Rights. This Agreement is only for the benefit of the Parties to this Agreement, their successors and permitted assigns and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

16.12 Treatment of Additional Amounts. The Parties hereto acknowledge and agree that any amounts payable by one Party to the other as a result of the payor's default (including Termination Value) shall constitute damages and not penalties. The Parties further acknowledge that in each case (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business Parties and have been represented by sophisticated and able legal and financial counsel and negotiated this Agreement at arm's length.

16.13 No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

16.14 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a "public utility" (as defined in the California Public Utilities Code or any other Applicable Law).

16.15 Sovereign Immunity. To the extent permitted by Applicable Law, Customer hereby waives any defense of sovereign immunity that Customer might otherwise have in connection with any action taken by Provider to enforce its rights against Customer under this Agreement; provided however, that Customer does not waive the provisions and procedural requirements specified under the laws of the State of California, applicable to commencing an action against Customer, which requirements differ from those provisions and requirements applicable to individuals and nongovernmental entities.

16.16 No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non- performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

16.17 Cooperation with Financing. Customer acknowledges that Provider may be financing the Services and the Systems and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of such information, (b) the giving of such certificates, and (c) providing such opinions of counsel and other matters as Provider and its financing parties may reasonably request; provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement (except for providing notices and additional cure periods to the financing parties with respect to Events of Defaults with respect to Provider as a financing party may reasonably request).

16.18 Setoff. Except as otherwise set forth herein, each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement or arising out of any other contractual arrangements between the Parties. All outstanding obligations to make and rights to receive, payment under this Agreement may be offset against each other.

16.19 Service Contract. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986.

16.20 Addition of Capacity. Subject to mutual agreement on kWh Rate and technology selection, Customer reserves the option of contracting with Provider and hereby provides a first right of refusal to Provider to allow Provider to provide additional generation capacity on substantially similar terms and conditions as are stated in this Agreement. Provider shall also be able to expand its System and to process additional Digester Gas, as may be provided by Customer.

Section 17. Estoppel

Either Party hereto, without charge, at any time and from time to time, within ten (10) Business Days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person, firm or corporation specified by such requesting party:

17.1 That this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;

17.2 Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and

conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and

17.3 Such other information as may be reasonably requested by a Party hereto. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[Signatures appear on next page]

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date set forth above.

CUSTOMER

CITY OF ESCONDIDO:

Date: _____

Sam Abed
Mayor

Date: _____

Diane Halverson
City Clerk

PROVIDER

Escondido Bioenergy Facility, LLC:

Date: _____

Signature

Title

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

JEFFREY R. EPP, City Attorney

By: _____

EXHIBIT A
GENERAL DESCRIPTION OF SITE

The area of work consists primarily of three areas:

1. Gas Conditioning Area: The areas North and West of the existing DAF equipment building

2. CHP Area: The area on and surrounding the existing concrete pad next immediately to the South of the energy recovery building.

3. Electrical Areas:
 - a. The area surrounding the existing SDG&E electrical equipment
 - b. The HARRF power building

Primary areas of work are shown in the attached drawing. Additional areas within HARRF will be required for making connections between equipment and to utilities (both existing and proposed), and other construction and staging activities.

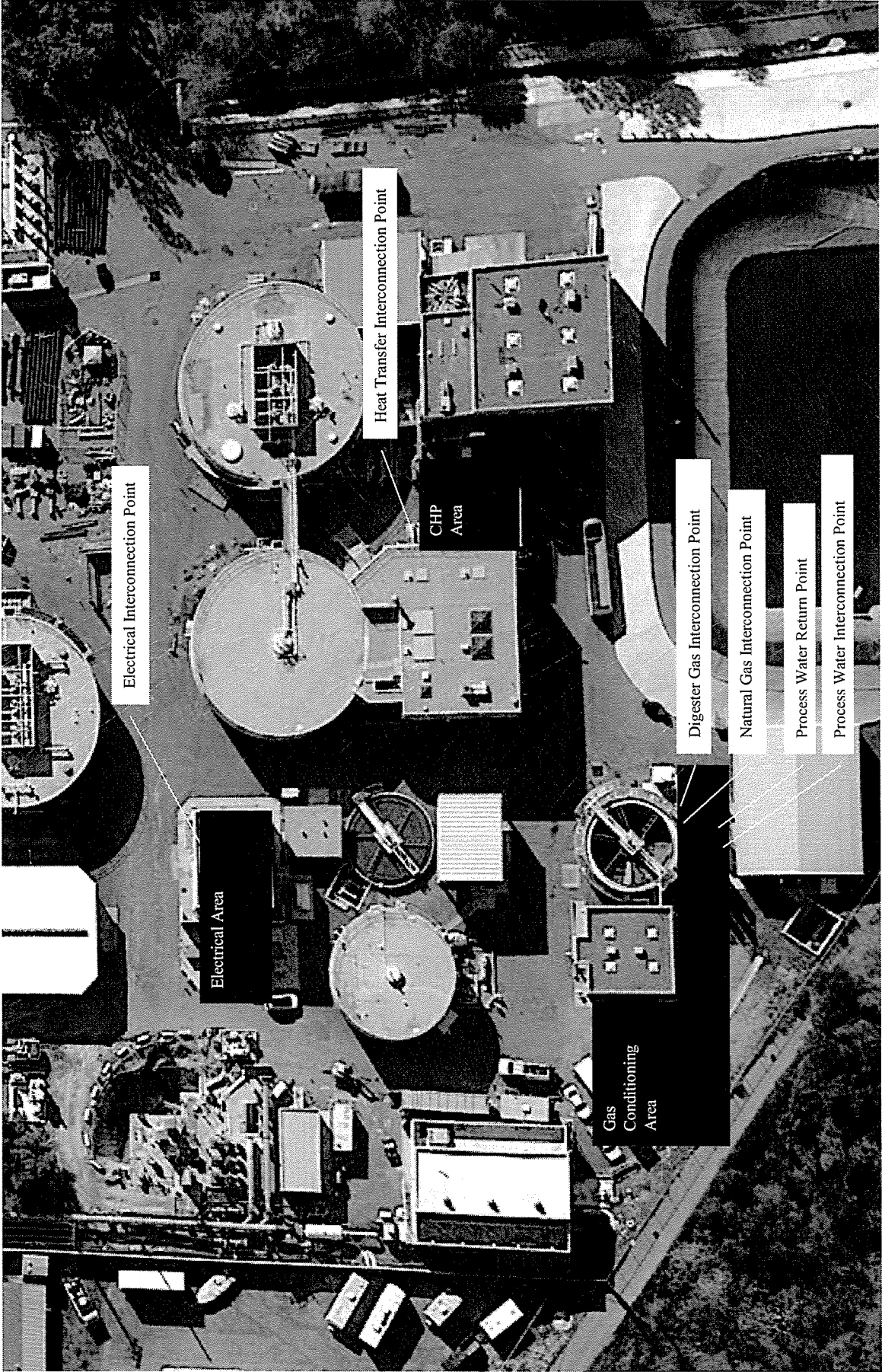


EXHIBIT B

GENERAL DESIGN AND CONSTRUCTION PROVISIONS

[For general guidance and planning purposes only; actual specifications may vary]

1. Design Phase Process

Design submittals will be handled the following way:

- (a) Provider will forward all design submittals (including two half sized copies of drawings and two sets of material and equipment selections) to Customer for review. Any comments by Customer shall be provided in the timeframe set forth in Section 3 below;
- (b) Customer and Provider will hold a kick-off workshop to capture interface points, site constraints, preferences, this includes on-site meeting with field verifications. In this meeting the Parties will also establish responsibilities, lines of communication, deliverables, schedule, permitting tasks, Agency support required, etc. Meeting minutes will be taken to document any design changes required;
- (c) The first design submittal to Customer will be a 30% design package.
- (d) The second design submittal to Customer will be a 90% design package.
- (e) Following the second set of submittals, Provider and Customer will hold a final design review workshop to verify interface points, tie-in shutdowns, materials, controls integration, communication, utilities, etc. Provider will finalize design drawings and will acquire any building and inspection permits required from the City.
- (f) Following the workshop and receipt of construction permits, Customer and Provider will agree on a final plan to mobilize and start construction.

2. Construction Phase Process

Provider and its contractors shall cooperate with Customer in all stages of the construction management process, including taking the following steps:

- (a) Attendance at a weekly construction meeting and such other meetings as are required during the construction phase. Meetings will include Customer staff and representatives from the prime contractor and Provider;
- (b) Requests for information ("RFI's") requesting Customer input or coordination will be forwarded to Customer for response, which will be given in accordance with Section 3 below.

- (c) Equipment vendors will to be on site during performance testing;
- (d) Final as-built drawings will be submitted to Customer at the end of the project.

3. Timeline for Review and Approval

- a. With respect to all reviews and approvals provided for in this Exhibit B for design phase activities, Customer comments will be returned to Provider within two weeks of receipt and Customer approval shall not be unreasonably withheld.
- b. With respect to all reviews and approvals provided for in this Exhibit B for construction phase, Customer comments will be returned to Provider within one week of receipt and Customer approval shall not be unreasonably withheld.

EXHIBIT C

GENERAL DESCRIPTION OF SYSTEMS; SPECIFICATIONS; MAINTENANCE

[For general guidance and planning purposes only; actual specifications may vary]

The facility will include the following major components

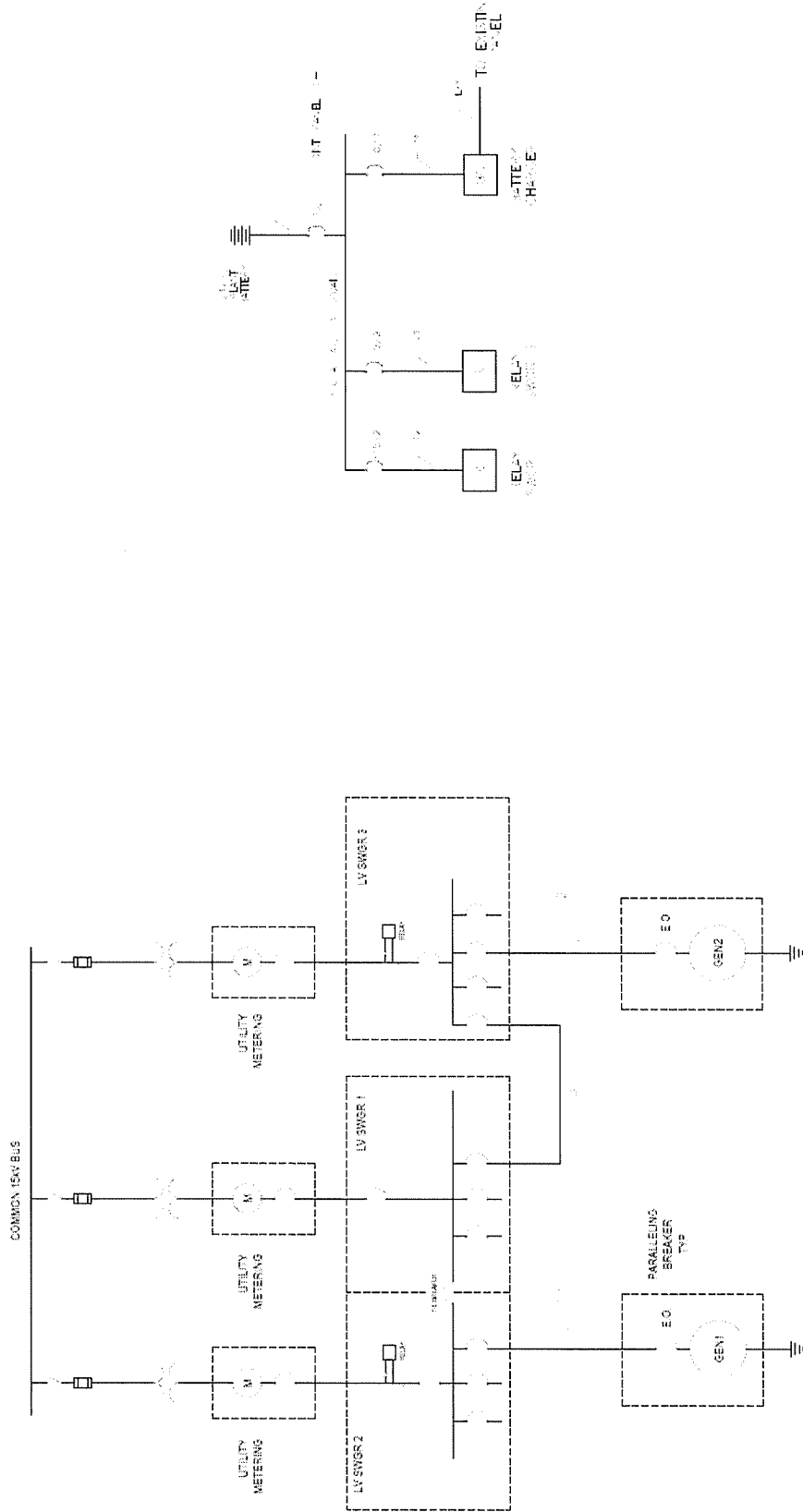
1. Cogeneration System

- a. Combined Heat and Power units (CHP)
 - i. Use of the existing concrete foundation with minor modification
 - ii. The CHP units will be installed immediately to the South of the existing energy recovery building
- b. Connection to the existing plant hot water loop at energy recovery building connection points
 - i. The CHP will recover heat. Heat exchangers will be connected to hot water supply and return piping provided by Customer.
 - ii. The existing system will function as it currently operates. No changes are expected for the existing heat loop.
- c. Electrical Interconnection
 - i. HARRF has three existing electrical services on site. Project anticipates tying into the services as shown on attached drawing E-1.
 - ii. CHP Output will be 480 V, 3 PH, 60 Hz.
 - iii. Install utility grade 480 V power meter external to CHP. Will be used for billing purposes.
 - iv. The power output to Customer will be to the existing electrical gear located in the HARRF power building.
 - v. Final electrical interconnection equipment and scope is dependent upon regulatory requirements.
 - vi. Customer shall provide power for ancillary loads.
- d. Biogas Conditioning
 - i. Provider will tie in to existing Digester Gas Interconnection Points close to the existing DAF.

- ii. Biogas conditioning equipment to compress, dry, and treat biogas will be installed as required for use by the CHP.
 - iii. Provider will install a connection to the existing flare.
 - iv. Biogas conditioning equipment and associated site improvements will be installed in the area surrounding the existing DAF equipment building.
 - v. When Customer removes existing equipment for site preparation, they will coordinate with Provider.
 - vi. Provider assumes that the existing digester gas line between the gas conditioning and CHP areas is in acceptable condition for use on the project.
- e. Data Signals
- i. View rights to select data will be made available to Customer by Provider for Customer's use during the Term.
 - ii. View rights to necessary data will be made available to Provider by Customer for Provider's use during the Term.
 - iii. Example data signals that may be required include but are not limited to: digester gas availability and production, energy consumption and demand, utility breaker status, hot water loop temperature and flow, equipment run status.

Drawings E1 and E5 are included to show the anticipated electrical approach and the general site plan for the Project.

PRELIMINARY




DATE REVISED E-1		PROJECT NAME ANMERGA SERVICES LLC	
DRAWN BY L. STEPHENSON		CLIENT NAME HARRIF COGEN FACILITY	
CHECKED BY M. BRACK		DATE 11/22/2014	
DESIGNED BY M. BRACK		PROJECT NO. 480V ONE LINE DC RELAY PROTECTION	
SCALE ---		SHEET NO. ---	
 1803 LA PLAZA AVE SUITE 200 CARLSBAD, CA 92008 PHONE (760) 937-4868 FAX (760) 937-4866		NTS	
REV	BY	DATE	DESCRIPTION
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-

EXHIBIT D
ACCEPTABLE DIGESTER GAS SPECIFICATIONS

Acceptable Digester Gas will meet the following criteria as defined in the table below.

Design Parameter	Value
Biogas Flow Rate	200-360 SCFM
Biogas Composition	
Methane	50-65%
Carbon Dioxide	30-45%
Oxygen	0-3%
Saturation	80-100%
Biogas Contaminants	
H ₂ S	200-300 ppmV 100 mg/m ₃
Siloxanes VOC's	100 mg/m ₃
Biogas Supply Temperature	85-110 °F
Biogas Supply Pressure	10-27 inWc

EXHIBIT E
TERMINATION VALUE SCHEDULE

End of Year	Termination Value
1	6,686,550
2	6,613,583
3	6,529,671
4	6,433,173
5	6,322,199
6	6,194,579
7	6,047,816
8	5,879,039
9	5,684,946
10	5,461,738
11	5,205,049
12	4,909,857
13	4,570,386
14	4,179,994
15	3,731,044
16	3,214,751
17	2,621,014
18	1,938,217
19	1,337,310
20	1,337,310

SITE LICENSE AGREEMENT

This **SITE LICENSE AGREEMENT** (this "License Agreement"), is made and effective this ____ day of _____, 2015 ("Effective Date"), by and between Escondido Bioenergy Facility, LLC a Delaware limited liability company, and its successors and assigns ("Licensee"), _____ ("Licensee"). Licensee and Licensor are sometimes individually referred to as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Licensor is the owner of certain real property in the City of Escondido California, more particularly described in Exhibit A (the "Property") which is adjacent to a public works facility owned and operated by Licensor; and

WHEREAS, Licensee is in the business of installing and operating electricity generating equipment powered by renewable energy; and

WHEREAS, subject to the terms and conditions of that certain Power Purchase Agreement dated as of _____ between Licensor and Licensee (as amended, modified and in effect from time to time, the "PPA." Licensor has engaged Licensee to install, operate and maintain a system that produces electricity and includes gas conditioning equipment, engine generators, and all ancillary components as further provided in the PPA between the Parties hereto, the "System") within a portion of the Property which may consist of multiple non-contiguous parcels and is more particularly described in Exhibit A (the "Site") for the purpose of providing electricity to Licensor;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the sufficiency of which is acknowledged by both Parties, the Parties do hereby agree as follows:

ARTICLE 1 DEFINED TERMS

Capitalized terms used but not defined herein shall have the same meanings given such terms in the PPA.

ARTICLE 2 GRANT OF LICENSE

Licensor does hereby grant to Licensee and Licensee does hereby accept from Licensor a nonexclusive, transferable License (with limited rights of sub-license, as provided herein) upon the Site in accordance with the terms and conditions set forth herein. Licensee hereby covenants to pay Licensor on or before the Commercial Operation Date as and as full consideration for this License \$10.00 (ten) dollars. Licensee may offset this amount against payments due under the PPA. If, after commencement of this License, either Party is unable to provide proof of said

payment, this License shall nevertheless remain in full force and effect pursuant to its terms. The mutual promises contained in the PPA shall be deemed to provide good and sufficient consideration therefor.

ARTICLE 3 SCOPE OF LICENSE (USE OF SITE)

(a) The scope of this License shall include, without limitation, the right to: (i) install, operate, maintain, improve and replace the System at the Site in accordance with the terms of the PPA and to run wires and conduits from the System to the electrical panel and other areas within the Property or between parts of the Site that are not contiguous, as are required or appropriate for the installation, operation, maintenance, improvement and replacement of the System, (ii) access the Site from time to time as reasonably necessary or appropriate for Licensee (including Licensee's affiliates and subcontractors, or assignees, if any) to provide Licensor with Services under the terms of the PPA, and (iii) a contractual right of access to, on, over and through the Property to access the Site, at such times and under such circumstances as are reasonable for Licensee to perform its obligations and to exercise its rights under the PPA.

(b) Licensor also grants Licensee access to existing sewer, gas, electrical, broadband internet connections and phone lines servicing the Site. Licensee shall cause appropriate metering to be installed on any such utility connections (other than broadband Internet) such that Licensee pays the cost of the use of said utilities. Licensor hereby also agrees to provide non-potable water to Licensee at no cost to Licensee.

(c) Access to the Property and the Site pursuant to the foregoing grants shall at all times be subject to compliance with (i) the reasonable policies adopted from time to time by the Licensor and provided in writing to Licensee regarding health and safety at the Property or as are necessary to provide for the safe operation of the Property and the associated Licensor facilities; and (ii) all regulatory and permitting requirements applicable to the Property and the Site.

(d) Licensee shall provide Licensor with plans and specifications for installation of the System for approval prior to commencement of work, which approval shall not be unreasonably conditioned, withheld or delayed. Licensor will maintain the Site in good condition and repair.

(e) Licensee shall have access to and use of the Site for the erection, installation, ownership, operation, maintenance, repair, replacement, improvement and removal of the System as well as for all other activities to be conducted by Licensee in connection with the performance of its obligations and exercise of its rights under the PPA. In connection therewith, Licensor may erect and maintain fencing and exercise reasonable security activities, including reasonably limiting access to the Site. Licensee will comply with all laws, ordinances, orders, rules and regulations (state, federal or local), specifically including all environmental and occupational, health and safety requirements relating to Licensee's use or occupancy of the Site and the System and the operation thereof. However, under no

circumstances shall Licensee be responsible or liable for preexisting environmental contamination.

- (f) Licensee may grant sub-licenses for the limited purposes of:
 - (i) Obtaining or securing equipment or other financing; and
 - (ii) In connection with the construction, operation or maintenance of the

System.

ARTICLE 4 TERM

(a) The term of this License Agreement shall commence on the Effective Date and shall terminate concurrently with the termination or expiration of the PPA (the "Term.") The License shall be irrevocable during the Term. Notwithstanding the foregoing, Licensor shall provide Licensee access to the Site following termination or expiration of this License Agreement according to the terms herein to the extent necessary to allow Licensee to exercise any obligation or right it may have under the PPA to remove the System from the Site as discussed in sub-section (b) below. The date on which the Term of this License ends is referred to herein as the "Expiration Date."

(b) If the System is to be removed by Licensee pursuant to the PPA, Licensee shall: (i) remove the System within the time frame set forth in the PPA; and (ii) return the Site to a good and usable condition, except for ordinary wear and tear. Notwithstanding the System's presence as personal property and not as a fixture on the Site, Licensee shall be entitled to remove the System or any part thereof and any related equipment from the Site at any time allowed by the PPA.

ARTICLE 5 INGRESS AND EGRESS

Licensor agrees to provide and maintain all roads, driveways and walkways that are now and may be located in and around the Site or on the grounds of the Property that are necessary or appropriate for proper ingress and egress to and from, and occupancy of, the Site. Licensee will observe all speed limits and other rules and regulations established by Licensor with respect to such roads and driveways existing on the Property which are used to access the Site.

ARTICLE 6 FACILITY SITE UTILITIES

Licensor shall provide certain Licensee specified utilities to the Site in connection with Licensee's construction, start-up, maintenance, repair, replacement and operation of the System. In connection therewith, Licensee's use of the Site shall include the non-exclusive appurtenant right to the use of natural gas lines, digester gas lines, water lines, sewer lines, storm water lines, power lines, fuel lines, telephone and communication lines, pipelines, conveyors and drainage ditches for the purpose of constructing, starting up, maintaining, repairing, replacing and operating the System. Licensee shall maintain and repair all utilities running from the System up

to the Interconnection Point(s) (as defined in the PPA), and Licensor shall maintain and repair all utilities, including all pipes, conduits, ducts, electric or other utilities, sinks or other apparatus through which any utility services are provided, at and from the Interconnection points through the remainder of the Property.

**ARTICLE 7
CONSTRUCTION LAYDOWN AREA**

Licensor shall provide an area within the Property, reasonable in size for the performance of Licensee's obligations under the PPA and in close proximity to the Site, for the storage and assemblage of materials to construct, erect, install, maintain, operate, repair and remove the System. Upon the completion of any activity requiring the use of such site, Licensee shall remove all remaining materials from such site and shall restore such site as nearly as is reasonably possible to the condition in which it existed immediately prior to the commencement of such activity subject to ordinary wear and tear.

**ARTICLE 8
PROPERTY RIGHTS**

Licensor acknowledges and agrees that the System is not a fixture on the Site, provided however, that notwithstanding that the System is not a fixture on the Site, Licensee is the exclusive owner or operator of the System, and that the Licensor may not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Site or the System with the fee interest of, or leasehold rights to, the Property or otherwise in a manner that would interfere with the quiet enjoyment of this License, or would prevent or impair Licensee's performance of the PPA, or increase Licensee's cost of performing the PPA in accordance with its terms. Licensor agrees that this License Agreement and the other rights established or granted in this License Agreement shall run with the Property and survive any transfer of the Property. Licensor represents and warrants to Licensee that as of the date hereof and except as provided in Exhibit B there are no matters which interfere with the rights of Licensee under this License Agreement or the PPA, including the rights of any lien holder, Licensor, or creditor. Licensor shall not suffer or permit the System to become subject to any lien or encumbrance for debt of any kind that may be owed by or demanded of Licensor.

**ARTICLE 9
QUIET ENJOYMENT**

Licensor covenants and agrees that Licensee, provided it remains in compliance with its obligations under this License Agreement, shall lawfully and quietly have, hold, occupy and enjoy the Site and the appurtenant rights thereto in accordance with the terms hereof throughout the entire term of this License Agreement free from any claim of any entity or person of superior title thereto without hindrance to, interference with or molestation of Licensee's use and enjoyment thereof, whether by Licensor or any of its agents, employees or independent contractors or by any entity, person or persons having or claiming an interest in the Site.

ARTICLE 10 PRIOR USES

In entering into this License Agreement, Licensor does not seek to make Licensee liable for any past contamination or pollution or breach of environmental laws, if any, located on or related to the Property, including the Site and the land beneath. Accordingly, Licensor agrees to assume full responsibility for (and protect, indemnify and defend Licensee against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the Property, including the Site, unless attributable to the actions of Licensee in which event, Licensee shall assume full responsibility for (and protect, indemnify and defend Licensor against) any liability or clean up obligations for any contamination, pollution or breach of environmental laws related to the Property.

ARTICLE 11 ASSIGNMENT

(a) This License Agreement and all the provisions hereof will be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This License Agreement and the rights of Licensee hereunder may be assigned by Licensee and/or Licensor concurrent with any assignment which is permitted pursuant to the PPA. Any other assignment shall require the prior written consent of the other Party.

(b) Notwithstanding the foregoing, (i) Licensor acknowledges that Licensee may finance the acquisition and installation of the System through a loan or lease from one or more finance providers and that Licensee's obligations may be secured by, among other collateral, a lien on or encumbrance of the interest established hereunder, a pledge or collateral assignment of this License Agreement, and a first priority security interest in the System. In order to facilitate any such transaction, and with respect to any finance providers of which Licensee has notified Licensor in writing (each, a "Lender" or "Licensor"), Licensor hereby consents to the lien on or encumbrance of the interest created herein, the collateral assignment by Licensee to the Lender or Licensor of Licensee's right, title and interest in and to this License Agreement and a first security interest in the System. Licensee shall be entitled to otherwise assign its right, title and interest in and to this License Agreement to an affiliate or institutional investor with notice to but without the prior written consent of Licensor.

ARTICLE 12 INSURANCE

The Licensor and Licensee shall each maintain the insurance coverage as described in Article 8 of the PPA, which insurance shall also apply to the activities to be conducted and permitted under this License Agreement.

ARTICLE 13 LIMITATION OF LIABILITY

Neither Party shall be liable to the other Party or its indemnified persons for any special, punitive, exemplary, indirect, or consequential damages, or losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with this License

Agreement, except for losses or damages arising out of (a) a Party's willful misconduct, gross negligence or fraud; or (b) a third party indemnity claim against a Party.

ARTICLE 14 OWNERSHIP OF THE SYSTEM

Licensor acknowledges that notwithstanding the System's presence as personal property on the Site and not as a fixture on the Site, Licensee is the exclusive owner of the System, the electricity generated by the System and one hundred percent (100%) of the Environmental Attributes, Environmental Financial Incentives, Rebates and Reporting Rights until such energy reaches the Electrical Interconnection Point.

ARTICLE 15 RELOCATION OF PROPERTY SUBJECT TO LICENSE

Pursuant to the PPA, the Licensor may require Licensee to relocate its activities to a different location. At a minimum, the Parties shall revise Exhibit A to reflect the new location. In addition, the Parties hereby agree, as a covenant of further assurances, that they will do all acts or things to cause the new property to become subject to this License, or a new License Agreement having terms and conditions substantially similar to the terms and conditions of this License Agreement. In such a case, once the new License Agreement has been fully executed by both Parties:

- (a) Licensee shall do any other acts or things to clear Licensor's title of the prior License; and
- (b) The provisions of Section 10, "Prior Uses," and particularly, without limitation, the indemnity contained therein, shall survive the relocation of the licensed activity and the execution of a new License Agreement by the Parties.

ARTICLE 16 MISCELLANEOUS PROVISIONS

Section 16.1 Applicable Law

This License Agreement shall be interpreted and governed by the laws of the state where the System is located, without regard to conflict of laws provisions. Any Dispute shall be resolved in accordance with the applicable provisions of the PPA.

Section 16.2 Rules of Interpretation

Titles and headings are included in this License Agreement for convenience only, and shall not be used for the purpose of construing and interpreting this License Agreement. Words in the singular also include the plural and vice versa where the context requires.

Section 16.3 Severability

In the event that any provisions of this License Agreement are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, Licensor and Licensee shall

use good faith efforts to negotiate an equitable adjustment in the provisions of this License Agreement with a view toward effecting the purposes of this License Agreement, and the validity and enforceability of the remaining provisions hereof shall not be affected thereby.

Section 16.4 Counterparts

This License Agreement may be executed in the form of counterparts, each of which shall be deemed equivalent to the original in legal effect.

Section 16.5 Entire Agreement, Amendments and Waivers

This License Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes the terms of any previous agreements or understandings, oral or written. Any waiver or amendment of this License Agreement must be in writing. Either Party's waiver of any breach or failure to enforce any of the terms of this License Agreement shall not affect or waive that Party's right to enforce any other term of this License Agreement.

Section 16.6 Further Assurances

Either Party shall execute and deliver such further instruments as may be reasonably requested by the other Party or any title company designated by a Party in order to carry out the terms of this License Agreement.

Section 16.7 Reserved

Section 16.8 Non-Disturbance Agreement

Licensor covenants that it will use its best efforts to obtain a non-disturbance contract ("NDC") from any third party who now has or may in future obtain an interest in the Site, including, without limitation, any lenders to Licensor or Licensor's landlord, which NDC shall (a) acknowledge and consent to Licensee's rights in the Site, (b) acknowledge that the third party has no interest in the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this License Agreement or the PPA; and (c) subordinates any lien the third party may have in and to the System and other property of Licensee that is or may from time to time hereafter be located at the Site.

Section 16.9 Estoppel

Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person, firm, or corporation specified by such requesting Party: (i) that this License Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this License Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and

performed, and of not, specifying the same; and (iii) such other information as may be reasonably requested by a Party hereto. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

Section 16.10 No Liens

(a) Licensor shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to any System or any interest therein. Licensor also shall pay promptly before a fine or penalty may attach to any System any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Licensor is responsible under this License Agreement or the PPA. If Licensor breaches its obligations under this Section 16.10, it shall immediately notify Licensee in writing, shall promptly cause such Lien to be discharged and released of record without cost to Licensee, and shall indemnify Licensee against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(b) Licensee shall be entitled to, and is hereby authorized to, file one or more precautionary UCC financing statements or fixture filings, as applicable, which are consistent herewith, in such jurisdictions as it deems appropriate with respect to the System in order to protect its rights in the System.

Section 16.11 Cooperation

The Parties agree to cooperate in good faith with each other in connection with the construction, ownership, operation and maintenance of the System, including, but not limited to, Licensor's reasonable assistance in ensuring that trees, vegetation, additions, or alterations to the Licensor's existing buildings or other moveable obstructions do not unreasonably interfere with the operation and maintenance of the System.

**ARTICLE 17
 NOTICES**

Except as otherwise provided in this License Agreement, or as the addressee may later specify in a written notice, all notices or other communications hereunder shall be in writing and deemed given if delivered personally or by a nationally recognized overnight delivery service, as further explained in the PPA, addressed as follows:

LICENSOR	LICENSEE:
City of Escondido	Escondido Bioenergy LLC
Director of Utilities	Attn: Arun Sharma
Christopher W. McKinney	5780 Fleet St, Carlsbad, CA 92008
201 N Broadway, Escondido, CA 92025	Phone: (760) 436-8870
Phone: (760) 839-4090	Fax: (760) 454 2887

IN WITNESS WHEREOF, Licensee and Licensor have executed this License Agreement as of the date first above written.

ESCONDIDO BIOENERGY LLC
A Delaware Limited Liability Company
Authorized to do business in California

APPROVED AS TO FORM:

Name: Arun Sharma

Escondido City Attorney

CITY OF ESCONDIDO
A municipal corporation.

By: _____
Name: Christopher W. McKinney
Title: Director of Utilities

NOTARY

SIGNATURE OF LICENSOR

EXHIBIT A

[SITE PLAN DEPICTING SITE – Attached as next Page]

EXHIBIT B

Existing Lien Holders

None.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 19

Date: July 8, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Diane Halverson, City Clerk

SUBJECT: Designation of Voting Delegate – League of California Cities Conference

RECOMMENDATION:

It is requested that Council designate a voting delegate, and up to two alternates, to represent the City of Escondido at the business meeting to be held during the League of California Cities Annual Conference, September 30 – October 2, 2015 in San Jose.

FISCAL ANALYSIS:

Costs to attend the conference are included in the City Council's Training/Meeting budget.

BACKGROUND:

At the League of California Cities annual conference, the membership considers and takes action on resolutions that establish League policy. Each member city has a right to cast one vote on matters pertaining to the League's policies if their Council has taken action to designate a voting delegate prior to September 18, 2015. Should the designated delegate be unable to serve, we may also appoint up to two alternate voting delegates.

Respectfully submitted,

Diane Halverson

Diane Halverson
City Clerk



FUTURE CITY COUNCIL AGENDA ITEMS
July 2, 2015

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

July 15, 2015
No Meeting (Summer Break)

July 22, 2015
No Meeting (Summer Break)



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

July 1, 2015

CITY TO RECEIVE FUNDS FOR REHABILITATION OF PARKS AND RECREATIONAL FACILITIES

The Department of Housing and Community Development (HCD) has announced a \$685,450 award to the City of Escondido through their 2014 Housing-Related Parks (HRP) Program. The HRP Program is an innovative program designed to reward local governments that approve housing for lower-income households and are in compliance with State housing element law with grant funds to create or rehabilitate parks and/or recreational facilities. Funds were awarded for preserving three affordable housing developments and creating 17 affordable home ownership opportunities. These funds will be focused on rehabilitation projects at several parks and community centers including: PACC, EVCC, Train Depot, Washington Park Pool & Rec Center, Jim Stone Pool, Oak Hill Activity Center.

ECONOMIC DEVELOPMENT

- As a follow up to Council direction regarding surplus parcels, Real Property developed a Request for Proposals for the El Norte Parkway surplus lots and started advertising the land for sale for residential development in April 2015. The RFP is posted on the City's web page, E-Bid Board and it has been mailed to certain developers specializing in smaller residential projects. Because of the uniqueness of the property's character (size, shape and access limitations), the market will be used to determine the property's value so an asking price was not included in the RFP. The RFP is open until an award is made. So far no offers or inquiries have been received; however, it has only been on the market for a short time. With the right amount of time and exposure, we remain optimistic that the right developer will come along with an offer to purchase the property to develop a 2-lot custom single-family home project for the site. Additionally, one of the abutting residential property owners remains interested in purchasing the property at a future date for the expansion of his backyard.
- The annual Escondido Girls Softball League Freedom Tournament will be played at Kit Carson Park from July 2nd to July 5th. They will be using all eight softball fields and two youth baseball fields to accommodate 97 teams. Teams will be traveling in from all over Southern California and Yuma Arizona. We will see 8u, 10u, 12u, and 14u youth girl divisions participating with an estimated 3,400 players and spectators in the Kit Carson Park area. The tournament will be using 10 fields in the park, all 8 softball fields and two youth baseball fields.

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

- Cute Cakes is opening their new Downtown Escondido bakery/café located at 345 West Grand Avenue on **Thursday, July 2 from 7 a.m. – 7 p.m.** For more information visit cutecakes-sd.com

RETROFIT OF GRAND AVENUE MEDIANS

In response to current drought regulations which prohibit irrigation of ornamental turf in medians, the Public Works Department will be completing a water-wise retrofit of medians on Grand Avenue in downtown Escondido. Irrigation will be retrofitted to improve efficiency and reduce water use. The ornamental turf will be replaced with drought tolerant plantings.

SPECIAL EVENTS

- Escondido's 52nd annual July 4th celebration & fireworks display in Grape Day Park is back this year with an exciting line-up featuring fun for the whole family! This exciting event celebrates our community's patriotic heritage and shares the love of our great nation with all of Escondido. Enjoy a variety of free entertainment beginning at 4 p.m. with a presentation by the American Legion followed by; *Jimmy & Enrique* at the Main Stage (4:45p.m.), *Mrs. Jones' Revenge* at the Main Stage (5:45 p.m.), *Morgan Leigh Band* at the Main Stage (6:45 p.m.), 1st Marine Division Band in concert at the Main Stage (8:05 p.m.), fireworks display by Fireworks America (approx. 9 p.m.). From 4 to 7 p.m. The Escondido History Center will be open and there will be projects for children of all ages. A variety of refreshments will be available for purchase. This event is generously sponsored by the City of Escondido and the California Center for the Arts, Escondido.

Please note: BBQs, alcohol, pets and tall chairs/canopies should not be brought to the park.

- For information about activities taking place in Escondido, please visit www.visitescondido.com

COMMUNITY DEVELOPMENT

Planning:

- The County Assessor's Office has released information regarding assessed valuation (gross) for taxable properties (see attached). The City's total assessed value is up 4.82% compared to the prior year, compared to the County average of 5.62%.
- An application has been submitted for a three-story, 75,825 SF medical office building within the ERTC Specific Plan Area, located on a 9.1 acre site addressed as 2130 Citracado Parkway. The property owner (JRM-ERTC, ILP) has also submitted an

City Manager's WEEKLY UPDATE to City Council

application for an extension of time of the ERTC development agreement which would otherwise expire at the end of the year.

- The California Department of Toxic Substances Control (DTSC) is soliciting comments on a Draft Cleanup Response Plan for the Oak Creek Project. Comments are due July 30th. A public workshop is scheduled for July 9th (see attached flyer).
- New State legislation (AB 52) becomes effective on July 1st regarding tribal notification and consultation procedures for development projects which are undergoing CEQA review pursuant to a negative declaration or EIR. The legislation is intended to provide early notification and opportunity for consultation regarding impacts to tribal cultural resources and mitigation. Three tribal bands have recently requested notification pursuant to AB 52. While this notification process will be incorporated into review procedures for all new applications, the process may result in a delay to some pending projects which have not yet been released for review of the CEQA document.
- Major Projects Update:
 - Oak Creek (NUW) – The applicants are in discussion with the Army Corps of Engineers regarding permit requirements for mitigation of wetland impacts. LAFCO staff has recommended that the proposed annexation boundary be expanded to include a roadway segment of Hamilton Lane between Bernardo and Felicita Avenues. This road segment does not meet City standards. Staff has sent a letter to LAFCO providing justification to support City's staff's recommendation to eliminate the proposed expansion of the annexation boundary. LAFCO anticipates comments from the County addressing this issue. A LAFCO hearing date has not yet been scheduled. Staff met with the developer to discuss the permit submittal and plan check process, particularly regarding their timing expectations in anticipation of the new storm water requirements.
 - Amanda Estates (NUW) – The applicant has submitted a certified tentative map for review, and has provided information to LAFCO staff addressing the additional information requested to process the Amanda Estates annexation and the associated annexation for the "Disadvantaged Unincorporated Community" (DUC) properties. No further action is anticipated for the DUC annexation. A LAFCO hearing date has not yet been scheduled. Staff has met with the developers regarding their expectations and timing of submittals in anticipation of the new storm water requirements.
 - Centerpointe 78 Commercial – Staff is reviewing sections of the screen check EIR as they become available. The EIR traffic consultant has identified alternative traffic mitigation measures for consideration by staff and the applicant, to address significant traffic impacts.
 - North Broadway Deficiency Area Projects – Staff continues to coordinate with the various development teams regarding the design of infrastructure improvements and

City Manager's WEEKLY UPDATE to City Council

has taken a proactive approach with County staff on review of required improvements within the unincorporated area. Street improvement plans for Lehner Ave. are being prioritized to allow construction to occur this summer while school is not in session. A grading permit has been issued for Lennar's "Pradera" project and building permit applications for the model homes are under review. A variance application has been submitted to resolve setback issues relating to the location of the perimeter walls. Staff and the applicant are coordinating with the San Diego County Water Authority which has raised concerns regarding the construction of the waterline improvements (required by the development agreement) within the SDCWA easement on Conway. The Zenner annexation application is under review by LAFCO. The applicant indicates they do not anticipate pulling grading permits this year in advance of the new storm water requirements.

- Kaen Planned Development (2516 S. Escondido Blvd.) – Revised plans were submitted on June 4th. The redesign eliminates 3 units (total number of units is now 65 units) to provide improved emergency access and provide additional opportunity for landscaping along the long entry drive. Refinements are needed for the Water Quality Technical Report and other site features affected by the redesign. A letter addressing items needed to complete the application for processing has been sent.
- Wohlford – A letter has been sent for the proposed 55-unit residential subdivision and planned development at 661 Bear Valley Parkway advising the applicant that the application is incomplete and identifying the necessary submittals to continue processing the application. The applicant is coordinating with staff regarding a Specific Alignment Plan for Bear Valley Parkway and is conducting technical studies. The applicant indicates their preference to prepare an EIR; this determination will be made upon submittal of the complete application and review of the technical studies. The applicant has offered to prepare a draft Request for Proposals for preparation of an EIR, to help expedite the EIR consultant selection process.
- Latitude II – The applicant continues to negotiate with the owners of adjacent properties regarding several issues that affect their proposed site plan, parking and sewer improvements. An alternative site plan has been provided to demonstrate a feasible plan if the negotiations regarding the motel sign along CCP are not successful. However, the proposed plan relies upon the relinquishment and/or relocation of access and sewer easements across the property's southeast perimeter to construct the proposed project; these private party negotiations are still underway. A revised Water Quality Technical Report has been submitted. The applicant recognizes that these issues must be resolved prior to issuance of any grading permits or final map. The draft Mitigated Negative Declaration was released for a 20-day public review period ending July 20th in anticipation of a Planning Commission hearing tentatively scheduled for July 28th.
- Shea Homes has submitted a revised map for substantial conformance review and determination for the 179-lot residential subdivision known as Hidden Valley Ranch (Tract 923). Revisions to the Water Quality Technical Report and documentation from Vista Irrigation District (VID) concurring with the proposed relocation of the water line are needed to make this determination. A revised plan for the internal park

City Manager's WEEKLY UPDATE to City Council

acreage is under review, with specific amenities to be review as part of a future Precise Plan submittal; the applicant is exploring mechanisms to address setback issues anticipated on 9 lots where the proposed units do not meet setback requirements of the planned development. Staff has sent a letter confirming discussions held with the developer regarding the schedule and timeline for submittals needed for issuance of grading permits. Rough grading plan submittal is anticipated by July 7th.

- Concordia Homes submitted a draft Specific Plan and tentative subdivision map for the Safari Highlands project for conceptual review prior to their formal application submittal. The project includes annexation and Sphere of Influence update for the 1,098 acres site and a subdivision to create 550 residential lots in seven neighborhoods, with lot sizes ranging from 7,663 SF to 4.76 acres. The applicant has deposited initial funds for a consultant agreement authorizing an extension of Planning staff to manage the project review; discussions regarding similar staff assistance for Engineering staff is underway. Staff met with LAFCO regarding submittal requirements and study area for a Sphere of Influence Update and Municipal Services Review.
- Felicita Development, LLC has submitted a Planned Development application for the vacant 6.9 acre property at the southeast corner of Felicita Rd. and Gamble Lane. The proposed project includes the phased development of a 140-unit hotel, an 80-unit extended stay hotel, a 120-bed assisted living facility and a gas station and car wash. Additional technical analysis and coordination is needed to address traffic, biology, water and sewer service, geotechnical and storm water concerns, along with a market study for the proposed uses. A letter addressing items and technical studies needed to complete the application has been sent.
- Revised plans submitted for EDI's proposed CUP expansion of the existing Materials Recovery Facility (MRF) are under review. The draft Mitigated Negative Declaration was released on June 24th for a 30-day public review period ending July 23rd. The project is tentatively scheduled for Planning Commission hearing on August 11th.

Building Division:

- The Building Division issued 60 permits for the week with a total valuation of \$550,350.
- 22 photovoltaic permits were issued for the week. Building has issued 537 permits so far this year compared to 269 issued at the same time last year.
- Inspections and counter contacts remain steady with inspections averaging 32 per day with 33 on Friday and counter contacts averaging 33 per day with 24 on Friday.

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

- The 76 unit apartments on 2412 S. Escondido Blvd have received underground plumbing and foundation inspections on the first of 3 buildings.
- The tenant improvement at 649 W. Mission Ave for the County Health and Human Services offices has received a Temporary Certificate of Occupancy.
- The Black Angus restaurant at the North County Mall has received foundation inspection approval and is now in the process of framing the building.

Code Enforcement:

- As of June 29th, the total number of open code enforcement case is 330 cases, with a backlog of an additional 38 cases not yet opened for assignment and investigation. During the prior week, 73 new cases were opened, 96 cases were closed and a total of 75 signs were removed. Staff processed 2 public records requests (PRR) last week, bringing the year-to-date total to 75 requests. Recruitment is underway for one full-time and three part-time vacant officer positions to assist with the backlog.
- Last week the Business License Division received 40 new applications and 171 renewals, and issued 29 new licenses.

CAPITAL IMPROVEMENTS

Eucalyptus Avenue Traffic Calming

At its April 11th meeting, the Transportation and Community Safety Commission (TCSC) selected Eucalyptus Avenue for study of possible traffic calming measures. While the project was ranked 7th using adopted scoring criteria, the Commission elevated the project based on testimony received from residents of the area. Staff has sent out a letter to residents with homes fronting the proposed traffic calming area and has received mixed feedback with some residents supporting traffic calming and others opposed. The feedback will be summarized and testimony will be received by the TCSC at their meeting on July 9th prior to deciding if and what type of traffic calming is appropriate for this area.

FY 2014-2015 Street Rehabilitation Project:

June 29, 2015 through July 3, 2015 the striping subcontractor is placing the remaining legends and roadway signs throughout the project limits.

Private Development

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

The contractor has paved the base section of asphalt on the new Bear Valley Parkway between Birch Avenue and Viewmont Drive. The temporary striping on Idaho Avenue has

City Manager's WEEKLY UPDATE to City Council

been replaced in anticipation of reopening the intersection for east bound traffic later this week. The wall contractor is continuing to stack block for the new retaining wall at Boyle Avenue at Bear Valley Parkway.

2412 South Escondido Boulevard:

The construction of the new onsite water main had to start the water quality testing over again. The contractor failed to secure all points of access to the new system and a subcontractor released the pressure from the main resulting in a test failure. The developer has requested to haul off excess soil remaining on site to his future Latitude II project site. Staff has notified the developer that excess can be hauled off to any site that has environmental clearance and a grading plan, such as the Pradera project; however, the Latitude II project does not meet these conditions which would allow placement of fill.

Pradera - Lennar Communities: The demolition of existing structures is ongoing. The permit and traffic control plans for the import operation has been approved. The grading contractor is actively grading phase 1 and 2 of the project.

Recycling

Under the direction of Stormwater and Recycling's "We Clean Escondido" program, a volunteer group from Rancho Escondido Mobile Home park has been established to remove litter from the flood channel adjacent to their homes. On Saturday, June 13th, with just 5 volunteers, they removed 29 bags of trash from the area! This is an excellent example of teamwork between the Utilities Stormwater division and the Public Works Recycling division:

PUBLIC SAFETY

Police

Incidents:

- On 06-23-15, a resident in the 400 block of W. Washington Ave woke up in the middle of the night to noises inside his residence and his dog was barking. Upon further investigation, the resident discovered that he had just been burglarized. Officers responded and located one of the suspects nearby. Through the investigation, the second suspect was identified and later located at a nearby location a short time later. Both suspects were arrested on burglary charges.
- On 06-24-15, officers were responding to a License Plate Reader hit on a stolen vehicle when they observed it in the area of El Norte Pkwy and Rose St. The vehicle was stopped and both occupants were detained without incident. Officers located numerous burglary tools in the car.
- On 06-24-15, officers observed a vehicle that they believed to be associated with the homicide that occurred on Gamble St. earlier this month. The vehicle fled from the officers and the suspects eventually abandoned their vehicle near Oak Hill St and San

City Manager's WEEKLY UPDATE to City Council

Pasqual Valley Rd. The three occupants attempted to flee on foot. The driver got away, but his identity is known. The two passengers were apprehended, one of which was involved in the homicide. All three suspects from the homicide are now in custody.

- On 06-25-15, an unknown suspect broke the window to Pegah's (Westside Café) and stole the cash register. The loss was approximately \$200 in cash. There is possibly video of the burglary and a suspect vehicle description was provided.
- On 06-26-15, an EPD officer observed smoke from the area of Iris Lane and Morningside Glen. As units responded to the area, police dispatch started receiving reports of a vehicle fire in the area. Det. Rodelo was nearby and arrived on scene within moments. He found the vehicle fully engulfed in fire and a male subject lying on the ground just a few feet from the vehicle. The male subject had suffered a stroke and could not walk on his own. Det. Rodelo was able to move the subject to safety away from the vehicle. The fire department responded and put out the vehicle fire. The male subject's boot was singed by the fire, but he was otherwise unharmed by the fire. He was treated for the stroke.
- On 06-26-15, officers responded to a residence in the 1700 block of S. Juniper St regarding a male who had just hung himself. The male teenager was found in the garage and was pronounced dead at the scene. He had a mental health history and had previous attempts at hanging himself.
- On 06-28-15, an adult male victim was approached by two unknown male suspects in the Flood Control Channel near Auto Park Way. The suspects beat the victim until he lost consciousness. When the victim came to, he realized that he had been robbed of his watch and a utility multi-tool. The suspects have not been identified or located at this time.

Events

- On 06-24-15, Patrol Squad 2B conducted a special detail focusing on transient activity. During the detail, the officers made 5 arrests (3 for warrants and 2 for drug possession), issued 3 citations, and removed 11 shopping carts from the street.
- On 06-26-15, Patrol Squad 4A conducted a juvenile curfew sweep in conjunction with the Juvenile Diversion Program. During the detail, 15 juveniles were taken into custody, 12 were referred into the Diversion Program, 14 were released to their parents, and 1 was booked into Juvenile Hall.
- On 06-27-15, a DUI checkpoint was conducted at Centre City Pkwy and Decatur Way. During the event, 1,236 vehicles drove through the checkpoint, 835 vehicles were screened in primary, 52 vehicles were sent to secondary (drivers who could not provide a driver's license or who were suspected of DUI), 3 Field Sobriety Tests were administered resulting in 1 DUI arrest, 32 citations were issued (8 for suspended license, 15 for unlicensed, and 1 for no insurance), and 11 vehicles were impounded.
- NTP Board Members attended a second meeting at Charter High School in an attempt to generate more interest for the East Valley Business Association. Fourteen additional

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

business owners attended the meeting and committed to being involved in future meetings.

- EPD welcomes our latest new hire, Bernice Castillo, who is filling one of our Police/Fire Dispatcher vacancies. Bernice is an experienced dispatcher who previously worked for the San Diego Police Department as a dispatcher.
- The North County San Diego Division of the California Highway Patrol recently moved into their new facility near the Vista Courthouse. They had previously operated out of the Oceanside facility for many decades.
- A nineteen year old man was sentenced to four years in state prison on a felony DUI conviction from earlier this year. He was involved in a major injury DUI collision that occurred at 2nd Ave and Broadway, which left one his passengers paralyzed from the chest down. This was a significant conviction and was successfully prosecuted by the San Diego District Attorney's office special vertical prosecution unit that was formed to handle fatal and major injury DUI collisions.

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