

Council Meeting Agenda

October 17, 2012

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	Marie Waldron
COUNCIL MEMBERS	Olga Diaz Ed Gallo Michael Morasco
CITY MANAGER	Clay Phillips
CITY CLERK	Diane Halverson
CITY ATTORNEY	Jeffrey Epp
DIRECTOR OF COMMUNITY DEVELOPMENT	Barbara Redlitz
DIRECTOR OF ENGINEERING SERVICES	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

**October 17, 2012
3:30 p.m. Meeting**

Escondido City Council

CALL TO ORDER

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

ORAL COMMUNICATIONS

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

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

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

Property: 240 S. Broadway
Agency Negotiators: Debra Lundy, Real Property Manager
Negotiating parties: La Paz Funeral Homes
Under negotiation: Price and terms of payment

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

Property: 2120 Harmony Grove
Agency Negotiators: Debra Lundy, Real Property Manager
Negotiating parties: Networking Cabling, Inc.
Under negotiation: Price and terms of payment

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

Property: E. Felicita Road (APN 238-102-41 and 45)
Agency Negotiators: Debra Lundy, Real Property Manager
Negotiating parties: Thomas F. Seymour, et al.
Under negotiation: Price and Terms of acquisition

ADJOURNMENT



Council Meeting Agenda

**October 17, 2012
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, Morasco, Waldron, Abed

ORAL COMMUNICATIONS

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COUNCIL MEMBERS' REPORTS/BRIEFING

CONSENT CALENDAR

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

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/CDC/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/CDC)**
3. **APPROVAL OF MINUTES: None Scheduled**
4. **ASSET FORFEITURE FUND BUDGET ADJUSTMENT** – Request Council authorize staff to establish a budget adjustment in the amount of \$78,470 with Asset Forfeiture Funds to purchase equipment and services for law enforcement purposes.

Staff Recommendation: Approval (**Police Department: Cory Moles**)

5. **READOPTION OF CONFLICT OF INTEREST CODE FOR THE CITY OF ESCONDIDO** – Recommend Council readopt the Conflict of Interest Code for the City of Escondido and update the disclosure categories for designated positions pursuant to the Political Reform Act.

Staff Recommendation: Approval (**City Attorney's Office: Jennifer McCain**)

RESOLUTION NO. 2012-174

6. **ADOPTION OF FAIR POLITICAL PRACTICES COMMISSION (FPPC) FORM 806/AGENCY REPORT OF PUBLIC OFFICIAL APPOINTMENTS** – Recommend Council adopt FPPC Form 806/Agency Report of Public Official Appointments and authorize the City Manager (or his designee) to verify and post FPPC Form 806 on the City's website and amend as needed.

Staff Recommendation: Approval (**City Attorney's Office: Jennifer K. McCain**)

RESOLUTION NO. 2012-155

7. **ADOPTION OF TICKET DISTRIBUTION POLICY** – Request Council adopt a ticket distribution policy pursuant to the Political Reform Act.

Staff Recommendation: Approval (**City Attorney's Office: Jennifer K. McCain**)

RESOLUTION NO. 2012-176

CONSENT CALENDAR CONTINUED

8. **LAKE WOHLFORD DAM REPLACEMENT CONSTRUCTION MANAGEMENT CONSULTING AGREEMENT AND BUDGET ADJUSTMENT** – Request Council authorize the Mayor and City Clerk to execute a Consulting Agreement with RBF Consulting, Inc. for the Lake Wohlford Dam Replacement Construction Management in the amount of \$2,458,516; and approve a budget adjustment in the amount of \$1,250,000.

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

RESOLUTION NO. 2012-167

9. **BID AWARD FOR THE INFLUENT PUMP STATION PROJECT** – Request Council authorize the Mayor and City Clerk to execute an agreement with TC Construction Company, Inc. in the amount of \$8,169,500 for the Influent Pump Station (IPS) Project.

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

RESOLUTION NO. 2012-171

10. **ADOPTION OF MITIGATED NEGATIVE DECLARATION FOR THE CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT (ENV 10-0004)** – Request Council adopt a Mitigated Negative Declaration for the Cemetery Area Water Pipeline Replacement Project. The proposed project will replace aging water transmission and distribution infrastructure, increase water delivery capacity and pressure to the project area, maintain a reliable water supply and distribution system; as well as install infrastructure to accommodate future delivery of recycled water.

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

RESOLUTION NO. 2012-158

11. **LEASE AGREEMENT WITH LA PAZ FUNERAL HOME, INC. AT 240 SOUTH BROADWAY AND BUDGET ADJUSTMENT** – Request Council authorize the Real Property Manager and City Clerk to execute a Lease Agreement with La Paz Funeral Home Inc. at 240 South Broadway; and request Council approve an increase to the General Fund Revenue for the Fiscal Year 2012/2013 in the amount of \$7,000 and an increase to the Engineering Professional Services Budget to pay for broker's fees in the amount of \$1,320.

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

RESOLUTION NO. 2012-166

CONSENT CALENDAR CONTINUED

- 12. CONSULTING AGREEMENT WITH BUREAU VERITAS NORTH AMERICA INC. AND BUDGET ADJUSTMENT FOR FINAL DESIGN OF THE EAST VALLEY PARKWAY/VALLEY CENTER ROAD WIDENING PROJECT** – Request Council authorize the Mayor and City Clerk to execute a Consulting Agreement between the City of Escondido and Bureau Veritas North America Inc. in the amount of \$675,713 to complete the final design to widen the remaining segment of East Valley Parkway/Valley Center Road from Beven Drive to County of San Diego improvements north of Lake Wohlford Road; and approve a budget adjustment to fully fund the project design and anticipated staff time.

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

RESOLUTION NO. 2012-163

- 13. LEASE AGREEMENT WITH NETWORK CABLING, INC. AT 2120 HARMONY GROVE ROAD** – Request Council authorize the Real Property Manager and City Clerk to execute a Lease Agreement with Network Cabling at 2120 Harmony Grove Road.

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

RESOLUTION NO. 2012-165

- 14. FIRST AMENDMENT TO LEASE AGREEMENT WITH KOOCHEN VAGNER'S BREWING COMPANY DBA: STONE BREWING COMPANY at 2120 HARMONY GROVE ROAD** – Request Council authorize the Real Property Manager and City Clerk to execute a First Amendment to Lease Agreement with Stone Brewery at 2120 Harmony Grove Road.

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

RESOLUTION NO. 2012-164

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.)

- 15. ORDINANCE AMENDING CHAPTER 12 OF THE ESCONDIDO MUNICIPAL CODE REGARDING MOBILE FOOD FACILITIES (CASE NO. AZ 12-0005)** – Approved on October 3, 2012 with a vote of 5/0.

ORDINANCE NO. 2012-18 (Adoption and Second Reading)

CURRENT BUSINESS

16. **CALPERS CONTRACT AMENDMENT-MISCELLANEOUS EMPLOYEES** – Request Council adopt the resolution of intent and first reading of the CalPERS Contract Amendment for Miscellaneous Employees: Section 20475, Different Levels of Benefits – 2% @ 60; and Section 20037 – Three Year Final Compensation.

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

- a. RESOLUTION NO. 2012-175
- b. ORDINANCE NO. 2012-20 (Introduction and First Reading)

PUBLIC HEARINGS

17. **AMENDMENT TO THE INTERIM DOWNTOWN SPECIFIC PLAN (PHG 12-0016)** – Request Council approve amending the Interim Downtown Specific Plan text involving a number of actions in various districts: 1) permitting restaurants to have outdoor food cooking, 2) modifying the matrix of permitted and conditional uses regarding primary and secondary educational facilities, general retail home furnishings, hardware/home improvement, food and liquor sales, wine and beer tasting and miscellaneous government operations, 3) refining standards for special events, outdoor dining and the outdoor display and sale of merchandise, 4) simplifying and clarifying development and application standards with regard to design review procedures, and 5) performing other minor text and graphic edits as appropriate.

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

RESOLUTION NO. 2012-161

18. **BICYCLE FACILITIES MASTER PLAN (PHG 12-0018)** – Request Council approve the Bicycle Facilities Master Plan.

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

RESOLUTION NO. 2012-162

19. **GREENCREST MOBILEHOME PARK SHORT-FORM RENT INCREASE APPLICATION** - Request Council consider the short-form rent increase application submitted by Greencrest Mobilehome Park, and if approved, grant an increase of seventy-five percent (75%) of the change in the Consumer Price Index, or 1.244% (an average increase of \$5.16), for the period of June 30, 2011 to June 30, 2012. The application meets the eligibility criteria for submittal of a short-form rent increase application.

Staff Recommendation: Approval (**Community Services/Housing: Jerry Van Leeuwen**)

RESOLUTION RRB NO. 2012-11

FUTURE AGENDA

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

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

ORAL COMMUNICATIONS

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ADJOURNMENT

UPCOMING MEETING SCHEDULE				
Date	Day	Time	Meeting Type	Location
October 24	-	-	No Meeting	-
October 31	-	-	No Meeting	-
November 7	-	-	No Meeting	-
November 14	Wednesday	3:30 & 4:30 pm	Council Meeting	Council Chambers
November 21	-	-	No Meeting	-

TO ADDRESS THE COUNCIL

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

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 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-Thursday 7:30 a.m. to 5:30 p.m.**



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

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

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 4
Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Cory Moles, Acting Chief of Police

SUBJECT: Asset Forfeiture Fund Budget Adjustment

RECOMMENDATION:

It is requested that Council authorize staff to establish a budget in the amount of \$78,470 with Asset Forfeiture Funds to purchase equipment and services for law enforcement purposes.

FISCAL ANALYSIS:

The Asset Forfeiture Fund will be reduced by \$78,470 leaving an available fund balance of \$102,579.

PREVIOUS ACTION:

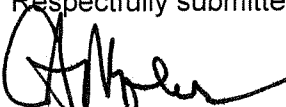
City Council approved an Asset Forfeiture budget adjustment on April 18, 2012 to fund police equipment.

BACKGROUND:

A percent of assets seized by officers during local operations are allocated to the City from the U.S. Department of Justice. Funds may be used for law enforcement equipment, services or training, but they may not be used to supplant items in the City's Operating Budget. Consistent with regulations, the Police Department requests your approval to set up a budget in the amount of \$78,470 for the following purchases:

Item	Cost	Purpose
Ballistic Helmets (25)	\$ 5,000	Officer Safety Equipment Needed for Mobile Field Force Unit
Bar Code Printers (6)	\$ 2,800	Replacement Printers Used to Print Property and Evidence Bar Codes
Bar Code Software	\$ 500	Software Upgrade for Obsolete Property and Evidence Barcode System
Freezer	\$ 5,400	Replacement Freezer for Property and Evidence Storage
Laptops (4)	\$ 17,050	Replacement Mobile Laptop Computers Used in Vehicles
Leads on Line Enhancements	\$ 1,700	Software Program Enhancement for Tracking Recycled Scrap Metal
Mapping Software	\$ 38,500	Software Program for District Policing and Crime Reduction
Refrigerator	\$ 4,500	Replacement for Property and Evidence Storage
Signature Pad	\$ 500	Back-up Electronic Signature Pad for Property and Evidence System
Stanchions	\$ 570	Temporary Barriers for Equipment and Front Counter Privacy
Trail Cameras (3)	\$ 450	Cameras Used for Field Surveillance
Trunk Locks	\$ 1,500	Vehicle Locks Used to Secure Weapons
	<u>\$ 78,470</u>	

Respectfully submitted,



Cory Moles
Acting Chief of Police



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: October 9, 2012
 Department: Police
 Division: Administration
 Project/Budget Manager: Susan Cervenka 4402
 Name Extension
 Council Date (if applicable): October 17, 2012
 (attach copy of staff report)

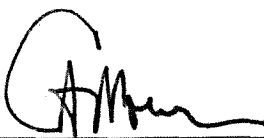
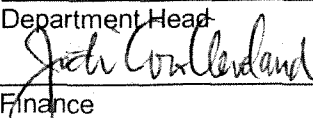
For Finance Use Only	
Log #	_____
Fiscal Year	_____
_____	Budget Balances
_____	General Fund Accts
_____	Revenue
_____	Interfund Transfers
_____	Fund Balance

Project/Account Description	Account Number	Amount of Increase	Amount of Decrease
Asset Forfeiture Fund Balance	3050-114-000		\$78,470
Professional Services	5131-114-500	\$1,000	
Safety Equipment	5105-114-500	\$16,920	
Software	5193-114-500	\$2,200	
Minor Office Equipment	5194-114-500	\$19,850	
Other Capital Outlay-Software	5207-114-500	\$38,500	

Explanation of Request:

A budget adjustment is needed to spend Asset Forfeiture Funds for software and equipment to support law enforcement operations.

APPROVALS

 _____ Date 10/9/12
 Department Head _____ Date
 _____ Date 10/9/12
 Finance _____ Date
 _____ Date
 City Manager _____ Date
 _____ Date
 City Clerk _____ Date

Distribution (after approval): Original: Finance



CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 5
Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Jennifer K. McCain, Assistant City Attorney
SUBJECT: Readoption of Conflict of Interest Code for the City of Escondido

RECOMMENDATION:

It is recommended that the City Council adopt Resolution No. 2012-174 readopting the Conflict of Interest Code for the City of Escondido and updating the disclosure categories for designated positions pursuant to the Political Reform Act.

FISCAL ANALYSIS:

None.

GENERAL PLAN ANALYSIS:

N/A.

PREVIOUS ACTION:

The City, the Escondido Community Development Commission (CDC), and the Escondido Joint Powers Financing Authority (EJPFA) have previously adopted Conflict of Interest Codes pursuant to the requirements of the Political Reform Act. On May 23, 2012, the City Council repealed the CDC's Conflict of Interest Code and updated the list of designated positions by adopting Resolutions Nos. 2012-78 and 2012-76.

BACKGROUND:

The City of Escondido and its agencies are subject to the requirements of the Political Reform Act (California Government Code § 81000, *et seq.*) and its regulations governing conflicts of interest. Government Code § 87200 specifically lists officials who are statutorily required to file a statement of economic interest. These officials include Councilmembers, City Manager, City Attorney, City Treasurer, Planning Commissioners, and City Officials and Employees Who Manage Public Investments. In addition to these statutory filing requirements, the Political Reform Act requires the City of Escondido and its agencies to adopt and promulgate a Conflict of Interest Code which includes disclosure categories and a list of designated public employees and elected and appointed officials who must comply with the requirements of the Conflict of Interest Code.

The City, CDC and EJPFA have previously adopted Conflict of Interest Codes pursuant to the requirements of the Political Reform Act. The Political Reform Act requires each local government agency to review its Conflict of Interest Codes biennially to determine whether the Codes must be amended.

The City's biennial review was expedited this year due to the passage of Assembly Bill 1X 26 which dissolved redevelopment agencies. On May 23, 2012, the City repealed the CDC's Conflict of Interest Code and updated the list of positions subject to the City's Code by adopting Resolution Nos. 2012-78 and 2012-76. The amendments were necessary to reflect the most current listing of City positions and to add the newly created Oversight Board.

Due to many changes in the law since the City's Code was originally adopted in 1994, it is necessary to readopt the City's Code to fully incorporate FPPC Regulation §18730, which sets forth the legal requirements for local Conflict of Interest Codes. It is also necessary to amend the disclosure categories to include loans, gifts, and travel payments as reportable sources of income in accordance with the recent changes made to FPPC Regulation §18730 and to provide for limited disclosure for newly created positions and consultants.

With regard to newly created positions and consultants, effective January 1, 2010, FPPC Regulation §18734 requires an individual hired as a consultant, or hired for a position *not yet covered* under the City's Conflict of Interest Code, to file a Form 700 if the individual serves in a position that makes or participates in making governmental decisions. These individuals must file under the broadest disclosure category until the City's Conflict of Interest Code is amended to include the new position¹. The only exception to this broad filing category is if the City provides, in writing, a limited disclosure requirement. The FPPC created Forms 804 (New Positions) and 805 (Consultants) to provide a uniform means to document obligations of the positions and provide a limited disclosure requirement.

Whenever a new position or a consultant is determined to have the decision-making authority described above, the City Manager or his designee must complete Form 804 or 805 if the broadest disclosure category is unnecessary for the position's limited range of duties. Forms 804 and 805 are public records and must be retained for the public's inspection in the same manner and location as the City's Conflict of Interest Code. The Conflict of Interest Code has been updated to comply with these new procedures.

Red-lined versions of the City's Conflict of Interest Code as well as FPPC Forms 804 and 805 are attached for your review.

¹ The City typically only amends its Code every other year as required by the Political Reform Act.

City of Escondido Conflict of Interest Code
October 17, 2012
Page 3

No changes are necessary at this time to the Conflict of Interest Code for the EJPFA. Based on the above, it is recommended that the City Council readopt the City's Conflict of Interest Code by approving Resolution No. 2012-174.

Respectfully submitted,



JENNIFER K. MCCAIN
Assistant City Attorney

Attachment: Red-lined Conflict of Interest Code
Red-lined List of Designated Positions Required to File Form 700
FPPC Form 804
FPPC Form 805

CITY OF ESCONDIDO
CONFLICT OF INTEREST CODE
EXHIBIT "A"

§ 18730. Provisions of Conflict-of-Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict-of-interest code within the meaning of Section 87300 or the amendment of a conflict-of-interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict-of-interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict-of-interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict-of-interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict-of-interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on ~~financial-economic~~ **financial-economic** interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their ~~financial-economic~~ **financial-economic** interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq. [†]

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict-of-interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those ~~financial~~**economic** interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the ~~financial~~**economic** interests set forth in a designated employee's disclosure categories are the kinds of ~~financial~~**economic** interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict-of-interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

¹ Designated employees who are required to file statements of economic interests under any other agency's conflict-of-interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

² See ~~Government Code~~ Section 81010 and ~~2-Cal. Code of Regs.~~ **Regulation** 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign ~~30 Days After Appointment~~ **Prior to Assuming Office.**

Any ~~Persons~~ who resigns **within 12 months of initial appointment, or** within 30 days of ~~initial appointment~~ **the date of notice provided by the filing officer to file an assuming office statement, is** ~~are~~ not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later-, **or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.**

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds ~~one thousand dollars (\$1,000)~~ **\$2,000**, exceeds ~~ten thousand dollars (\$10,000)~~, or exceeds ~~one hundred thousand dollars (\$100,000)~~, or exceeds **\$1,000,000**.

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating ~~two hundred fifty dollars (\$250)~~ **\$500** or more in value, or ~~fifty dollars (\$50)~~ or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was ~~one thousand dollars (\$1,000)~~ or

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than ~~\$1,000~~ **\$2,000** are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵ A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

less, greater than ~~one thousand dollars (\$1,000)~~, or greater than ~~ten thousand dollars (\$10,000)~~; **or greater than \$100,000;**

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan **and the term of the loan.**

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ~~ten thousand dollars (\$10,000)~~.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$440.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$440 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall

not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.
4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.
2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

- 1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.**
- 2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:**
 - a. The date the loan was made.**
 - b. The date the last payment of \$100 or more was made on the loan.**
 - c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.**

(B) This section shall not apply to the following types of loans:

- 1. A loan made to the campaign committee of an elected officer or a candidate for elective office.**
- 2. A loan that would otherwise not be a gift as defined in this title.**
- 3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.**
- 4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.**
- 5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.**

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

~~(8) Section 8~~ **(9) Section 9.** Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth ~~one thousand dollars (\$1,000)~~ **\$2,000** or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth ~~one thousand dollars (\$1,000)~~ **\$2,000** or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating ~~two hundred fifty dollars (\$250)~~ **\$500** or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating ~~\$250~~ **\$440** or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

~~(8.3) Section 8.3~~ **(9.3) Section 9.3.** Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

~~(8.5) Section 8.5~~ **(9.5) Section 9.5.** Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

~~(9) Section 9~~ **(10) Section 10.** ~~Manner of Disqualification~~ **Disclosure of Disqualifying Interest.**

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest. ~~In the case of a voting body, this determination and disclosure shall be made part of the agency's official record; in the case of a~~

~~designated employee who is the head of an agency, this determination and disclosure shall be made in writing to his or her appointing authority; and in the case of other designated employees, this determination and disclosure shall be made in writing to the designated employee's supervisor.~~

~~(10) Section 10~~ **(11) Section 11.** Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 **and Regulations 18329 and 18329.5** or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

~~(11) Section 11~~ **(12) Section 12.** Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

Note: Authority cited: Section 83112, Government Code. Reference: Sections **87103(e)**, 87300-87302, **89501, 89502 and 89503**, Government Code.

HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14). Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).
7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).
9. **Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).**
10. **Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).**
11. **Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.**
12. **Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).**

13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).
16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
19. Editorial correction of subsection (a) (Register 98, No. 47).
20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).
21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).
22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).
24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).
25. Editorial correction of History 24 (Register 2003, No. 12).
26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).
27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).
28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).
29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to Fair Political Practices

Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

- 30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).**
- 31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).**

**This database is current through 6/15/12 Register 2012, No. 24
2 CCR § 18730, 2 CA ADC § 18730**

**CITY OF ESCONDIDO
CONFLICT OF INTEREST CODE
EXHIBIT "B"**

List of Designated Positions Required to File Form 700

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
CITY ATTORNEY'S OFFICE	
Assistant City Attorney	2, 4, 6
Assistant City Attorney/Litigation	2, 4, 6
Senior Deputy City Attorney	2, 4, 6
Deputy City Attorney	2, 4, 6
CITY CLERK	
City Clerk	2, 4, 6
Assistant City Clerk	2, 4, 6
CITY MANAGER'S OFFICE	
Assistant City Manager	2, 4, 6
Deputy City Manager	2, 4, 6
Assistant to the City Manager	2, 4, 6
Management Analyst	6
COMMUNITY DEVELOPMENT	
Director of Community Development	2, 3, 4, 6
Assistant Planning Director	2, 3, 4, 6
Senior Planner	2, 3, 4, 6
Associate Planner	2, 3, 4, 6
Principal Planner	2, 3, 4, 6
Building Official	2, 3, 4, 6
Deputy Building Official	2, 3, 4, 6
Code Enforcement Manager	2, 3, 4, 6
Economic Development Manager	6
Management Analyst	6

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
HOUSING AND NEIGHBORHOOD SERVICES	
Neighborhood Services Manager	2, 3, 4, 6
Management Analyst	6
COMMUNITY SERVICES	
Director of Community Services	2, 3, 4, 6
Assistant Director of Community Services	2, 3, 4, 6
Deputy Director of Maintenance and Operations	2, 3, 4, 6
Streets and Parks Maintenance Superintendent	3, 6
Building Maintenance Superintendent	3, 6
Fleet Maintenance Superintendent	3, 6
Recreation Superintendent	2, 3, 4, 6
City Librarian	3, 6
Deputy City Librarian	3, 6
Older Adult Services Manager	7
Program Administrator	7
ENGINEERING	
Director of Engineering Services	2, 3, 4, 6
Deputy Director of Engineering Services	2, 3, 4, 6
Assistant City Engineer	2, 3, 4, 6
Design and Construction Project Manager	2, 3, 4, 6
Principal Engineer	3, 4, 7
Real Property Manager	2, 3, 4, 6
Parks and Open Space Administrator	3, 6
UTILITIES	
Director of Utilities	2, 3, 4, 6
Deputy Director of Utilities/Construction & Maintenance	2, 3, 4, 6

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
Deputy Director of Utilities/Wastewater	2, 3, 4, 6
Deputy Director of Utilities/Water	2, 3, 4, 6
Utilities Construction Project Manager	2, 3, 4, 6
Canal Superintendent	3, 6
Wastewater Treatment Plant Superintendent	3, 6
Water Distribution Superintendent	3, 6
Water Treatment Plant Superintendent	3, 6
Utilities Maintenance Superintendent	3, 6
Lakes and Open Space Superintendent	3, 6
Laboratory Superintendent	3, 6
Environmental Programs Manager	3, 6
Utilities Analyst	6
Environmental Program Manager/Utilities	6
FINANCE*	
Finance Manager	6
Investment Officer	6
Revenue Manager	6
Collections Officer	6
Purchasing Supervisor	6
FIRE DEPARTMENT	
Fire Chief	2, 3, 4, 6
Deputy Fire Chief	2, 3, 4, 6
Fire Division Chief	3, 7
Fire Battalion Chief	3, 7
Assistant Fire Chief	3, 7
Fire Marshall	3, 7

* Officials Who Manage Public Investment:

It has been determined that the following positions manage public investments and will file a statement of economic interests pursuant to Government Code §87000: Investment Officer, Director of Financial & Administrative Services, Finance Director.

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
Deputy Fire Marshall	3, 7
Fire Administrative Services Manager	6
Emergency Medical Services Coordinator	6
HUMAN RESOURCES	
Human Resources Director	6, 7
Human Resources Manager	6, 7
Benefits and Workers' Compensation Manager	6, 7
Risk and Safety Manager	6, 7
Safety Administrator	6, 7
Senior Human Resources Analyst	6, 7
INFORMATION SYSTEMS	
Director of Information Systems	6
Applications Development Manager	6
Network/Office Automation Manager	6
Geographic Information Systems Manager	6
Public Safety Systems Manager	6
POLICE DEPARTMENT	
Chief of Police	2, 3, 6
Assistant Chief of Police	2, 3, 6
Police Captain	2, 3, 6
Police Services Bureau Manager	2, 3, 6
Senior Crime Analyst	6
Police Services Analyst	6
BOARDS AND COMMISSIONS	
Building Advisory and Appeals Board	3, 7
Environmental Advisory Commission	3, 7
Historic Preservation Commission	3, 7
Investment Committee	2, 4, 6
Library Board of Trustees	3, 7

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
Personnel Board of Review	3, 7
Public Art Commission	3, 7
Community and Older Adult Services Commission	3, 7
Transportation and Community Safety Commission	3, 7
Oversight Board to the Successor Agency to the Escondido Redevelopment Agency	3, 6
CONSULTANTS	
Consultants	1

Designated Employees are those positions within this city who may exercise independent judgment and make or participate in the making of governmental decisions which may foreseeably have a material effect on any financial interest.

Persons in newly-created positions shall file under the broadest disclosure category in the agency's conflict-of-interest code until the agency amends its code to reflect the position. However, the City Manager or his designee may determine in writing that the broadest disclosure is not necessary and set interim disclosure that is more tailored to positions with a limited range of duties. In accordance with 2 Cal. Code of Regs. §18734, such written determination shall include a description of the newly-created position's duties and, based upon that description, a statement of the extent of disclosure requirements. Alternatively, the City Manager or his designee may complete Form 804, which satisfies the requirements of §18734. The City Manager or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

Consultant means an individual who, pursuant to a contract with a state or local government agency:

- (A) makes a governmental decision whether to
- (1) approve a rate, rule or regulation;
 - (2) adopt or enforce a law;
 - (3) issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order or similar authorization or entitlement;
 - (4) authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
 - (5) grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
 - (6) grant agency approval to a plan, design, report, study, or similar item;

- (7) adopt, or grant agency approval of policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) serves in a staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

The City Manager or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. **In accordance with 2 Cal. Code of Regs. §18734,** such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. **Alternatively, the City Manager or his designee may complete Form 805, which satisfies the requirements of §18734.** The City Manager or his designee's determination is a public record and shall be retained for public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

Disclosure Categories

General Provisions – The Political Reform Act, Govt. Code §81000, *et seq.*, requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. §18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the above list in which members and employees are designated and disclosure categories are set forth, constitute the conflict of interest code of the City of Escondido.

Pursuant to §4 of the standard code, designated employees shall file statements of economic interests with the agency. Upon receipt of the statements of the City of Escondido, the agency shall make and retain a copy and forward the original of these statements to the Escondido City Clerk. Statements for all other designated employees will be retained by the agency.

Disclosure Categories –

Category 1: All investments, **business positions**, and sources of income (**including loans, gifts,** and travel payments**) from sources located or doing business in the **City of Escondido; All interests in real property located in the City of Escondido or within two miles of any land owned or used by the City of Escondido;**

Category 2: ~~All investments~~**interests in real property located in the City of Escondido;**

Category 3: All investments, interests in real property and sources of income (**including loans, gifts,** and travel payments**) subject to the regulatory, permit or licensing authority of the City of Escondido;

Category 4: Investments in business entities and sources of income (**including loans, gifts,** and travel payments**) which engage in land development, construction or the acquisition or sale of real property;

Category 5: All interests in real property located within two miles of any land owned or used by the City of Escondido;-

Category 6: Investments in business entities and sources of income (**including loans, gifts,** and travel payments**) of the type which, within the past two years, have contracted

with the City of Escondido to provide services, supplies, materials, machinery, or equipment;-

Category 7: Investments in business entities and sources of income **(including loans, gifts,** and travel payments)** of the type which, within the past two years, have contracted with the designated employee's department or board or commission, to provide services, supplies, materials, machinery or equipment.

**** Gifts with a value of less than \$50 aggregate per year from a single source are not reportable financial interests and gifts with a value of more than \$420 aggregate per year from a single source are prohibited.**

**Agency Report of:
New Positions**

A Public Document

**California
Form 804**

1. Agency Name (Also include, Division, Department, or Region (if applicable))		<input type="checkbox"/> Amendment
Agency Contact (Last Name, First Name, Title)		Date of Original Filing: _____ (month, day, year)
Area Code/Phone Number	E-mail	

2. New Position Information

Position Title/Classification and Job Summary	Assigned Category	OR	Disclosure Requirement	Assuming/Start Date (Optional)
				Start <u> </u> / <u> </u> / <u> </u> d / m / yr
				Start <u> </u> / <u> </u> / <u> </u> d / m / yr
				Start <u> </u> / <u> </u> / <u> </u> d / m / yr
				Start <u> </u> / <u> </u> / <u> </u> d / m / yr
				Start <u> </u> / <u> </u> / <u> </u> d / m / yr
				Start <u> </u> / <u> </u> / <u> </u> d / m / yr
				Start <u> </u> / <u> </u> / <u> </u> d / m / yr

3. Verification

I have read and understand FPPC Regulations 18701 and 18734. I have verified that the disclosure assignment(s) set forth above, is in accordance with its provisions.

Signature	Print Name	Title	(month, day, year)
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Comment: (Use this space or an attachment for any additional information.)

**Agency Report of:
New Positions**

A Public Document

State and local government agencies may use this form to identify new positions that will make or participate in making governmental decisions on behalf of the agency. An individual in a newly created position must file a Statement of Economic Interests (Form 700) within 30 days of assuming office.

This form identifies the Statement of Economic Interests, Form 700, disclosure requirements for individuals serving in new positions. This form is for the agency's internal use and should be maintained by the agency in the same manner as the agency's conflict-of-interest code. For more information, refer to the FPPC website www.fppc.ca.gov and Regulations 18701-18702.4 and Regulation 18734.

Disclosure Requirements

- Disclosure requirements should conform to the range of duties.
- Alternatively, the agency must require an individual to file under the broadest disclosure category in the agency's conflict-of-interest code or, if the agency does not have a conflict-of-interest code, full disclosure.

Full disclosure includes reporting all investments, business positions, and interests in real property held on the date of assuming office and income received during the 12 months immediately preceding assuming office.

When a new position is added, in addition to completing this form, the agency should begin the process to amend the conflict-of-interest code.

Examples:

An agency added a new data processing manager position. The individual will be assigned the same disclosure category that the agency's other IT staff are assigned.

An agency implemented a new licensing program and a new manager position was added. Because this was a new program, the agency provided a written description of the individual's disclosure requirements which included sources subject to the licensing procedures.

An agency reorganized and changed the duties of several positions listed in the conflict-of-interest code. This form is not required as positions are not new. The agency should begin to amend its conflict-of-interest code if the range of authority and types of decisions changed.

An agency changed the titles but not the duties and responsibilities of several positions. This form is not required. The agency must file an amendment to update the conflict-of-interest code.

Instructions

Part 1

Identify the agency, contact information, and provide the amendment explanation in the comment section when applicable.

Part 2

Identify the new position(s) and describe the position's duties. Identify the disclosure by:

- Assigning an existing category(s) in the agency's code, or
- Writing a disclosure requirement.

Complete if the agency knows the employment date.

Part 3

The agency's conflict-of-interest code should identify the position that is responsible for the verification.

Example

Agency Report of:
New Positions

A Public Document **California Form 804**

1. Agency Name (Also, Division, Department, or Region if applicable) Amendment
CA Joint Powers Authority Date of Original Filing: _____ (month, day, year)

Agency Contact (Last Name, First Name, Title)
Smith, Adam Executive Director

Area Code/Phone Number E-mail
555-555-5555 adam.smith@cjpa.ca.gov

2. New Position Information

Position Title/Classification and Job Summary	Assigned Category	OR	Disclosure Requirement	Assuming Start Date (Optional)
Data Processing Manager (manages IT Dept)	3			Start <u>3</u> / <u>3</u> / <u>XX</u> a / m / yr
Licensing Director (duty statement attached)			All investments, business positions in business entities, and sources	Start <u>3</u> / <u>8</u> / <u>XX</u> a / m / yr
			of income, including gifts, loans, and travel payments, from entities	Start <u> </u> / <u> </u> / <u> </u> a / m / yr
			that are of the type subject to licensing by the Department or are subject to regulation by the Department.	Start <u> </u> / <u> </u> / <u> </u> a / m / yr
			(Alternately, attach a written explanation.)	Start <u> </u> / <u> </u> / <u> </u> a / m / yr
				Start <u> </u> / <u> </u> / <u> </u> a / m / yr

3. Verification

I have read and understand FPPC Regulations 18701 and 18734. I have verified that the disclosure assignment(s) set forth above, is in accordance with its provisions.

Adam Smith Signature Adam Smith First Name Executive Director Title 3-10-XX (month, day, year)

Comment: (Use this space or an attachment for any additional information.)

**Agency Report of:
Consultants**

A Public Document

California Form 805

1. Agency Name (Also include, Division, Department, or Region (if applicable))		<input type="checkbox"/> Amendment Date of Original Filing: _____ <small>(month, day, year)</small>
Agency Contact (Name, Title)		
Area Code/Phone Number	E-mail	

2. Firm Information

Firm Name _____

Firm Address	E-mail (optional)	E-mail (optional)
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Describe General Purpose of Contract

3. Consultant Information

Consultant Name (Last, First)	Assigned Category	OR	Disclosure Requirement	Assuming/Start Date Leaving/End Date (if known)
				Start ___/___/___ d / m / yr End ___/___/___ d / m / yr
				Start ___/___/___ d / m / yr End ___/___/___ d / m / yr
				Start ___/___/___ d / m / yr End ___/___/___ d / m / yr

4. Verification

I have read and understand FPPC Regulations 18701 and 18734. I have verified that the disclosure assignment(s) set forth above, is in accordance with its provisions.

Signature	Print Name	Title	(month, day, year)
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Comment: (Use this space or an attachment for any additional information.)

A Public Document

State and local government agencies may use this form to identify consultants that will make or participate in making governmental decisions on behalf of the agency. A consultant must file a Statement of Economic Interests (Form 700) within 30 days of assuming office.

This form identifies the Statement of Economic Interests, Form 700, disclosure requirements for individuals serving in these positions. This form is for the agency's internal use and should be maintained by the agency in the same manner as the agency's conflict-of-interest code. For more information, refer to the FPPC website www.fppc.ca.gov and Regulation 18701 and 18734.

Disclosure Requirements

- Disclosure requirements should conform to the range of duties.
- Alternatively, the agency must require an individual to file under the broadest disclosure category in the agency's conflict-of-interest code or, if the agency does not have a conflict-of-interest code, full disclosure.

Full disclosure includes reporting all investments, business positions, and interests in real property held on the date of assuming office and income received during the 12 months immediately preceding assuming office.

Examples:

An agency hired a law firm to act as its general counsel. An individual will make recommendations to the agency's board and provide general legal services. The individual qualifies as a consultant and based on the indefinable duties will be assigned the broadest or full disclosure under the agency's conflict-of-interest code.

Not all outside contractors meet the consultant definition in FPPC Regulation 18701 requiring of the Form 700. When an agency determines that an individual is a consultant with limited duties, tailored disclosure should be used.

An agency hired a firm to prepare an environmental impact report ("EIR") on airport expansion. The individual at the firm who will prepare the EIR should be assigned a disclosure requirement that reflects the contract's scope of authority. An example might include real property, investments and business positions in business entities, and income from only those sources engaging in air traffic or aviation goods or services. Note: The agency can assign an existing disclosure category, if applicable.

Instructions

An individual must file the Form 700 within 30 days of assuming office and an annual statement for each calendar year of the contract. At the conclusion of services a leaving office statement is required.

Part 1

Identify the agency, contact information, and provide the amendment explanation in the comment section when applicable.

Part 2

Identify the consultant's firm name and address. Briefly describe the general purpose of the contract.

Part 3

Identify the name of those individuals that qualify as consultants and will file the Form 700. Identify the disclosure by:

- Assigning an existing category(s) in the agency's code, or
- Writing a disclosure requirement.

Provide the start and end dates of service if known.

Part 4

The Agency's conflict-of-interest code should identify the position that is responsible for the verification.

Example of Part 2 & 3

2. Firm Name

ABC Company		
Firm Address	E-mail (optional)	E-mail (optional)
1010 Capital St., Sacramento, CA 95814	abcco@company.com	
Describe General Purpose of Contract		
Prepare an EIR on airport expansion.		

3. Consultant Information

Consultant Name (Last, First)	Assigned Category	OR	Disclosure Requirement	Assuming/Start Date Leaving/End Date (If known)
Hector Rodriguez	3			Start <u>7</u> / <u>7</u> / <u>XX</u> d / m / yr End <u>12</u> / <u>12</u> / <u>XX</u> d / m / yr

RESOLUTION NO. 2012-174

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
READOPTING THE CITY'S CONFLICT OF
INTEREST CODE PURSUANT TO THE
POLITICAL REFORM ACT

WHEREAS, the City of Escondido is a local government agency subject to the requirements of the Political Reform Act (California Government Code § 81000, *et seq.*) and its regulations governing conflicts of interest; and

WHEREAS, the Political Reform Act requires every agency, including the City of Escondido, to adopt and promulgate a conflict of interest code, adopt disclosure categories, and designate those public employees and elected and appointed officials who must comply with the requirements of the Code; and

WHEREAS, on July 9, 1980, the City originally adopted the Fair Political Practices Commission's standard model conflict of interest code by Resolution No. 80-141, and has continued to maintain such a code in effect, together with disclosure categories and a list of those positions subject to the requirements of the conflict of interest code; and

WHEREAS, on September 28, 1994, the City Council readopted a conflict of interest code as required by the Political Reform Act, and amended and updated the disclosure categories and list of positions subject to the requirements of the Code; and

WHEREAS, the Political Reform Act requires every local government agency to review its conflict of interest code biennially to determine whether the Code must be amended; and

WHEREAS, on May 23, 2012, the City amended and updated the list of positions subject to the requirements of the conflict of interest code; and

WHEREAS, upon further review, the City desires to readopt a conflict of interest code as required by the Political Reform Act, and amend and update the disclosure categories and the list of positions subject to the requirements of the conflict of interest code;

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 terms of California Code of Regulations § 18730 and any amendments to this section which are duly adopted by the Fair Political Practices Commission are hereby adopted as the conflict of interest code for the City of Escondido. A copy of the California Code of Regulations Section 18730 is attached and incorporated by this reference as Exhibit "A."
3. That the disclosure categories and the designation of employees and elected and appointed officials subject to the requirements of this conflict of interest code are attached and incorporated by this reference as Exhibit "B."
4. That this resolution supersedes all previous resolutions of the City of Escondido, which adopt or amend a conflict of interest code, disclosure categories or designate employees and elected and appointed officials who are subject to a conflict of interest code.

CITY OF ESCONDIDO
CONFLICT OF INTEREST CODE
EXHIBIT "A"

§ 18730. Provisions of Conflict-of-Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict-of-interest code within the meaning of Section 87300 or the amendment of a conflict-of-interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict-of-interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict-of-interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict-of-interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict-of-interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict-of-interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict-of-interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

¹ Designated employees who are required to file statements of economic interests under any other agency's conflict-of-interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

² See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;
3. A description of the consideration, if any, for which the income was received;
4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;
2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than \$10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

⁵ A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$440.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$440 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected

officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.
4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.
2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

- a. The date the loan was made.
- b. The date the last payment of \$100 or more was made on the loan.
- c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.
2. A loan that would otherwise not be a gift as defined in this title.
3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.
4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.
5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$440 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

**CITY OF ESCONDIDO
CONFLICT OF INTEREST CODE
EXHIBIT "B"**

List of Designated Positions Required to File Form 700

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
CITY ATTORNEY'S OFFICE	
Assistant City Attorney	2, 4, 6
Assistant City Attorney/Litigation	2, 4, 6
Senior Deputy City Attorney	2, 4, 6
Deputy City Attorney	2, 4, 6
CITY CLERK	
City Clerk	2, 4, 6
Assistant City Clerk	2, 4, 6
CITY MANAGER'S OFFICE	
Assistant City Manager	2, 4, 6
Deputy City Manager	2, 4, 6
Assistant to the City Manager	2, 4, 6
Management Analyst	6
COMMUNITY DEVELOPMENT	
Director of Community Development	2, 3, 4, 6
Assistant Planning Director	2, 3, 4, 6
Senior Planner	2, 3, 4, 6
Associate Planner	2, 3, 4, 6
Principal Planner	2, 3, 4, 6
Building Official	2, 3, 4, 6
Deputy Building Official	2, 3, 4, 6
Code Enforcement Manager	2, 3, 4, 6
Economic Development Manager	6
Management Analyst	6

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
HOUSING AND NEIGHBORHOOD SERVICES	
Neighborhood Services Manager	2, 3, 4, 6
Management Analyst	6
COMMUNITY SERVICES	
Director of Community Services	2, 3, 4, 6
Assistant Director of Community Services	2, 3, 4, 6
Deputy Director of Maintenance and Operations	2, 3, 4, 6
Streets and Parks Maintenance Superintendent	3, 6
Building Maintenance Superintendent	3, 6
Fleet Maintenance Superintendent	3, 6
Recreation Superintendent	2, 3, 4, 6
City Librarian	3, 6
Deputy City Librarian	3, 6
Older Adult Services Manager	7
Program Administrator	7
ENGINEERING	
Director of Engineering Services	2, 3, 4, 6
Deputy Director of Engineering Services	2, 3, 4, 6
Assistant City Engineer	2, 3, 4, 6
Design and Construction Project Manager	2, 3, 4, 6
Principal Engineer	3, 4, 7
Real Property Manager	2, 3, 4, 6
Parks and Open Space Administrator	3, 6
UTILITIES	
Director of Utilities	2, 3, 4, 6
Deputy Director of Utilities/Construction & Maintenance	2, 3, 4, 6

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
Deputy Director of Utilities/Wastewater	2, 3, 4, 6
Deputy Director of Utilities/Water	2, 3, 4, 6
Utilities Construction Project Manager	2, 3, 4, 6
Canal Superintendent	3, 6
Wastewater Treatment Plant Superintendent	3, 6
Water Distribution Superintendent	3, 6
Water Treatment Plant Superintendent	3, 6
Utilities Maintenance Superintendent	3, 6
Lakes and Open Space Superintendent	3, 6
Laboratory Superintendent	3, 6
Environmental Programs Manager	3, 6
Utilities Analyst	6
Environmental Program Manager/Utilities	6
FINANCE*	
Finance Manager	6
Investment Officer	6
Revenue Manager	6
Collections Officer	6
Purchasing Supervisor	6
FIRE DEPARTMENT	
Fire Chief	2, 3, 4, 6
Deputy Fire Chief	2, 3, 4, 6
Fire Division Chief	3, 7
Fire Battalion Chief	3, 7
Assistant Fire Chief	3, 7

* Officials Who Manage Public Investment:

It has been determined that the following positions manage public investments and will file a statement of economic interests pursuant to Government Code §87000: Investment Officer, Director of Financial & Administrative Services, Finance Director.

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
Fire Marshall	3, 7
Deputy Fire Marshall	3, 7
Fire Administrative Services Manager	6
Emergency Medical Services Coordinator	6
HUMAN RESOURCES	
Human Resources Director	6
Human Resources Manager	6
Benefits and Workers' Compensation Manager	6
Risk and Safety Manager	6
Safety Administrator	6
Senior Human Resources Analyst	6
INFORMATION SYSTEMS	
Director of Information Systems	6
Applications Development Manager	6
Network/Office Automation Manager	6
Geographic Information Systems Manager	6
Public Safety Systems Manager	6
POLICE DEPARTMENT	
Chief of Police	2, 3, 6
Assistant Chief of Police	2, 3, 6
Police Captain	2, 3, 6
Police Services Bureau Manager	2, 3, 6
Senior Crime Analyst	6
Police Services Analyst	6
BOARDS AND COMMISSIONS	
Building Advisory and Appeals Board	3, 7
Environmental Advisory Commission	3, 7
Historic Preservation Commission	3, 7

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
Investment Committee	2, 4, 6
Library Board of Trustees	3, 7
Personnel Board of Review	3, 7
Public Art Commission	3, 7
Community and Older Adult Services Commission	3, 7
Transportation and Community Safety Commission	3, 7
Oversight Board to the Successor Agency to the Escondido Redevelopment Agency	3, 6
CONSULTANTS	
Consultants	1

Designated Employees are those positions within this city who may exercise independent judgment and make or participate in the making of governmental decisions which may foreseeably have a material effect on any financial interest.

Persons in newly-created positions shall file under the broadest disclosure category in the agency's conflict-of-interest code until the agency amends its code to reflect the position. However, the City Manager or his designee may determine in writing that the broadest disclosure is not necessary and set interim disclosure that is more tailored to positions with a limited range of duties. In accordance with 2 Cal. Code of Regs. §18734, such written determination shall include a description of the newly-created position's duties and, based upon that description, a statement of the extent of disclosure requirements. Alternatively, the City Manager or his designee may complete Form 804, which satisfies the requirements of §18734. The City Manager or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

Consultant means an individual who, pursuant to a contract with a state or local government agency:

- (A) makes a governmental decision whether to
 - (1) approve a rate, rule or regulation;
 - (2) adopt or enforce a law;
 - (3) issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order or similar authorization or entitlement;
 - (4) authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;

- (5) grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
- (6) grant agency approval to a plan, design, report, study, or similar item;
- (7) adopt, or grant agency approval of policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) serves in a staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

The City Manager or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. In accordance with 2 Cal. Code of Regs. §18734, such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. Alternatively, the City Manager or his designee may complete Form 805, which satisfies the requirements of §18734. The City Manager or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

Disclosure Categories

General Provisions – The Political Reform Act, Govt. Code §81000, *et seq.*, requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. §18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the above list in which members and employees are designated and disclosure categories are set forth, constitute the conflict of interest code of the City of Escondido.

Pursuant to §4 of the standard code, designated employees shall file statements of economic interests with the agency. Upon receipt of the statements of the City of Escondido, the agency shall make and retain a copy and forward the original of these statements to the Escondido City Clerk. Statements for all other designated employees will be retained by the agency.

Disclosure Categories –

- Category 1: All investments, business positions, and sources of income (including loans, gifts,** and travel payments) from sources located or doing business in the City of Escondido; All interests in real property located in the City of Escondido or within two miles of any land owned or used by the City of Escondido;
- Category 2: All interests in real property located in the City of Escondido;
- Category 3: All investments, interests in real property and sources of income (including loans, gifts,** and travel payments) subject to the regulatory, permit or licensing authority of the City of Escondido;
- Category 4: Investments in business entities and sources of income (including loans, gifts,** and travel payments) which engage in land development, construction or the acquisition or sale of real property;

Category 5: All interests in real property located within two miles of any land owned or used by the City of Escondido;

Category 6: Investments in business entities and sources of income (including loans, gifts,** and travel payments) of the type which, within the past two years, have contracted with the City of Escondido to provide services, supplies, materials, machinery, or equipment;

Category 7: Investments in business entities and sources of income (including loans, gifts,** and travel payments) of the type which, within the past two years, have contracted with the designated employee's department or board or commission, to provide services, supplies, materials, machinery or equipment.

** Gifts with a value of less than \$50 aggregate per year from a single source are not reportable financial interests and gifts with a value of more than \$420 aggregate per year from a single source are prohibited.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 6
Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Jennifer K. McCain, Assistant City Attorney

SUBJECT: Adoption of Fair Political Practices Commission (FPPC) Form 806/Agency Report of Public Official Appointments

RECOMMENDATION:

It is recommended that Council adopt Resolution No. 2012-155 adopting FPPC Form 806/Agency Report of Public Official Appointments and authorizing the City Manager (or his designee) to verify and post FPPC Form 806 on the City's website and to amend as needed.

FISCAL ANALYSIS:

N/A

BACKGROUND:

In the past, the Mayor or other Councilmembers had to abstain from either making an appointment or participating in the vote for certain positions with other public entities that provided a stipend for mileage, participation, etc. The SANDAG appointment was usually the most high profile of these situations. A recent change to the law addresses that circumstance, and now lays the groundwork for participation once the appropriate forms and disclosures have been made, as recommended by this agenda item.

In March 2012, the FPPC amended Regulation 18705.5 to allow a councilmember to participate in a decision appointing him or herself to a compensated position with an external agency, board or commission. The regulation requires that the body making the appointment...adopt and post on its website, on a form provided by the Commission, a list that sets forth each appointed position for which compensation is paid, the salary or stipend for each appointed position, the name of the public official who has been appointed to the position, and the name of the public official, if any, who has been appointed as an alternate and the term of the position.

In May 2012, the FPPC adopted FPPC Form 806 (Agency Report of Public Official Appointments) as referenced in the amended regulation. FPPC Form 806 must be adopted prior to the City Council voting to appoint a Councilmember to a compensated position with any other agency, board or

commission. Following its adoption, FPPC Form 806 must be amended to reflect any change in the number of scheduled meetings, compensation paid to members, or membership in the agency, board or commission. Also, FPPC Form 806 must be amended to include any new agency, board or commission prior to a City Council vote appointing a councilmember as representative to that entity. The current Council appointment list is attached and can also be found online: <http://www.escondido.org/council-appointments.aspx>.

Once FPPC Form 806 is adopted, it must be posted on the City's website before a Councilmember may participate in a decision to appoint themselves to a compensated position on the Council or with another board.

In order to comply with Regulation 18705.5, it is recommended that Council adopt Resolution No. 2012-155 adopting FPPC Form 806 and authorizing the City Manager (or his designee) to verify and post FPPC Form 806 on the City's website and to amend the list in the future as required by law.

Respectfully submitted,



JENNIFER K. MCCAIN
Assistant City Attorney

... The Heart of San Diego North

City Council

- Meeting Schedule
- Meeting Broadcasts
- Meeting Agendas
- Meeting Minutes
- Council Action Plan
- Council Appointments
- Council Awards
- Council Greetings
- State of the City Address
- Legislative Program
- General Municipal Election
- Government Links**
- Citizen Involvement

City Council Subcommittee & Ad Hoc Appointments

2010-2012

The following information is maintained by the City Clerk's Office.

CITY COUNCIL APPOINTED (REGIONAL) SUBCOMMITTEES			
NAME OF AGENCY	COUNCIL REPRESENTATIVE	STAFF LIAISON	NOTES
LAFCO (Alternate North Inland Representative)	Sam Abed		Term of office: December 5, 2011 to May 2013
NORTH COUNTY TRANSIT DISTRICT	Ed Gallo Olga Diaz (Alternate)	Ed Domingue	
SANDAG	Sam Abed Marie Waldron (Alternate) Ed Gallo (2nd Alternate/Borders Committee)	Robb Zaino Joyce Masterson	
SAN DIEGUITO RIVER VALLEY Regional Open Space Park JPA Board	Olga Diaz Mike Morasco (Alternate)	Barbara Redlitz	
MAYORAL APPOINTED (REGIONAL) SUBCOMMITTEES			
NAME OF AGENCY	COUNCIL REPRESENTATIVE	STAFF LIAISON	NOTES
ABAG	Sam Abed		Voting delegate is the Mayor who may appoint alternates (Reso 98-262)
ESCONDIDO-CHULA VISTA Joint Financing Authority	Sam Abed	Gil Rojas	Meets on call, less than annually
LEAGUE OF CALIFORNIA CITIES	Marie Waldron	Clay Phillips	
REGIONAL SOLD WASTE ASSOCIATION BOARD	Marie Waldron		Initial appointment 9-17-03
ESCONDIDO CREEK WATERSHED ALLIANCE (ECWA)	Olga Diaz		Cities of Encinitas, Solana Beach; San Diego County; Escondido Creek Conservancy; San Elijo Lagoon Conservancy; state & federal agencies (Meets Quarterly)
MAYORAL APPOINTED (LOCAL) SUBCOMMITTEES			
NAME OF COMMITTEE	COUNCIL REPRESENTATIVE	STAFF LIAISON	NOTES
ANNUAL AWARD SELECTIONS Mayor's State of City Address	Marie Waldron Mike Morasco	Joyce Masterson	Meets annually
CCAE	Ed Gallo Mike Morasco	Jerry VanLeeuwen	(Established 12-16-09 - former ad hoc committee)
ECONOMIC DEVELOPMENT	Sam Abed Marie Waldron	Charlie Grimm	
SCHOOL SUBCOMMITTEE	Mike Morasco Olga Diaz	Clay Phillips	
UTILITIES SUBCOMMITTEE	Ed Gallo Mike Morasco	Chris McKinney	Originally established 9-19-07 as an ad hoc; became permanent 2-24-10
MAYORAL APPOINTED AD HOC COMMITTEES			
NAME OF COMMITTEE	COUNCIL REPRESENTATIVE	STAFF LIAISON	NOTES <i>Not subject to Brown Act</i>
DOWNTOWN PARKING (Established 4-6-05)	Olga Diaz Ed Gallo	Charlie Grimm	Temporary liaison to make recommendations on interim and long-term parking concerns.

Revised: November 2011
Comprehensive Council Action to Review: December 15, 2010

RESOLUTION NO. 2012-155

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ADOPTING AGENCY REPORT OF PUBLIC OFFICIAL APPOINTMENTS (FPPC FORM 806) AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO VERIFY AND POST FPPC FORM 806 ON THE CITY'S WEBSITE AND TO AMEND FPPC FORM 806 AS REQUIRED BY LAW

WHEREAS, the California Fair Political Practices Commission ("FPPC") has amended Section 18705.5 of Title 2, Division 6, California Code of Regulations to allow a public official to make, participate in making, or use his or her official position to influence, or attempt to influence, a government decision where (1) the decision is on his or her appointment as an officer of the body of which he or she is a member (e.g. mayor or deputy mayor), or to a committee, board, or commission of a public agency, a special district, a joint powers agency. . . ; (2) the appointment is one required to be made by the body of which the official is a member pursuant to either state law, local law, or a joint powers agreement; and (3) the body making the appointment adopts and posts on its website a list that sets forth each appointed position for which compensation is paid, the salary or stipend for each appointed position, the name of the public official who has been appointed to the position and the name of the public official, if any, who has been appointed as alternate, and the term of the position; and

WHEREAS, FPPC Form 806, attached hereto as Exhibit "A" and incorporated by this reference, lists each appointed position by the Escondido City Council for which compensation is paid, the salary or stipend for each appointed position, the name of the

public official who has been appointed to the position and the name of the public official, if any, who has been appointed as alternate, and the term of the position; and

WHEREAS, the City Council will consider appointments to a committee, board or commission of a public agency, special district, joint powers authority, or a metropolitan planning organization after the November 2012 general election; and

WHEREAS, said appointments are required to be made by the City Council; and

WHEREAS, FPPC Form 806 should be amended when the number of scheduled meetings is changed, there is a change in the compensation paid to the members, or when there is a change in membership on the board or commission; and

WHEREAS, to ensure compliance with Regulation 18705.5, the City Council authorizes the City Manager or his designee to verify and post FPPC Form 806 on the City's website and to amend FPPC Form 806 as required by law.

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

1. That the above recitations are true.
2. That the City Council of the City of Escondido hereby adopts the Agency Report of Public Official Appointments (FPPC Form 806) contained herein as Exhibit "A" and authorizes the City Manager or his designee to verify and post FPPC Form 806 on the City's website and to amend FPPC Form 806 as required by law.

**Agency Report of:
 Public Official Appointments**

A Public Document

1. Agency Name		California Form 806
City of Escondido		
Division, Department, or Region (If Applicable)		For Official Use Only
Designated Agency Contact (Name, Title)		Date Posted:
Diane Halverson, City Clerk		
Area Code/Phone Number	E-mail	Page <u>1</u> of <u>2</u>
760-839-4617	dhalverson@escondido.org	10/18/12 <i>(Month, Day, Year)</i>

2. Appointments

Agency Boards and Commissions	Name of Appointed Person	Appt Date and Length of Term	Per Meeting/Annual Salary/Stipend
North County Transit District	▶ Name <u>Gallo, Ed</u> <i>(Last, First)</i> Alternate, if any <u>Diaz, Olga</u> <i>(Last, First)</i>	▶ <u>12 / 15 / 10</u> <i>Appt Date</i> ▶ <u>Two Years</u> <i>Length of Term</i>	▶ Per Meeting: \$ <u>75.00</u> ▶ Estimated Annual: <input checked="" type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> <u>Other</u>
LAFCO	▶ Name <u>Abed, Sam</u> <i>(Last, First)</i> Alternate, if any _____ <i>(Last, First)</i>	▶ <u>12 / 15 / 10</u> <i>Appt Date</i> ▶ <u>Two Years</u> <i>Length of Term</i>	▶ Per Meeting: \$ <u>100.00</u> ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input checked="" type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> <u>Other</u>
SANDAG	▶ Name <u>Abed, Sam</u> <i>(Last, First)</i> Alternate, if any _____ <i>(Last, First)</i>	▶ <u>12 / 15 / 10</u> <i>Appt Date</i> ▶ <u>Two Years</u> <i>Length of Term</i>	▶ Per Meeting: \$ <u>150.00</u> ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input checked="" type="checkbox"/> <u>7000.00</u> <i>Other</i>
SANDAG	▶ Name _____ <i>(Last, First)</i> Alternate, if any <u>Gallo, Ed</u> <i>(Last, First)</i>	▶ <u>12 / 15 / 10</u> <i>Appt Date</i> ▶ <u>Two Years</u> <i>Length of Term</i>	▶ Per Meeting: \$ <u>100.00</u> ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input checked="" type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> <u>Other</u>

3. Verification

I have read and understand FPPC Regulation 18705.5. I have verified that the appointment and information identified above is true to the best of my information and belief.

Signature of Agency Head or Designee *Print Name* *Title* *(Month, Day, Year)*

Comment: _____

**Agency Report of:
 Public Official Appointments
 Continuation Sheet**

California Form 806
 A Public Document

1. Agency Name
 City of Escondido

Date Posted: 10/18/12
 (Month, Day, Year)

2. Appointments

Agency Boards and Commissions	Name of Appointed Person	Appt Date and Length of Term	Per Meeting/Annual Salary/Stipend
SANDAG	▶ Name _____ <small>(Last, First)</small> Alternate, if any <u>Waldron, Marie</u> <small>(Last, First)</small>	▶ <u>12 / 15 / 10</u> <small>Appt Date</small> ▶ <u>Two Years</u> <small>Length of Term</small>	▶ Per Meeting: \$ <u>150.00</u> ▶ Estimated Annual: <input checked="" type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>
Regional Solid Waste Association Board	▶ Name <u>Waldron, Marie</u> <small>(Last, First)</small> Alternate, if any _____ <small>(Last, First)</small>	▶ <u>12 / 15 / 10</u> <small>Appt Date</small> ▶ <u>Two Years</u> <small>Length of Term</small>	▶ Per Meeting: \$ <u>150.00</u> ▶ Estimated Annual: <input checked="" type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>
	▶ Name _____ <small>(Last, First)</small> Alternate, if any _____ <small>(Last, First)</small>	▶ _____ <small>Appt Date</small> ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____ ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>
	▶ Name _____ <small>(Last, First)</small> Alternate, if any _____ <small>(Last, First)</small>	▶ _____ <small>Appt Date</small> ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____ ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>
	▶ Name _____ <small>(Last, First)</small> Alternate, if any _____ <small>(Last, First)</small>	▶ _____ <small>Appt Date</small> ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____ ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>
	▶ Name _____ <small>(Last, First)</small> Alternate, if any _____ <small>(Last, First)</small>	▶ _____ <small>Appt Date</small> ▶ _____ <small>Length of Term</small>	▶ Per Meeting: \$ _____ ▶ Estimated Annual: <input type="checkbox"/> \$0-\$1,000 <input type="checkbox"/> \$2,001-\$3,000 <input type="checkbox"/> \$1,001-\$2,000 <input type="checkbox"/> _____ <small>Other</small>



CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 7

Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Jennifer K. McCain, Assistant City Attorney

SUBJECT: Adoption of Ticket Distribution Policy

RECOMMENDATION:

It is recommended that the City Council adopt Resolution No. 2012-176 adopting a Ticket Distribution Policy.

FISCAL ANALYSIS:

None.

GENERAL PLAN ANALYSIS:

N/A.

PREVIOUS ACTION:

None.

BACKGROUND:

Public officials, employees, and consultants designated in the City's Conflict of Interest Code are required to report gifts aggregating \$50 or more from a single source during a calendar year on their Form 700 Statement of Economic Interests. (Gov. Code § 87210.) In addition, public officials and designated employees and consultants are prohibited from accepting gifts aggregating \$440 or more from a single source in any calendar year. (Gov. Code § 89503.)

The Fair Political Practices Commission (FPPC) recognizes exceptions to these gift regulations in several categories, including: tickets and passes to entertainment events, sporting events, and similar occasions that are distributed by the City, and gifts made to the City. With regard to tickets and passes, in 2009 the FPPC adopted Regulation § 18944.1 providing that gift reporting and limits will not apply if certain procedures are followed. In general, the agency must adopt a policy declaring that the distribution of such tickets accomplishes a public purpose, then fill out the appropriate FPPC form and post the form on the City's website. Form 802 (attached) details each event and the public purpose of each ticket distribution. Form 802 was updated in 2012 to include ceremonial role events as serving a public purpose. A ceremonial role is defined as an act performed at an event by the official as a representative of the official's agency at the request of the holder of the event or function

Gifts to the City and Ticket Distribution Policy

October 17, 2012

Page 2

where, for a period of time, the focus of the event is on the act performed by the official. (FPPC Regulation § 18942.3.) Examples of ceremonial roles include: throwing out a first pitch at a baseball game; ribbon cutting ceremonies; and making presentations of proclamations. Tickets distributed by the City to City officials for ceremonial roles may also be excluded from the gift regulations for the official so long as the City has adopted the requisite policy. (FPPC Regulation § 18942.)

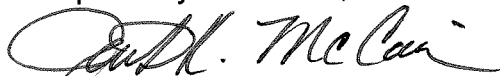
The attached Ticket Distribution Policy provides for the distribution of tickets and passes by the City in accordance with FPPC Regulation § 18944.1. It delineates the public purposes served by the City's distribution of tickets and passes to City officials and designated employees and consultants. The policy also includes the FPPC's disclosure and reporting requirements, grants the City Manager or his designee the authority to administer the policy, and limits the transferability of the tickets.

The Ticket Distribution Policy only applies to tickets and passes. Gifts to the City, other than tickets and passes, that are used by a City official are still not considered a reportable or limited gift to the City official as long as certain reporting procedures are followed. (FPPC Regulation § 18944.) In the case of gifts other than tickets or passes, each gift must be treated on a case-by-case basis.

Based on the foregoing, the City will be responsible for completing, verifying and posting the forms on the City's webpage. With this policy in place, where applicable, City officials do not report the value of tickets or passes on their own Form 700.

It is recommended that the City Council approve Resolution No. 2012-176 adopting a Ticket Distribution Policy.

Respectfully submitted,



JENNIFER K. MCCAIN

Assistant City Attorney

Attachment: Ticket Distribution Policy
FPPC Form 802

CITY OF ESCONDIDO
TICKET DISTRIBUTION POLICY

PURPOSE:

The purpose of this policy is to ensure that all tickets the City receives or acquires from public and private entities and individuals are distributed in furtherance of governmental and/or public purposes.

DEFINITIONS:

1. "Ceremonial role" means an act performed at an event by the official as a representative of the official's agency at the request of the holder of the event or function where, for a period of time, the focus of the event is on the act performed by the official.
2. "City" or "City of Escondido" shall mean and include the City of Escondido, any other affiliated agency created or activated by the Escondido City Council, and any departments, boards and commissions thereof.
3. "City Official" means every member, officer, employee or consultant of the City of Escondido, as defined in Government Code section 82048 and FPPC Regulation 18701. Such term shall include, without limitation, any City board or commission member or other appointed official or employee required to file an annual Statement of Economic Interest (FPPC form 700).
4. "City Venue" means and includes any facility owned, controlled or operated by the City of Escondido.
5. "FPPC" means and refers to the California Fair Political Practices Commission.
6. "Immediate family" means the spouse and dependent children.
7. "Ticket" or "Pass" means and includes any form of admission privilege to a facility, event, show or performance for an entertainment, amusement, recreational, or similar purpose.

POLICY:

TICKET DISTRIBUTION

I. **Scope of Policy.**

1. This Policy applies to Tickets, which provide admission to a facility, event, show, or performance for an entertainment, amusement, recreational or similar purpose, and are either:
 - i. Gratuitously provided to the City by an outside source;
 - ii. Acquired by the City by purchase;
 - iii. Acquired by the City pursuant to the terms of a contract for the use of City property;

- iv. Acquired by the City pursuant to its control over the event; or
 - v. Acquired by the City in any other manner.
2. This Policy only applies to the City's distribution of a ticket or pass to, or at the behest of, a City employee or official. This Policy does not apply to any other item of value provided to the City or any City Official.

II. General Provisions.

1. The use of complimentary tickets is a privilege extended by the City and not the right of any person to which the privilege may from time to time be extended.
2. Tickets distributed to a City Official pursuant to this Policy shall not be transferred to any other person, except to members of such City Official's immediate family solely for their personal use.
3. No person who receives a ticket pursuant to this policy shall sell or receive reimbursement for the value of such ticket.
4. The City Manager shall have the authority, in his or her sole discretion, to establish procedures for the distribution of tickets in accordance with this Policy. All requests for tickets which fall within the scope of this Policy shall be made in accordance with the procedures established by the City Manager.
5. The City Manager or his or her designee shall be the Agency Head for purposes of implementing the provisions of this Policy, and forwarding the applicable form provided by the FPPC.
6. No ticket gratuitously provided to the City by an outside source and distributed to, or at the behest of, a City Official shall be earmarked by the original source for provision to a particular City Official.

III. Public Purpose. The following list of governmental and/or public purposes the City may accomplish through the distribution of tickets is illustrative rather than exhaustive:

1. Performing or facilitating the performance of a ceremonial role or function by a City Official on behalf of the City at an event;
2. Facilitating the attendance of a City Official at an event where the job duties of the City Official require his or her attendance at the event;
3. Promotion of intergovernmental relations and/or cooperation and coordination of resources with other governmental agencies, including, but not limited to, attendance at an event with or by elected or appointed public officials from other jurisdictions, their staff members and their guests;
4. Promotion of City resources and/or facilities available to Escondido residents;
5. Promotion of City-run, sponsored, or supported community programs or events;

6. Promoting, supporting and/or showing appreciation for programs or services rendered by charitable and non-profit organizations benefiting Escondido residents;
7. Promotion of business activity, development, and/or redevelopment within the City;
8. Promotion of City-owned businesses;
9. Promotion of City tourism on a local, state, national or worldwide scale;
10. Promotion of City recognition, visibility, and/or profile on a local, state, national or worldwide scale;
11. Promotion of open government by City official appearances, participation and/or availability at business and/or community events;
12. Increasing public exposure to, and awareness of, the various recreational, cultural, and educational venues and facilities available to the public within the City;
13. Attracting or rewarding volunteer public service;
14. Encouraging or rewarding significant academic, athletic, or public service achievements by Escondido students, residents, or businesses;
15. Attracting and retaining highly qualified employees in the City service;
16. Recognizing or rewarding meritorious service by a City employee;
17. Promoting enhanced City employee performance or morale;
18. Recognizing contributions made to the City by former City Council Members, City employees, or other elected officials.

IV. Disclosure and Reporting Requirements.

1. A record of a ticket or pass distribution shall be completed on a form provided by the Commission (FPPC Form 802). The form must be maintained as a public record, be subject to inspection and copying, and be forwarded to the Commission for posting on its website.
2. The Ticket Distribution Policy shall be posted on the City website in a prominent fashion.
3. The distribution of a ticket or tickets pursuant to this Policy shall be posted on the City website in a prominent fashion.

**Agency Report of:
Ceremonial Role Events and Ticket/Pass Distributions**

A Public Document

1. Agency Name		Date Stamp	California Form 802
Division, Department, or Region <i>(If Applicable)</i>			For Official Use Only
Designated Agency Contact <i>(Name, Title)</i>			
Area Code/Phone Number	E-mail	<input type="checkbox"/> Amendment <i>(Must provide explanation in Part 3.)</i> Date of Original Filing: _____ <i>(Month, Day, Year)</i>	

2. Function or Event Information

Does the agency have a ticket policy? Yes No Face Value of Each Ticket/Pass \$ _____

Event Description _____ Date(s) _____ / _____ / _____
Provide Title/Explanation

Ticket(s)/Pass(es) provided by agency? Yes No If no: _____
Name of Source

Was ticket distribution made at the behest of agency official? No Yes If yes: _____
Official's Name (Last, First)

3. Recipients

• Use Section A to identify the agency's department or unit. • Use Section B to identify an individual. • Use Section C to identify an outside organization.

A. Name of Agency, Department or Unit	Number of Ticket(s)/Pass(es)	Describe the public purpose made pursuant to the agency's policy
B. Name of Individual <i>(Last, First)</i>	Number of Ticket(s)/Pass(es)	Identify one of the following:
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> <i>If checking "Ceremonial Role" or "Other" describe below:</i>
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> <i>If checking "Ceremonial Role" or "Other" describe below:</i>
C. Name of Outside Organization <i>(include address and description)</i>	Number of Ticket(s)/Pass(es)	Describe the public purpose made pursuant to the agency's policy

4. Verification

I have read and understand FPPC Regulations 18944.1 and 18942. I have verified that the distribution set forth above, is in accordance with the requirements.

Signature of Agency Head or Designee *Print Name* *Title* *(Month, Day, Year)*

Comment: _____

RESOLUTION NO. 2012-176

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
ADOPTING A TICKET DISTRIBUTION
POLICY.

WHEREAS, the California Fair Political Practices Commission ("FPPC") has amended Section 18944.1 of the California Code of Regulations in order to establish whether a ticket or pass that provides admission to a facility, event, show or performance for an entertainment, amusement, recreational, or similar purpose constitutes a gift under Government Code Section 82028 when the ticket or pass is given to a City employee or official; and

WHEREAS, in order for a City employee or official to use a ticket or pass to attend a facility, event, show or performance for an entertainment, amusement, recreational, or similar purpose so that the ticket or pass given to a City employee or official does not constitute a gift, a policy in accordance with Regulation 18994.1 is necessary; and

WHEREAS, the City may receive complimentary tickets and passes from outside sources as a way of facilitating the participation of City employees and officials at various events of interest to the City and the City, for the same reason, occasionally will acquire tickets or passes to events; and

WHEREAS, the distribution and use of such tickets and passes by City employees and officials serve a variety of public purposes; and

WHEREAS, based on such practices and Regulation 18944.1, the City Council desires to adopt a clear policy regarding the distribution of tickets and passes to facilities, events, shows or performances for an entertainment, amusement, recreational, or similar purpose; 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 of the City of Escondido, California, hereby adopts the policy contained herein, and incorporated by this reference, as Exhibit "A" pertaining to the distribution of tickets and passes to employees and officials of the City of Escondido.

CITY OF ESCONDIDO
TICKET DISTRIBUTION POLICY

EXHIBIT "A"

PURPOSE:

The purpose of this policy is to ensure that all tickets the City receives or acquires from public and private entities and individuals are distributed in furtherance of governmental and/or public purposes.

DEFINITIONS:

1. "Ceremonial role" means an act performed at an event by the official as a representative of the official's agency at the request of the holder of the event or function where, for a period of time, the focus of the event is on the act performed by the official.
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6. Promoting, supporting and/or showing appreciation for programs or services rendered by charitable and non-profit organizations benefiting Escondido residents;
7. Promotion of business activity, development, and/or redevelopment within the City;
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11. Promotion of open government by City official appearances, participation and/or availability at business and/or community events;
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2. The Ticket Distribution Policy shall be posted on the City website in a prominent fashion.
3. The distribution of a ticket or tickets pursuant to this Policy shall be posted on the City website in a prominent fashion.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 8
Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Christopher W. McKinney, Director of Utilities
SUBJECT: Lake Wohlford Dam Replacement Construction Management Consulting Agreement

RECOMMENDATION:

The Utilities Department requests that the City Council:

1. Adopt Resolution No. 2012-167 authorizing the Mayor and City Clerk to execute a Consulting Agreement with RBF Consulting, Inc. for the Lake Wohlford Dam Replacement Construction Management in the amount of \$2,458,516.
2. Approve a budget adjustment in the amount of \$1,250,000 to CIP 704912 (Lake Wohlford Dam Project) with \$1,250,000 from CIP 701705 (A-3 Reservoir Design).

FISCAL ANALYSIS:

The Lake Wohlford Dam Project CIP 704912 currently has \$5,054,000 in the CIP of which \$3,497,000 is encumbered for the design consultant contract leaving \$1,557,000 available. Additional funding is available in the amount of \$1,250,000 from the A-3 Reservoir Design Project CIP 701705. Both the previously approved design contract and this construction management contract will be eligible for a 50% reimbursement from the State of California, Prop 1E Grant. The additional funds are for this Construction Management contract and City staff time.

PREVIOUS ACTION:

In February 2009 City Council authorized a contract with GEI Consultants, Inc. (GEI) for the Evaluation of Alternatives for Replacement of Lake Wohlford Dam. In February 2011 City Council authorized the submission of a grant application for Proposition 1E Stormwater Flood Management grant. On August 1, 2012, City Council authorized a contract with Black & Veatch for the design of the replacement dam.

BACKGROUND:

Over the last few years the City has had numerous investigations and studies performed on the Lake Wohlford Dam. In 2007 the water level at the lake was lowered following a determination that

the last report was received, "Evaluation of Alternatives for Replacement of Lake Wohlford Dam", which evaluated two alternative dam types downstream of the existing structure.

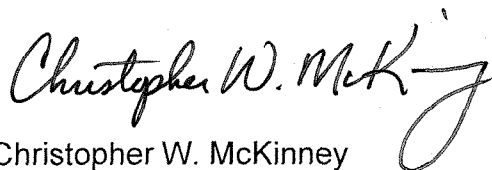
Due to the estimated cost of the overall project the Water CIP could not execute the project without significant outside financial assistance. The City has been actively pursuing funding opportunities since receiving the Evaluation of Alternatives report in June 2010. At the end of 2011 the City received confirmation of an award of up \$14.9M in matching funds for the dam replacement from the State of California, Prop 1E Grant.

The Utilities Department received three proposals for Construction Management services in August 2012. A selection panel of five City staff members evaluated the proposals and interviewed all three proposers in September 2012. The selection panel unanimously selected the team lead by RBF Consulting, Inc. as the best qualified to meet the needs of the City.

Due to the critical nature of dam design and construction it is important to maintain continuity from the design through construction. This contract with RBF Consulting, Inc. will include constructability reviews and input during design, construction inspection, and construction materials testing.

The City will be required by the state and federal regulators to retain a Board of Consultants comprised of specialists in specific fields related to dams to provide project oversight. The contracts for this Board of Consultants are not part of the Construction Management Agreement and will be presented separately to the Council in the near future for approval.

Respectfully submitted,

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

Christopher W. McKinney
Director of Utilities



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: October 4, 2012
Department: Utilities
Division: Engineering/Construction
Project/Budget Manager: Craig Whittemore 4038
Name Extension
Council Date (if applicable): October 17, 2012
(attach copy of staff report)

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. Includes entries for Lake Wohlford Dam Project and A-3 Reservoir Design.

Explanation of Request:

Additional funds are required to initiate the construction management services for the Lake Wohlford Dam Replacement. The A-3 Reservoir project will be changing significantly as a result of the latest Water Master Plan update.

APPROVALS

Handwritten signatures and dates for Department Head, City Manager, Finance, and City Clerk.

Distribution (after approval): Original: Finance

RESOLUTION NO. 2012-167

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR AND CITY
CLERK TO EXECUTE, ON BEHALF OF THE
CITY, A CONSULTING AGREEMENT WITH
RBF CONSULTING, INC. FOR THE LAKE
WOHLFORD DAM REPLACEMENT
CONSTRUCTION MANAGEMENT

WHEREAS, the City desires to regain full storage capacity for water at Lake Wohlford; and

WHEREAS, the current condition of the Lake Wohlford Dam prevents said full storage capacity and requires a replacement dam; and

WHEREAS, a selection panel has selected RBF Consulting, Inc. as being the most qualified proposer; and

WHEREAS, the Director of Utilities recommends that the Consulting Agreement ("Agreement") with RBF Consulting, Inc. 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 RBF Consulting, 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 Clerk are hereby authorized to execute, on behalf of the City, an Agreement with RBF Consulting, Inc. A copy of the Agreement is attached as Exhibit "1" and is incorporated by this reference.



CITY OF ESCONDIDO
CONSULTING AGREEMENT

This Agreement is made this _____ day of _____, 20__.

Between: CITY OF ESCONDIDO
a Municipal Corporation
201 N. Broadway
Escondido, California 92025
Attn: Craig Whittemore
760-839-4038
("CITY")

And: RBF Consulting, Inc.
9755 Clairemont Mesa Blvd.
San Diego, CA 92124
Attn: N. Wayne Papac
858-810-1406
("CONSULTANT")

Witness that whereas:

- A. It has been determined to be in the CITY's best interest to retain the professional services of a consultant to provide construction management services for pre-construction and construction activities including constructability reviews, inspection, materials testing, etc. for the Lake Wohlford Dam Replacement; and
- B. The CONSULTANT is considered competent to perform the necessary professional services for CITY;

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

- 1. Services. The CONSULTANT will furnish all of the services as described in "Attachment A" which is attached and incorporated by this reference.
- 2. Compensation. The CITY will pay the CONSULTANT in accordance with the conditions specified in "Attachment A," in the sum of \$2,458,516. Any breach of this Agreement will relieve CITY from the obligation to pay CONSULTANT, if CONSULTANT has not corrected the breach after CITY provides notice and a reasonable time to correct it. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in subsequent amendment(s) shall not exceed a cumulative total of twenty-five percent (25%) of the maximum payment provided for in this Section 2.

- 3. Scope of Compensation. The CONSULTANT will be compensated for performance of tasks specified in "Attachment A" only. No compensation will be provided for any other tasks without specific prior written consent from the CITY.
- 4. Duties. CONSULTANT will be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other services furnished by the CONSULTANT under this Agreement, except that the CONSULTANT will not be responsible for the accuracy of information supplied by the CITY.
- 5. Personnel. The performance of services under this Agreement by certain professionals is significant to the CITY. CONSULTANT will assign the persons listed on "Attachment B," which is attached and incorporated by this reference, to perform the Services described in Paragraph 1, and will not add or remove persons from the list without the prior written consent of the CITY. If no designation is made, then CONSULTANT may not assign services without obtaining the advance written consent of the CITY. CONSULTANT will not subcontract any tasks under this Agreement without obtaining the advance written consent of the CITY.
- 6. Termination. Either CONSULTANT or the CITY may terminate this Agreement with thirty (30) days advance written notice.
- 7. City Property. All original documents, drawings, electronic media, and other material prepared by CONSULTANT under this Agreement immediately becomes the exclusive property of the CITY, and may not be used by CONSULTANT for any other purpose without prior written consent of the CITY.
- 8. Insurance.
 - a. The CONSULTANT shall secure and maintain at its own cost, for all operations, the following insurance coverage, unless reduced by the City Attorney:
 - (1) General liability insurance. Occurrence basis with minimum limits of \$1,000,000 each occurrence, \$2,000,000 General Aggregate, and \$1,000,000 Products/Completed Operations Aggregate; and
 - (2) Automobile liability insurance of \$1,000,000 combined single-limit per accident for bodily injury and property damage, unless waived as provided in 8(b) below; and
 - (3) Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship; and
 - (4) Errors and Omissions professional liability insurance with minimum coverage of \$1,000,000.
 - b. It is the parties' understanding that the use of a motor vehicle is not a primary subject of this Agreement. CONSULTANT acknowledges that operating a motor vehicle is outside the scope of this Agreement and occurs only at the convenience of the CONSULTANT. A waiver of automobile liability insurance is only effective if both sets of initials appear below, otherwise such insurance is required.

Acknowledged by CONSULTANT _____

Waiver appropriate by CITY _____

- c. Each insurance policy required above must be acceptable to the City Attorney.
 - (1) Each policy must provide for 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.
 - (2) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
 - (3) Both the General Liability and the Automobile Liability policies must name the CITY specifically as an additional insured under the policy on a separate endorsement page. The CITY includes its officials, employees, and volunteers. The endorsement must be ISO Form CG 20 10 11 85 edition or its equivalent for General Liability endorsements and CA 20 01 for Automobile Liability endorsements.
 - (4) The General Liability policy must include coverage for bodily injury and property damage arising from CONSULTANT's work, including its on-going operations and products-completed operations hazard.
 - (5) The General Liability policy must be primary and noncontributory and any insurance maintained by CITY is excess.
- c. In executing this Agreement, CONSULTANT agrees to have completed insurance documents on file with the CITY within fourteen (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. Indemnification. CONSULTANT (which in this paragraph 9 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless the CITY from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any of the following:
 - a. Any claim of liability arising out of the negligence or any acts or omissions of CONSULTANT in the performance of this Agreement;
 - b. Any personal injuries, property damage or death that CONSULTANT may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or
 - c. Any injury or death which results or increases by any action taken to medically treat CONSULTANT.
10. Anti-Assignment Clause. The CONSULTANT may not assign, delegate or transfer any interest or duty under this Agreement without advance written approval of the CITY, and any attempt to do so will immediately render this entire Agreement null and void. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY'S written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
11. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.

12. Independent Contractor. CONSULTANT is an independent contractor and no agency or employment relationship, either express or implied, is created by the execution of this Agreement.
13. Merger Clause. This Agreement and its Attachments, if any, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and any of its Attachments, the provisions of this Agreement must prevail.
14. Anti-Waiver Clause. None of the provisions in this Agreement will be waived by CITY because of previous failure to insist upon strict performance, nor will any provision be waived by CITY because any other provision has been waived, in whole or in part.
15. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.
16. Choice of Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in San Diego County, California.
17. Multiple Copies of Agreement/Counterparts. Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
18. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the CITY.
19. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below. Each party agrees to promptly send notice of any changes of this information to the other party, at the address first above written.
20. Business License. The CONSULTANT is required to obtain a City of Escondido Business License prior to execution of this Agreement.
21. Compliance with Applicable Laws, Permits and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. CONSULTANT shall obtain any and all licenses, permits, and authorizations necessary to perform services set forth in this Agreement. Neither CITY, nor any elected nor appointed boards, officers, officials, employees, or agents of CITY shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
22. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. CONSULTANT affirms that as an employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on

this public project. CONSULTANT agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.

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

CITY OF ESCONDIDO

Date: _____

Sam Abed
Mayor

Date: _____

Diane Halverson
City Clerk

RBF Consulting, Inc.

Date: _____

Bob Kallenbaugh
Regional Manager
Service Area Manager

(The above signature must be notarized)

APPROVED AS TO FORM:

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

By: _____

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

ATTACHMENT 'A'
SCOPE OF SERVICES

PROJECT DESCRIPTION

Lake Wohlford Dam was originally constructed as a rockfill dam in 1895 with a height of 76 feet. In 1924, hydraulic fill was added to the lake side of the dam and the overall height of the dam was increased to 100 feet. The reservoir has a storage capacity of approximately 6,500 acre-feet (AF) and a surface area of approximately 225 acres with the water surface at the dam spillway crest elevation, approximately 1,480 feet. Due to current safety concerns of the dam in the event of a major earthquake, the lake is being operated with a lower water surface elevation which has reduced the available capacity to approximately 40% of the full capacity. The City will be receiving a Proposition 1E Grant from the State Department of Water Resources for funding the overall project.

The Construction Manager shall be responsible for the constructability review and managing all aspects of the construction project as directed by the City. The Design Engineer will be retained to provide construction phase services that include reviewing shop drawings, answering requests for information, and responding to request for Change Orders and preparing "As-Built" record drawings.

CONSULTANT-FURNISHED SERVICES

TASK 1 Pre-Construction Services

The consultant shall provide the following pre-construction services:

- Conduct an initial Delivery Team assignment review facilitating roles and responsibilities between the City, Design and CM Teams.
- Provide personnel experienced in dam design and construction to provide input to the City and Design Team during the pre-design, environmental and permit acquisition phases as required.
- Provide personnel experienced in dam design and construction to provide constructability reviews on 30%, 60%, and 90% design submittals including written feedback and resolution tracking.

- Attend monthly design progress meetings, and delivery team meetings as required providing oral and written feedback evaluations.
- Attend a 100% design submittal constructability review workshop.
- Work closely with the City and the Design Team to develop comprehensive bid documents (Front End).
- Work closely with the City and the Design Team to develop a contractor pre-qualification process.
- Receive and respond to bidder's questions including drafting of addenda (if required), and participate in the City's pre-bid and bid opening meetings.
- Prepare any required schedules, estimates, and reports during the pre-construction phase.

TASK 2 Construction Services

The Consultant shall provide experienced construction inspectors to perform full-time observation of the construction activities. The contract duration is estimated to be 480 calendar days. The construction inspector will observe and document the work and its conformance with the plan and specification requirements. The construction inspector's duties will also consist of the following activities:

- Preparation of written daily field reports for submittal to the City. Reports will include work performed, labor and equipment utilized, and a discussion of any work not conforming the plans and specifications.
- Provide all soils and material testing and documenting reports.
- Observe all construction and coordinate observation of special construction including excavation, backfill, and all piping and connections to existing facilities.
- Perform photographic documentation of construction activities in digital format.
- Observe and record all major materials delivery to the site to document they are in accordance with the specifications and approved shop drawings.
- Coordinate, review and observe all equipment testing and start up.
- Coordinate with City staff in the commissioning and startup of the completed facility.
- Provide special inspections not required of the contractor.
- Update project red line drawings during construction and review contractor red lines during course of construction.

Provide construction management services including the following:

- Conduct weekly progress meetings or more often as needed including job progress and schedule meetings with the Contractor, the City, and others as necessary. Prepare and distribute meeting minutes via email.

- Administer and track all “Submittal”, “Request for Information”, “Contractor’s Request for Change Order”, and other related forms. Provide appropriate response and/or recommendations to and from the City. Consult with City and Design Team on all technical matters. Notify all parties of issues that impact critical path schedule. Negotiate and recommend Change Orders on behalf of the City. Coordinate with Design Team as necessary.
- Monitor project permit conditions and related expiration dates and inform the City and Contractor when non-compliance is observed.
- Monitor and ensure Contractor’s compliance with all requirements of project design specifications and drawings.
- Monitor Contractor’s schedule each week, including the previous weeks’ progress and Contractor’s anticipated work. Make recommendations as necessary and inform the City as necessary of schedule issues.
- Process monthly progress pay estimates including review of Contractor’s work progress with the City representative, review for accuracy, and comparison with actual work completed; make appropriate recommendations to the City on payment issues.
- Provide document control including processing and filing all project correspondence, documents, and drawings including conversion of all received documents into a .pdf format. The Construction Manager is to handle all paperwork between all parties.
- Prepare monthly construction management reports to include a detailed description of work completed, schedule status, submittals status, RFI status, design revision status, progress payment and overall contract status, and project photographs. The monthly reports will be prepared in a City-provided format including color copies of the digital photographs with captions of work performed. Electronic copies of the monthly reports will be provided to the City and other parties as requested.
- Conduct and coordinate preliminary and final walk-throughs with punch lists, start-up and testing, and closeout.
- Consultant shall provide Licensed Surveyor reviews of construction staking provided by others and ensure compliance with all contract requirements.
- Provide all soils, and materials testing per the Contract requirements. An on-site lab may be utilized pending construction requirements, and is included in this scope.

**CITY of ESCONDIDO
 LAKE WOHLFORD DAM REPLACEMENT PROJECT
 CONSTRUCTION MANAGEMENT and INSPECTION SERVICES**

TASK COST BREAKDOWN

Task	Task Description	Last	Position	Firm	Hours	Rate	Total
1	TASK 1 Pre-Construction						
		Buensuceso	Admin/ Assistant	RBF	424.0	\$70.00	\$29,680.00
		Hertel	Const./Estimator	ES	192.0	\$160.00	\$30,720.00
		Martin	Technical Reviewer	MDC	96.0	\$150.00	\$14,400.00
		Keller	Geotechnical Engineer	GEI	200.0	\$208.00	\$41,600.00
		Osterle	Dam Design Eng.	Rizzo	816.0	\$242.00	\$197,472.00
		Gonzales	Environmental Engineer	RBF	336.0	\$165.00	\$55,440.00
		Jentzen	Sched./QSP Specialist	RBF	80.0	\$125.00	\$10,000.00
		Bassett	Senior Inspector	RBF	24.0	\$145.00	\$3,480.00
		Cook	Construction Manager	RBF	1012.0	\$170.00	\$172,040.00
		Papac	Project Manager	RBF	532.0	\$187.00	\$99,484.00
	TOTAL TASK 1						\$654,316.00
2	TASK 2 Construction						
		Buensuceso	Admin/ Assistant	RBF	1320.0	\$70.00	\$92,400.00
		Wade	Survey Confirm.	RBF	136.0	\$245.00	\$33,320.00
		Hertel	Const./Estimator	ES	272.0	\$160.00	\$43,520.00
		Herrera	Material Testing	GDC	1080.0	\$135.00	\$145,800.00
		Gaby	Material Test. Lead	WCG	1720.0	\$130.00	\$223,600.00
		Martin	Technical Reviewer	MDC	64.0	\$150.00	\$9,600.00
		Keller	Geotechnical Engineer	GEI	384.0	\$208.00	\$79,872.00
		Osterle	Dam Design Eng.	Rizzo	144.0	\$242.00	\$34,848.00
		Gonzales	Environmental Engineer	RBF	64.0	\$165.00	\$10,560.00
		Jentzen	Sched./QSP Specialist	RBF	960.0	\$125.00	\$120,000.00
		Cruz	Inspector	RBF	640.0	\$140.00	\$89,600.00
		Bassett	Senior Inspector	RBF	2440.0	\$145.00	\$353,800.00
		Cook	Construction Manager	RBF	1360.0	\$170.00	\$231,200.00
		Papac	Project Manager	RBF	1040.0	\$187.00	\$194,480.00
	TOTAL TASK 2						\$1,662,600.00
	Total Hours				15336.0		\$2,316,916.00
	Additional Services	T. Gonzales	Labor Compliance	GWCSI	340.0	\$90.00	\$30,600.00
	ODC's Per Month, During Construction			RBF	15.0	\$2,400.00	\$36,000.00
	Additional Services CM			RBF	1.0	\$75,000.00	\$75,000.00
	TOTAL						\$2,458,516.00

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 9
Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Christopher W. McKinney, Utilities Director
SUBJECT: Bid Award for the Influent Pump Station Project

RECOMMENDATION:

The Utilities Department requests Council adoption of Resolution No. 2012-171 authorizing the Mayor and City Clerk to execute an agreement with TC Construction Company, Inc. in the amount of \$8,169,500 for the Influent Pump Station (IPS) Project.

FISCAL ANALYSIS:

Competitive bids were opened by the City Clerk's representative on October 4, 2012, with the following results:

1) TC Construction Company, Inc., Santee	\$8,169,500.00
2) W.M. Lyles Co., Temecula	\$8,650,000.00
3) HPS Mechanical, Inc., Bakersfield	\$8,981,970.00
4) Stanek Constructors, Inc., Escondido	\$9,280,000.00
5) CSE/RSH Construction, Hemet	\$9,288,023.00
6) PCL Construction, Inc., San Marcos	\$9,720,847.00

This project is budgeted under CIP 804001 with sufficient funds available to complete this contract.

BACKGROUND:

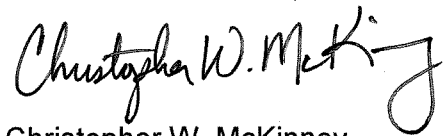
The IPS Project will rehabilitate the existing station at the Hale Avenue Resource Recovery Facility (HARRF). The IPS receives wastewater from the City at a low-elevation point in the HARRF and pumps it to the headworks. All wastewater treated at the HARRF is processed by this station, excepting water received from the Rancho Bernardo section of San Diego.

The original station was built in 1973 and has undergone upgrades over the past 40 years. The project will replace obsolete and worn out pumps, as well as piping, electrical equipment, and structures. The new station will be constructed in essentially the same footprint as the existing facility.

October 17, 2012
Bid Award Influent Pump Station Project
Page 2

Of critical importance is replacement of the pipe manifold connecting the pumps to the effluent pipeline. A recent assessment of this pipeline indicated significant internal corrosion, thus increasing the probability of pipeline failure. Such a failure would lead to significant, detrimental operational and environmental impacts.

Respectfully submitted,

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

Christopher W. McKinney
Director of Utilities

RESOLUTION NO. 2012-171

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 TC CONSTRUCTION COMPANY INCORPORATED, FOR THE CONSTRUCTION OF THE INFLUENT PUMP STATION PROJECT

WHEREAS, the Escondido City Council authorized an invitation for bids for the construction of the Influent Pump Station (the "Project"); and

WHEREAS, the City of Escondido opened sealed bids for the Project on October 4, 2012; and

WHEREAS, the Director of Utilities has determined TC Construction Company Incorporated to be the lowest responsive and responsible bidder and recommends awarding the bid in the amount of \$8,169,500 to TC Construction Company Incorporated; and

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

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 recommendation of the Director of Utilities and finds TC Construction Company Incorporated to be the lowest responsive and responsible bidder.
3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, a Public Improvement Agreement ("Agreement") with TC Construction Company

Incorporated for the Project. 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 **TC Construction Company Incorporated** (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

INFLUENT PUMP STATION

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 **Eight Million One Hundred Sixty Nine Thousand Five Hundred Dollars (\$8,169,500)**.
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 **six hundred and forty (640) 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 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

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

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.

APPROVED AS TO FORM:

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

By: _____

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

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,

INFLUENT PUMP STATION

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)

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,

INFLUENT PUMP STATION

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)

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

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 10
Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Barbara J. Redlitz, Director of Community Development

SUBJECT: Adoption of Mitigated Negative Declaration for the Cemetery Area Water Pipeline Replacement Project (ENV 10-0004)

STAFF RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-158 adopting a Mitigated Negative Declaration for the Cemetery Area Water Pipeline Replacement Project.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission has not reviewed the environmental documentation for this CIP project because the project does not include any associated land use entitlements.

PROJECT DESCRIPTION:

The proposed CIP project consists of the abandonment of approximately 17,500 linear feet (3.3 miles) of existing 12- to 24-inch diameter potable water pipeline within the East Grove, Reed, and Hogback pressure zones. Most of the abandoned pipelines currently bisect private lots and would be replaced with approximately 12,600 linear feet of new pipeline that generally would be constructed along lot lines or within public rights-of-way. In addition, an approximately 2,545-foot long, 20-inch diameter recycled water pipeline would be constructed in the western portion of the project area, but would not be activated immediately. The project also would include construction of an approximately 10-by-20-foot pressure-reducing structure along the potable water pipeline alignment in the eastern portion of the project area. The proposed project would replace aging water transmission and distribution infrastructure, increase water delivery capacity and pressure to the project area, and maintain a reliable water supply and distribution system, as well as install infrastructure to accommodate future delivery of recycled water.

LOCATION:

The approximately 32-acre project area is located in the eastern portion of the City's water service area, and is generally bound by Reed Road on the north, Cloverdale Road on the east, Mountain View Drive on the south, and Whispering Highlands Drive on the west. Oak Hill Memorial Park is included within the project area.

FISCAL ANALYSIS:

Construction plans and specifications for the project are nearly completed and the Engineer's estimate for the project is \$6,300,000 - \$7,700,000. The project construction will be funded out of CIP line item 704911, Cemetery Area Waterline bond money.

GENERAL PLAN ANALYSIS:

The proposed project area is located partially within the eastern limits of Escondido and partially within the unincorporated area of San Diego County. All properties within the project area are located within the Escondido General Plan boundary and have been assigned either an Estate II (up to 2 dwelling units per acre) or Rural 2 (up to 0.5 dwelling units per acre) land use designation. All construction would occur within existing and future rights-of-way or easements; and all the new pipelines would be placed underground. No land use entitlements or changes to residential density are proposed.

ENVIRONMENTAL REVIEW:

A proposed Mitigated Negative Declaration (City Log No. ENV 10-0004) was issued for a 30-day public review on December 13, 2011. Responses to comments received on the proposed Mitigated Negative Declaration have been incorporated into the Final Mitigated Negative Declaration. Mitigation measures required under CEQA were developed to reduce the potential for adverse impacts with respect to biological resources and cultural resources; and specific design measures related to air quality, hazards and hazardous materials, and noise have been incorporated into the design and implementation of the project.

Sections of the Final Mitigated Negative Declaration have been clarified or expanded, but no new significant impacts have been identified, no impacts increased in severity, and no new mitigation measures have been identified. As such, the Mitigated Negative Declaration document was not fundamentally or basically inadequate in nature and the conclusions do not require reevaluation or recirculation. Staff feels the Final Mitigated Negative Declaration adequately addresses all project-related issues.

PREVIOUS ACTION:

On October 21, 2009, the City Council unanimously approved a request to execute a consulting agreement with Black and Veatch Corporation in the amount of \$583,181 for engineering services to prepare construction drawings, specifications and environmental documentation for the Cemetery Area Water Pipeline Replacement Project.

BACKGROUND:

The proposed project consists of the abandonment of approximately 17,500 linear feet (3.3 miles) of existing 12- to 24-inch diameter concrete-lined steel potable water pipeline within three pressure zones (See Figure 3). The pipelines would be replaced with approximately 12,600 linear feet (2.4 miles) of new pipeline generally ranging between 12 and 24 inches in diameter and comprising steel,

ductile iron, polyvinylchloride (PVC), or high-density polyethylene (HDPE) pipe material. Numerous smaller PVC or copper pipes would be installed as laterals to maintain service to existing customers. New meters also would be constructed and, in some cases, existing meters would be relocated as part of the project. The proposed lateral lines and new meters would be constructed within existing driveways or private roadways and existing meters would be relocated from private properties to the public right-of-way. The existing pipelines would stay in service throughout the duration of construction, and would be capped and abandoned in place following implementation of the proposed replacement pipelines, or removed where necessary to provide room for the replacement pipe segments.

PUBLIC COMMENT:

The proposed Mitigated Negative Declaration was distributed for public review from December 15, 2011 to January 17, 2012. Five comment letters were received during the 30-day public review period including four from other public agencies and one from a homeowner within the project area. Comments from the agencies included the sensitivity of biological resources in the area and the need to coordinate with the County of San Diego for improvements outside the city limits. The homeowner (Mr. Steve Kirby) expressed concern about the location of the pressure reducing station that would be constructed on his property, as well as the replacement of portions of his driveway that would be affected by construction. Staff met with Mr. Kirby on his property to discuss his concerns and have been working with the design consultant to modify elements of the project plans to address his issues. All the comment letters and responses have been incorporated into the Final Mitigated Negative Declaration.

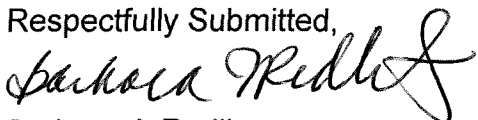
DISCUSSION:

The proposed project would replace aging water transmission and distribution infrastructure, increase water delivery capacity and pressure to the project area, and maintain a reliable water supply and distribution system, as well as install infrastructure to accommodate future delivery of recycled water. The project also would provide the added benefit of abandoning those existing water lines that currently bisect private lots and replacing them with new lines that, in most instances, would be constructed along lot boundary lines and/or within public rights-of-way. The primary objective of the increase in pressure or capacity that could result from the proposed project is to improve the flow of water to existing property owners during a wildfire-related emergency.

The Final Mitigated Negative Declaration may be viewed on the City of Escondido website at the following link:

<http://www.escondido.org/Data/Sites/1/media/PDFs/Planning/CemeteryPipeline/FinalMitigatedNegativeDeclaration.pdf>

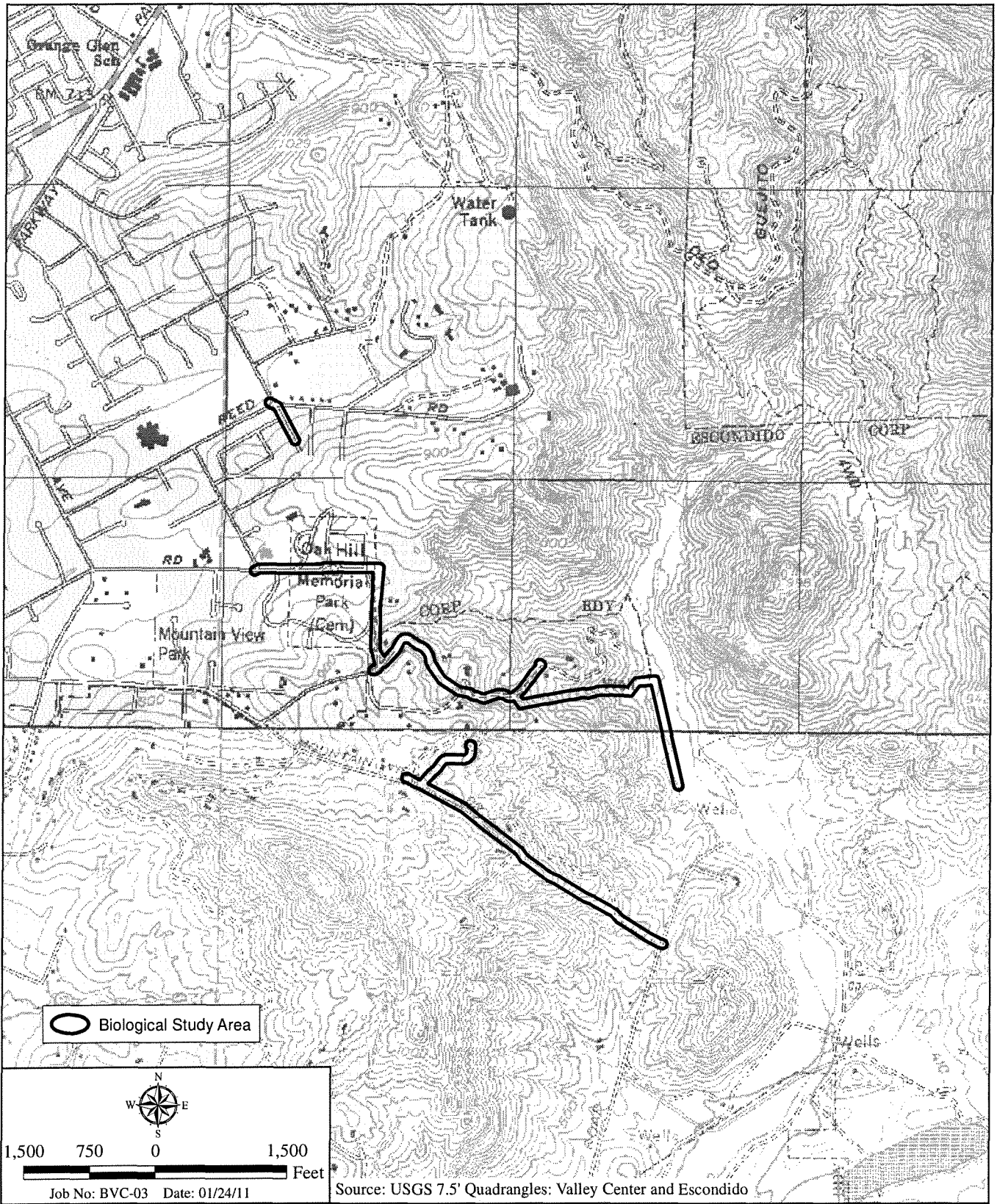
Respectfully Submitted,



Barbara J. Redlitz
Director of Community Development

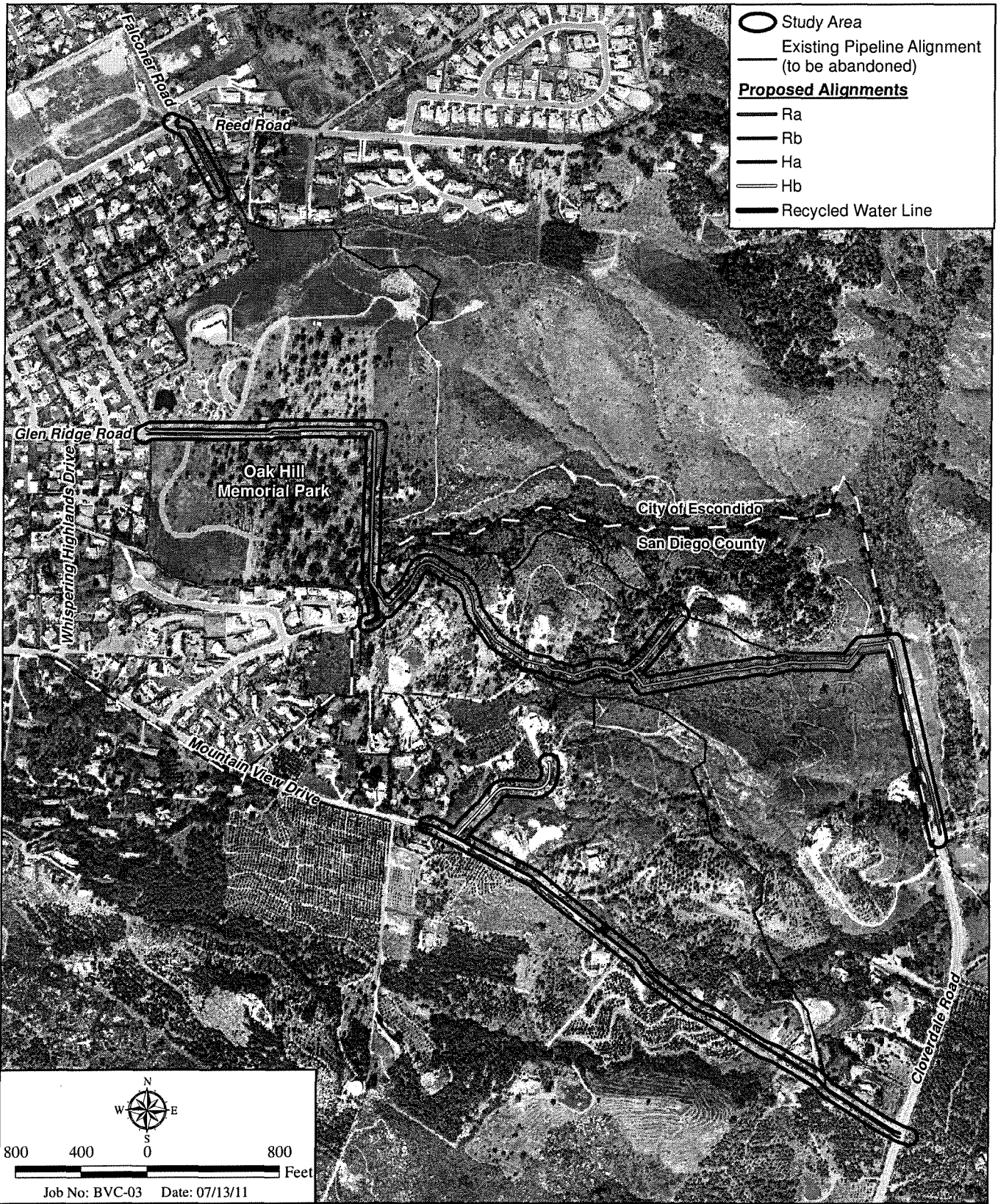


Bill Martin
Principal Planner



Project Location Map

CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT



Aerial Photograph

CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT

RESOLUTION NO. 2012-158

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
APPROVING AND ADOPTING THE FINAL
MITIGATED NEGATIVE DECLARATION FOR
THE CEMETERY AREA WATER PIPELINE
REPLACEMENT PROJECT

Case No. ENV 10-0004

WHEREAS, a Mitigated Negative Declaration has been prepared for the Cemetery Area Water Pipeline Replacement Project that consists of the abandonment of approximately 17,500 linear feet (3.3 miles) of existing 12- to 24-inch diameter potable water pipeline within the East Grove, Reed, and Hogback pressure zones that will be replaced with approximately 12,600 linear feet of new pipeline that generally would be constructed along lot lines or within public rights-of-way. In addition, an approximately 2,545-foot long, 20-inch diameter recycled water pipeline would be constructed in the western portion of the project area, but would not be activated immediately. The project also would include construction of an approximately 10-by-20-foot pressure-reducing structure along the potable water pipeline alignment in the eastern portion of the project area; and

WHEREAS, the City Council of the City of Escondido as the lead agency under the California Environmental Quality Act ("CEQA") is responsible for adoption of the Mitigated Negative Declaration; and

WHEREAS, the City Council of the City of Escondido did on October 17, 2012, hold a meeting to consider adoption of the Mitigated Negative Declaration and associated Mitigation Monitoring Report; and

WHEREAS, the City Council has reviewed and considered the Final Mitigated Negative Declaration prepared for the project, and has determined that it adequately addresses all environmental issues associated with the project; and

WHEREAS, the City Council desires at this time, and deems it to be in the best public interest, to approve and adopt the Mitigated Negative Declaration for the Cemetery Area Water Pipeline Replacement Project.

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

1. That the above recitations are true.
2. That the City Council has considered the Mitigated Negative Declaration together with all comments received during the public review process.
3. That the Mitigation Monitoring Report attached as Exhibit "A," and incorporated by this reference, addresses mitigation for potential project related impacts and that the report will sufficiently mitigate and assign on-going responsibility for carrying out mitigation responsibilities which are appropriate to address and mitigate project-related impacts.
4. That upon consideration of the staff report (a copy of which is on file in the Planning Division), public testimony presented at the City Council meeting and applicable law, the City Council finds that the project is consistent with the General Plan and hereby approves and adopts the Mitigated Negative Declaration for the Cemetery Area Water Pipeline Replacement Project.



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

Resolution No. 2012-158
 Exhibit A
 Page 1 of 5

**MITIGATION MONITORING REPORT
 CASE NO.: ENV 10-0004**

PROJECT NAME: Cemetery Area Water Pipeline Replacement Project

PROJECT LOCATION: The approximately 12,600-linear foot (lf) potable water pipeline replacement and recycled water pipeline project would be constructed in four narrow alignments within an approximately 32-acre area. The project area is in the eastern portion of the City of Escondido's Utilities Department, Water Division service area, generally bound by Reed Road on the north, Cloverdale Road on the east, Mountain View Drive on the south, and Whispering Highlands Drive on the west. Oak Hill Memorial Park (Cemetery) is located within the project area and portions of both the potable and recycled water pipelines would be constructed within the Cemetery, outside of interment areas. A pressure-reducing station in the form of a 10-by-20-foot structure on a small concrete pad would be constructed along the potable water pipeline alignment on Mountain View Drive near the intersection with Cloverdale Road, in the southeast corner of the project area.

PROJECT DESCRIPTION: The proposed project consists of the abandonment of approximately 17,500 lf (3.3 miles) of existing 12- to 24-inch-diameter concrete-lined steel potable water pipeline within the East Grove, Reed, and Hogback pressure zones. The pipelines would be replaced with approximately 12,600 lf of new pipeline comprising steel, ductile iron, polyvinylchloride (PVC), or high-density polyethylene (HDPE) pipe material, as well as PVC or copper service laterals. In addition to the potable water pipelines, an approximately 2,545-foot-long, 20-inch-diameter HDPE recycled water pipeline would be constructed in the western portion of the project area, generally parallel with one portion of the potable water pipeline. Although expected to be installed concurrent with the rest of the proposed project, the recycled water line would not be activated until some point in the future. The project also would include construction of an approximately 10-by-20-foot pressure-reducing structure located along the potable water pipeline alignment in the eastern portion of the project area. The proposed project would replace aging potable water transmission and distribution infrastructure, increase water delivery capacity and pressure to the immediate project area, and maintain a reliable water supply and distribution system. The proposed alignments intersect with approximately 57 private parcels, 47 of which are residential. The project also would abandon those existing water lines that currently bisect private lots and replace them with new lines that, in most instances, would be constructed along lot boundary lines and/or within public rights-of-way. The primary objective of the increase in pressure or capacity that could result from the proposed project is to improve the flow of water to existing property owners during a wildfire-related emergency. The existing pipelines would stay in service throughout the duration of construction, and would be capped and abandoned in place following implementation of the proposed replacement pipelines, or removed if necessary to provide room for the replacement lines.

APPROVAL BODY/DATE: Escondido City Council / October 17, 2012

PROJECT MANAGER: Bill Martin, Principal Planner

CONTACT PERSON: Bill Martin

PHONE NUMBER: (760) 839-4557

NATURE OF IMPACT	MITIGATION MEASURE	IDENTIFICATION NO. LOCATION IN DOC.	RESPONSIBILITY FOR IMPLEMENTING	CERTIFIED INITIAL/DATE	COMMENTS
Phase at which the Mitigation Measures are to be implemented					
PRIOR TO APPROVAL OF GRADING, BUILDING AND LANDSCAPE PLANS					
Project impacts to sensitive vegetation communities.	<p>Bio-1: Mitigation for impacts to non-jurisdictional coast live oak woodland (including disturbed) within the City and unincorporated County shall occur at a 2:1 ratio through creation and enhancement of suitable habitat at an approved mitigation bank in consultation with the City, County, and resource agencies (Corps, CDFG) prior to clearing, grubbing or grading (Table 1).</p> <p>Mitigation for impacts to Diegan coastal sage scrub (including disturbed) within the unincorporated County shall occur at a 1.5:1 ratio while impacts to non-native grassland within the City and unincorporated County shall be mitigated at a 0.5:1 ratio through creation and enhancement of suitable habitat or acquisition of suitable credits at an approved mitigation bank in consultation with the County and resource agencies prior to clearing, grubbing or grading (Table 1).</p>	Mitigation Measure Bio-1 Page 16	City Planning Division County Department of Planning and Land Use		
Potential indirect impacts to sensitive animal species.	<p>Bio-2: Indirect impacts to sensitive animal species (through loss of habitat) shall be mitigated through implementation of Mitigation Measure Bio-1, above.</p>	Mitigation Measure Bio-2 Page 18	City Planning Division County Department of Planning and Land Use		
PRIOR TO AND DURING CONSTRUCTION					
Potential direct and indirect impacts to nesting/breeding gnatcatchers and/or raptors.	<p>Bio-3: Unless a pre-grading survey is conducted within three days prior to the initial disturbance, no grubbing, clearing, or grading within 500 feet of occupied Diegan coastal sage scrub during the gnatcatcher breeding season (February 15 through August 31) or tree-nesting raptor breeding season (January 1 through September 15) shall occur. As such, all grading permits, improvement plans, and the final map shall state the same.</p> <p>If grubbing, clearing, or grading would occur during the gnatcatcher and/or raptor breeding season, a pre-grading survey shall be conducted within three days prior to grading to determine if these species occur within the areas directly impacted by grading or indirectly impacted by noise. If there are no gnatcatchers or raptors nesting (includes nest building or other breeding/nesting behavior) within this area, development shall be allowed to proceed. However, if any of these birds are observed nesting or displaying breeding/nesting behavior within the area, construction shall be postponed until (1) all nesting (or breeding/nesting behavior) has ceased or until after September 15; or (2) a temporary noise barrier or berm shall be constructed at the edge of the development footprint to reduce noise levels below 60 dB Leq or ambient (if ambient is greater than 60 dB Leq). Alternatively, the duration of construction equipment operation could be controlled to keep noise levels below 60 dB Leq or</p>	Mitigation Measure Bio-3 Page 18	City Planning Division Qualified biologist		

Phase at which the Mitigation Measures are to be implemented

NATURE OF IMPACT	MITIGATION MEASURE	IDENTIFICATION NO. LOCATION IN DOC.	RESPONSIBILITY FOR IMPLEMENTING	CERTIFIED INITIAL/DATE	COMMENTS
	<p>Bio-3 (cont.): ambient in lieu of or in concert with a wall or other sound attenuation barrier.</p> <p>To ensure compliance with the MBTA, clearing of native vegetation shall occur outside of the breeding season of most avian species (March 1 through July 31) unless a pre-grading survey is negative. Clearing during the breeding season of MBTA-covered species (migratory birds that are native to the U.S. or its territories) could occur if it is determined that no nesting birds (or birds displaying breeding or nesting behavior) are present within three days prior to clearing. As described above, a pre-grading survey shall be conducted to determine if breeding or nesting avian species occur within areas directly affected by grading or indirectly affected by noise. If any of these birds are observed nesting or displaying breeding/nesting behavior within the area, construction shall be postponed until (1) the nest is abandoned or the young have fledged or (2) after July 31.</p>				
<p>Avoidance of impacts to sensitive vegetation communities.</p>	<p>Bio-4: In areas adjacent to sensitive vegetation, the construction and staging area limits shall be clearly demarcated with temporary construction (orange blaze) fencing under the supervision of a qualified biologist to ensure that construction activity remains within the defined limits of work (refer to Figures 8a and 8b in the BTR). This fencing shall be erected prior to commencement of brushing or grading activities and shall demarcate areas where human and equipment access and disturbance from grading are prohibited adjacent to sensitive habitats. All site preparation near these interfaces shall be monitored by a qualified biologist during construction activities. A qualified biologist also shall inspect the demarcated areas during regularly scheduled construction monitoring visits.</p>	<p>Mitigation Measure Bio-4 Page 18</p>	<p>Construction Manager Qualified biologist</p>		
<p>Avoidance of impacts to sensitive jurisdictional areas and County RPO wetlands.</p>	<p>Bio-5: The Corps jurisdictional Waters of the U.S., CDFG jurisdictional Waters of the State, and County RPO wetlands within the BSA shall be avoided and no impacts shall occur to these jurisdictional areas and County RPO wetlands adjacent to the project alignment. The Corps and CDFG jurisdictional areas and County RPO wetlands to be avoided shall be clearly demarcated with temporary construction (orange blaze) fencing under the supervision of a qualified biologist to ensure that construction activity remains outside of these sensitive areas (refer to Figures 8a and 8b in the BTR). This fencing shall be erected prior to commencement of brushing or grading activities and shall demarcate areas where human and equipment access and disturbance from grading are prohibited adjacent to sensitive jurisdictional habitats and County RPO wetlands. All site preparation near these interfaces shall be monitored by a qualified biologist during construction activities. A qualified biologist also shall inspect the demarcated areas during regularly scheduled construction monitoring visits.</p>	<p>Mitigation Measure Bio-5 Page 19</p>	<p>Construction Manager Qualified biologist</p>		

Phase at which the Mitigation Measures are to be implemented

NATURE OF IMPACT	MITIGATION MEASURE	IDENTIFICATION NO. LOCATION IN DOC.	RESPONSIBILITY FOR IMPLEMENTING	CERTIFIED INITIAL/DATE	COMMENTS
Potential impacts related to disturbance of unknown subsurface cultural resources due to the cultural sensitivity of the project area.	CR-1: Prior to implementation of the monitoring, a pre-excavation agreement shall be developed between the appropriate Native American Tribes and the Water Division. Due to the location of the project, both Kumeyaay and Luiseño representatives should be included.	Mitigation Measure CR-1 Page 22	City Water Division Native American representatives of Kumeyaay and Luiseño tribes		
Potential impacts related to disturbance of unknown subsurface cultural resources due to the cultural sensitivity of the project area.	CR-2: The qualified archaeologist and the Native American representatives shall attend the pre-grading meeting with the contractors to explain the requirements of the program.	Mitigation Measure CR-2 Page 23	Construction Manager Qualified archaeologist and Native American representatives		
Potential impacts related to disturbance of unknown subsurface cultural resources due to the cultural sensitivity of the project area.	CR-3: An archaeologist and Native American monitors shall be on-site during all brushing and clearing, as well as during grading, trenching, and other ground-disturbing activities that occur within the first three feet below grade, unless otherwise agreed upon by the archaeological Principal Investigator, the Native American representatives, and Water Division staff. During the initial monitoring phase, the archaeological Principal Investigator shall re-evaluate the proposed alignments and identify those disturbance areas which are either in paved roads outside of alluvial areas; on very steep slopes without bedrock outcrops; or in bedrock, and therefore less likely to contain cultural resources. Decisions will be made in the field as to which areas do not require monitoring by an archaeologist. Native American monitors, however, shall be on site during all brushing, clearing, and other ground-disturbing activities, as noted above.	Mitigation Measure CR-3 Page 23	City Water Division Qualified archaeologist and Native American monitors		
Potential impacts related to encountering unknown subsurface cultural resources during site preparation and/or construction.	CR-4: If cultural resources are encountered, the monitors shall have the authority to temporarily halt or redirect grading/trenching while the cultural resources are documented and assessed. If significant resources are encountered, appropriate mitigation measures must be developed and implemented.	Mitigation Measure CR-4 Page 23	Construction Manager Qualified archaeologist and Native American monitors		
Potential impacts related to encountering human remains during site preparation and/or construction.	CR-5: If any human remains are discovered, the County Coroner shall be contacted. In the event that the remains are determined to be of Native American origin, the Most Likely Descendant, as identified by the Native American Heritage Commission, shall be contacted in order to determine proper treatment and disposition of the remains.	Mitigation Measure CR-5 Page 23	County Coroner Native American monitors		
Potential impacts related to recovery of artifactual materials.	CR-6: Recovered artifactual materials shall be cataloged and analyzed.	Mitigation Measure CR-6 Page 23	Qualified archaeologist		
Potential impacts related to monitoring and data recovery.	CR-7: A report shall be completed describing the methods and results of the monitoring and data recovery program.	Mitigation Measure Cul-7 Page 23	City Planning Division Qualified archaeologist		

Phase at which the Mitigation Measures are to be implemented

NATURE OF IMPACT	MITIGATION MEASURE	IDENTIFICATION NO. LOCATION IN DOC.	RESPONSIBILITY FOR IMPLEMENTING	CERTIFIED INITIAL/DATE	COMMENTS
Potential impacts related to curation of artifacts.	CR-8: Artifacts collected (if any) shall be curated with accompanying catalog to current professional repository standards or the collection will be repatriated to the appropriate Native American Tribe(s), as specified in the pre-excavation agreement.	Mitigation Measure CR-8 Page 23	City Planning Division City Water Division Qualified archaeologist and Native American monitors		

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 11

Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Edward N. Domingue, Director of Engineering Services
Debra Lundy, Real Property Manager

SUBJECT: Lease Agreement with La Paz Funeral Home, Inc. at 240 South Broadway

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-166 authorizing the Real Property Manager and City Clerk to execute a Lease Agreement with La Paz Funeral Home, Inc. at 240 South Broadway. It is further requested that Council approve an increase to the General Fund Revenue for the Fiscal Year 2012/2013 in the amount of \$7,000 and an increase to the Engineering Professional Services Budget to pay broker's fees of \$1,320.

FISCAL ANALYSIS:

Rental revenue in the amount of \$2,000 per month will be deposited into the general fund. A rent credit up to \$5,000 has been negotiated in exchange for the performance of certain tenant improvements by the Lessee. The real estate broker's fees in the amount of \$1,320 will be offset by the rental revenue to be received under this proposed lease agreement.

PREVIOUS ACTION:

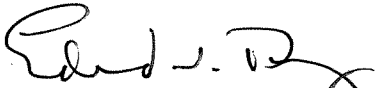
N/A

BACKGROUND:

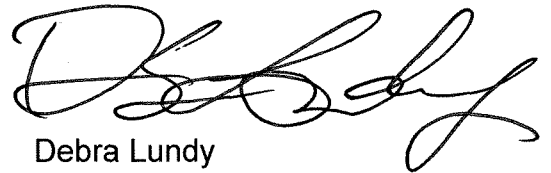
The subject property was purchased for the City's Main Library Expansion Project. The Project has been delayed, so when the property became vacant last fall, the City began marketing it for lease in order to generate interim rental revenue. La Paz Funeral Home, Inc. is interested in leasing the space for chapel services as an extension of its main funeral home/mortuary located in San Diego. La Paz would like to establish itself within the community of Escondido and will secure a permanent location within the City if successful. The only services to be offered at this location will be chapel services; all other funeral services will be performed at the main funeral home/mortuary. This proposed lease agreement will be subject to the tenant securing a Conditional Use Permit on or before December 31, 2012. The City will continue marketing the property and accepting back up offers during the entitlement process. Due to the amount of deferred maintenance at the property, the proposed Lease Agreement includes a provision for a rent credit up to \$5,000 for performing tenant

improvements, such as painting the interior, painting the exterior and installing new carpeting. All tenant improvements will be subject to advance approval by the City due to the historical significance of the building. As a result of uncertainty about the City's future uses for this property, the proposed Lease Agreement is a one-year term with two additional one-year options for renewal upon City approval. The proposed rent of \$2,000 per month reflects market rent for this type of property.

Respectfully submitted,



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



Debra Lundy
Real Property Manager



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: 10/17/2012
Department: Engineering
Division: Real Property
Project/Budget Manager: Debra Lundy x4034
Council Date (if applicable): 10/17/2012

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. Includes rows for Rent (4610-001, 7,000) and Professional Services (5131-001-402, 1,320).

Explanation of Request:

Increase in general fund rent income resulting from leasing property at 240 S. Broadway. Also, increase expenditures for brokerage fees.

APPROVALS

Handwritten signatures and dates for Department Head and Finance.

10/9/12
Date
10/9/12
Date

City Manager Date
City Clerk Date

Distribution (after approval): Original: Finance

RESOLUTION NO. 2012-166

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE REAL PROPERTY MANAGER AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A LEASE AGREEMENT WITH LA PAZ FUNERAL HOME, INC.

WHEREAS, the City of Escondido ("City") purchased certain real property located at 240 S. Broadway for its Main Library Expansion Project; and

WHEREAS, the Main Library Expansion Project is temporarily delayed and the property is currently vacant; and

WHEREAS, La Paz Funeral Home, Inc. operates a funeral home/mortuary in San Diego and is looking to expand its services to Escondido by offering a facility for its chapel services; and

WHEREAS, the City and La Paz Funeral Home, Inc. desire to enter into a Lease Agreement to allow La Paz Funeral Home, Inc. to operate chapel services; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the Lease Agreement.

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 Real Property Manager and City Clerk are authorized to execute, on

behalf of the City, the Lease Agreement with La Paz Funeral Home, Inc., which is attached hereto as Exhibit "1" and incorporated by this reference.



City of Escondido

LEASE AGREEMENT

PREMISES:

240 S. Broadway
Escondido, CA 92025

LESSEE:

La Paz Funeral Home, Inc.,
a California corporation

TERM: One (1) Year

CITY OF ESCONDIDO
LEASE AGREEMENT INDEX

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CITY OF ESCONDIDO
LEASE AGREEMENT

This Agreement is made this _____ day of _____, 2012.

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

And: La Paz Funeral Home, Inc.
A California corporation
2601 Imperial Avenue
San Diego, CA 92102
("LESSEE")

Witness that whereas:

A. City desires to rent to Lessee and Lessee desires to rent from City certain public property located at 240 S. Broadway, Escondido, CA 92025, for the purpose of operating a chapel for funeral services.

NOW THEREFORE, it is mutually agreed by and between City and Lessee as follows:

1. DEFINITION OF TERMS. The following words in this Lease Agreement shall have the significance attached to them in this clause unless otherwise apparent from their context.
 - a. "Lease" means this Lease Agreement.
 - b. "Premises" means the real property described as 240 South Broadway, Escondido, CA 92025.
 - c. "Lease Administrator" means the City of Escondido–Real Property Agent, or upon written notice to Lessee, such other person as shall be designated from time to time by City.

d. "Lessee" means La Paz Funeral Home, and does not include its heirs, assigns, or successors-in-interest.

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

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

and on behalf of Lessee by, whose address is:

La Paz Funeral Home, Inc.
2601 Imperial Avenue
San Diego, CA 92102

3. TERM. The term of this Lease shall be one (1) year, commencing on the date that is the latter of the following events: 1) Lessee has received a conditional use permit for the Premises; and 2) the City has delivered possession of the Premises to Lessee.

4. TERMINATION OF LEASE.

4.1 Each party shall have the right to terminate this Lease in the event Lessee cannot obtain a conditional use permit, for whatever reason, or in the event the Premises does not receive an Americans with Disabilities Act hardship exemption by December 31, 2012.

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

4.2.1 Lessee's failure to comply with the following clauses in this Lease:

- Acceptance and Maintenance, Paragraph 13
- Alterations, Paragraph 14
- Use, Paragraph 15
- Occupancy and Assignment, Paragraph 16
- Conduct, Paragraph 17
- Insurance, Paragraph 22
- Americans with Disabilities Act (ADA), Paragraph 29

4.2.2 If the City discovers at any time during the lease term that the Lessee or any other party has used, is using, or will use the Premises in an unlawful manner or for an unlawful purpose, or in any manner that is inconsistent with any provision of this Lease.

5. OPTIONS TO RENEW. Upon each expiration, and by providing the City with a written request at least three (3) months prior, upon City approval, Lessee shall have two (2) additional one-year options to renew the Lease. The Rent shall be increased by 3% from the previous year's Rent for each option exercised.

6. VACATION OF PREMISES.

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

6.2 Upon such termination, Lessee shall immediately:

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

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

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

7. RENT. In consideration of the possession and use of the Premises, Lessee shall deliver and pay rent to City during the term of this Lease in the amount of \$2,000.00 per month, on or prior to the 5th day of each month.

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

9. COST OF LIVING ADJUSTMENT. NA.

10. SECURITY DEPOSIT. A security deposit equal to \$2,000.00 shall be required under this Agreement and is due upon execution of the Lease.

11. UTILITIES PAYMENTS. Lessee agrees to provide and pay for all utilities and services necessary for the occupancy and use of the Premises, including, but not limited to: gas, water, electricity, trash, sewage charges or septic service, and telephone.

12. TAXES, ASSESSMENTS, AND FEES.

12.1 The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of personal property taxes levied on such interest. Lessee shall be responsible for the payment of, and shall pay before delinquent, all taxes, assessments, and fees assessed or levied upon Lessee, on said Premises or any interest therein, on any buildings, structures, machines, appliances, or other improvements of any nature whatsoever, or on any interest therein.

12.2 Lessee further agrees not to allow such taxes, assessments, or fees to become a lien against said premises or any improvement thereon. Nothing herein contained shall be deemed to prevent or prohibit Lessee from contesting the validity of amount of any such tax, assessment, or fee in any manner authorized by law.

13. ACCEPTANCE AND MAINTENANCE.

13.1 Lessee hereby acknowledges that Lessee has inspected the Premises, that Lessee accepts said Premises "as is" and "where is," that the Premises are in a good and sanitary order, condition, and repair. Lessee hereby accepts the Premises as such.

13.2 Lessee agrees to take good care of the Premises and all improvements, alterations, fixtures, and appurtenances thereon. Lessee agrees to make all repairs in and about the Premises, including painting, which may be necessary to preserve them in good order and condition. Said repairs, if any, shall be made in a good and professional manner, and at least equal to the condition and quality of the repaired items at the inception of this Lease. Lessee shall promptly pay the expenses of such repairs. Lessee agrees to be solely responsible for all costs of maintenance and repair.

- 13.3 In the event Lessee fails to properly maintain the premises as required by City, then City may notify Lessee in writing of said failure. In the event Lessee fails to perform said maintenance within thirty (30) days after such notice by City, City may perform such maintenance, and the cost thereof including, but not limited to, the cost of labor, material, and equipment, shall be paid by Lessee to City within ten (10) days from receipt by Lessee of a cost statement from City.
- 13.4 Noncompliance by Lessee with any provision of this clause shall allow the City to immediately terminate this Lease, pursuant to Paragraph 4.2 above.

14. ALTERATIONS.

- 14.1 Lessee shall make alterations and improvements to the Premises per a mutually agreed upon plan and specifications. Lessee shall not paint, alter, cut, add to, or otherwise change the appearance, structure, or condition of the Premises without the prior written consent of the Lease Administrator and only after obtaining applicable permits. The City shall provide Lessee a rent credit of up to \$5,000.00 for paint and carpet that has been pre-approved by the City. The City shall provide such rent credit upon proof of receipts provided by Lessee to the City evidencing expenditure on pre-approved alterations and improvements.
- 14.2 Any improvements made with the consent of the Lease Administrator shall become a fixture to the realty and shall remain on and be surrendered with the Premises upon termination of this Lease.
- 14.3 Noncompliance by Lessee with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

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

- 15.1 For Funeral Chapel Services, in accordance with the provisions and requirements contained in any permits required by the City of Escondido Planning Department.
- 15.2 Lessee shall not use, nor permit the use of, the Premises other than as described in Paragraph 15.1 above. In any case where Lessee is, or should reasonably be, in doubt as to the propriety of any particular use, Lessee may request, and will not be in breach or default if Lessee abides by, the written determination of the Lease Administrator that such use is or is not permitted.

- 15.3 Noncompliance by Lessee with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.
16. OCCUPANCY AND ASSIGNMENT. The Premises shall only be occupied by Lessee except with prior written consent of the Lease Administrator. Lessee may not assign any interest in this Lease to any other party, at any time, including a transferee of a controlling interest in Lessee. Lessee's noncompliance with this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.
17. CONDUCT.
- 17.1 Lessee and guests of Lessee shall at all times conduct themselves in a quiet and dignified manner so as to cause no annoyance or inconvenience to neighbors of Lessee.
- 17.2 Lessee shall not violate, or permit the violation of, any City or County ordinance, or state or federal law, in or about the Premises.
- 17.3 Noncompliance by Lessee with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.
18. PETS. No pets or livestock of any kind may be kept on the Premises without the prior written consent of the Lease Administrator.
19. NOTICES. Any notice required or permitted to be given by this Lease must either be personally served on the other party or served by certified mail, return receipt requested, to the addressee. Notices served by mail shall be sent to the address listed above in Paragraph 2. A change of either party's address must also be immediately served in the manner described above.
20. RIGHT OF INSPECTION. City reserves the right for its agents or employees to enter upon and inspect the Premises at any reasonable time to ascertain if Lessee is complying with the provisions of this Lease.
21. RIGHT TO SHOW PREMISES. City reserves the right, during the last sixty (60) days of this Lease, or any extension thereof, to show the Premises in order to facilitate re-renting or selling the Premises.

22. INSURANCE.

- 22.1 Lessee must have insurance in the following amounts at all times during this Agreement:
- 22.1.1 General liability insurance with at least \$1 Million combined single-limit coverage per occurrence for bodily injury and property damage; and
 - 22.1.2 Automobile liability insurance of \$1 Million combined single-limit per accident for bodily injury and property damage; and
 - 22.1.3 Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship
- 22.2 Each insurance policy required above must be acceptable to the City Attorney:
- 22.2.1 Each policy must name the City specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy.
 - 22.2.2 Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
 - 22.2.3 All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
- 22.3 Lessee agrees to deposit with City, on or before the effective date of this Lease, one Certificate of Insurance for each of the policy or policies necessary to satisfy the insurance provisions of this Lease and to keep such insurance in effect during the entire term of this Lease. Said Certificate of Insurance shall be reviewed by, and acceptable to, the City Attorney, prior to commencement of the Lease Term. Lessee will also deposit with the City within 60 days of the Effective Date of this Lease, an Additional Insured Endorsement naming City specifically and separately as a "additional insured", with the exception of the worker's compensation policy. The appropriate endorsements described in Paragraph 22.2 above shall follow within

sixty (60) days. Noncompliance by Lessee with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

22.4 City shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the Lease Administrator, the insurance provisions in this Lease do not provide adequate protection for City and for members of the public using the Premises, City may require Lessee to obtain insurance sufficient in coverage, form and amount to provide adequate protection from and against the kind and extent of risks which exist or are foreseeable at the time a change in insurance is required. City's requirements shall be reasonable, but shall be designed to assure adequate protection of the City's interests. The Lease Administrator shall notify Lessee in writing of changes in the insurance requirements and, if Lessee does not deposit with City within sixty (60) days of receipt of such notice a new Certificate of Insurance for each policy or policies of insurance incorporating such changes, this Lease shall be deemed in default without further notice to Lessee and may be forthwith terminated by the Lease Administrator, pursuant to Paragraph 4.2 above.

22.5 The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury or loss attributable to any act or omission of it or its agents, customers or guests in connection with this Lease or with use or occupancy of the Premises.

22.6 Noncompliance by Lessee with any provision of this Paragraph 22 shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

23. INDEMNIFICATION. Lessee shall defend, indemnify, and hold harmless City, its officers, agents, and employees from and against any and all claims, demands, and liabilities for loss of any kind or nature which City, its officers, agents, or employees may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected with this Agreement or with the occupancy and use of the Premises by Lessee, its invitees, visitors, or any other persons whatsoever. Lessee further agrees to pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorney's fees incurred

by City on account of any such claims, demands, or liabilities. However, the provisions of this Agreement shall not be construed to indemnify City for claims or acts arising from City's sole negligence.

24. COSTS AND ATTORNEY'S FEES. In the event legal action is brought to enforce the terms of or to declare a termination of this Lease for reason of breach thereof, the unsuccessful party shall pay all of the successful party's costs of such action, together with reasonable attorney's fees, in an amount to be fixed by the court.
25. NONDISCRIMINATION. Lessee herein covenants that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of physical or mental disabilities, race, color, creed, religion, sex, marital status, national origin or ancestry in the use, occupancy, tenure or enjoyment of the leased premises. Lessee shall not establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, or use of occupancy by customers, tenants or vendees in the leased premises.
26. SUPERSEDURE. This Lease, upon becoming effective, shall supersede any leases or rental agreements heretofore made or issued for the Premises between the City and Lessee.
27. HAZARDOUS AND/OR CONTAMINATED SOIL AND MATERIAL. Lessee will not place or permit to be placed materials and/or contaminated soils on the premises which under federal, state, or local law, statute, ordinance, or regulations require special handling in collection, storage, treatment, and/or disposal. Lessee also hereby covenants and agrees that, if at any time it is determined there are materials and/or contaminated soils located on the premises which under any environmental requirement require special handling in collection, storage, treatment, or disposal, Lessee shall notify City. Within thirty (30) days after written notice to City or from City, Lessee shall commence to take and thereafter diligently complete, at Lessee's sole expense, such actions as may be necessary to comply with environmental requirements.
28. CHOICE OF LAW. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in North San Diego County, California.
29. SPECIAL PROVISIONS. Lessee hereby acknowledges that Lessee waives all rights to any form of relocation assistance provided for by local, state, or federal law to which Lessee may be entitled by reason of this Lease.

30. AMERICANS WITH DISABILITIES ACT (ADA). It is the duty of the Lessee while operating under this Lease to comply with all local, state, and federal laws, including, but not limited to, the Americans with Disabilities Act and to indemnify City from any violation of any such law. Failure to comply with a provision of local, state, or federal law is grounds for the Lease Administrator's immediate termination of this Lease.

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

CITY OF ESCONDIDO

Date: _____

By: _____
Debra Lundy, Real Property Manager

Date: _____

By: _____
Diane Halverson, City Clerk

Date: _____

La Paz Funeral Home, Inc., a California corporation

By: _____
Bertram W. Roberts, Director

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

By: _____

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 12
Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Edward N. Domingue, Director of Engineering Services
Matthew Souttere, Associate Engineer

SUBJECT: Consulting Agreement with Bureau Veritas North America Inc. and Budget Adjustment for Final Design of the East Valley Parkway/Valley Center Road Widening Project

RECOMMENDATION:

It is requested that Council: 1) adopt Resolution No. 2012-163 authorizing the Mayor and City Clerk to execute a Consulting Agreement between the City of Escondido and Bureau Veritas North America Inc. in the amount of \$675,713 to complete the final design to widen the remaining segment of East Valley Parkway/Valley Center Road from Beven Drive to County of San Diego improvements north of Lake Wohlford Road; and 2) approve a Budget Adjustment to fully fund project design and anticipated staff time.

FISCAL ANALYSIS:

There is \$400,000 already programmed in Account No. 230-691705 for this work. Staff is requesting that \$345,713 be transferred from Account No. 230-3050 into Account No. 230-691705 via a Budget Adjustment Request to fund the project design costs and staff time spent on the project.

PREVIOUS ACTION:

Consulting Agreement by Resolution 2000-143, dated August 23, 2000, First Amendment, dated January 15, 2003; Second Amendment, dated February 21, 2003; Third Amendment, dated July 15, 2003; Fourth Amendment, dated September 30, 2003; Fifth Amendment, dated December 24, 2003; Sixth Amendment, dated June 30, 2004; and Seventh Amendment, dated October 4, 2006.

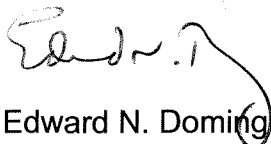
BACKGROUND:

Under an earlier contract, extending from April 2000 through approximately 2006, Bureau Veritas North America Inc. completed a majority of the design work for Bear Valley Parkway and East Valley Parkway/Valley Center Road, including preliminary work for the segment of road under consideration (See Attachment A). Work included the establishment of survey control, topographic mapping, legal descriptions and plat preparation for the Bear Valley Parkway/East Valley Parkway Underground District Boundary, traffic analysis, environmental assessment and support, potholing of utilities,

preparation of support material for presentations, and geotechnical work to establish alignment options for eventual final design. Due to the lack of funding, final design for improvement of the remaining segment was not completed at that time.

This project will improve East Valley Parkway/Valley Center Road between Beven Drive and existing County of San Diego improvements approximately one quarter of a mile north of Lake Wohlford Road. Similar improvements on both sides of this road segment have already been completed. Improvements to the south were part of earlier projects completed by the City, and improvements to the north were completed by the County of San Diego. Improvements that make up this project include street widening to provide three lanes in each direction between Beven Drive and Lake Wohlford Road, then transitioning to two lanes north of Lake Wohlford Road to match previously completed street improvements by the County of San Diego. Widening of the existing bridge north of Lake Wohlford Road is required to complete proposed street widening improvements, and will be included with this project. Other improvements include new curb, gutter, median, sidewalk, traffic striping and signal improvements, and new landscaping and irrigation to match Eureka Spring improvements to the south. Proposed improvements are intended to match existing improvements on both sides of this road segment, improve pedestrian and vehicular safety in the area, and improve appearance at the entrance to the City along this major corridor. Staff recommends this agreement with Bureau Veritas North America Inc. because substantial preliminary work has already been completed by this firm, which helps reduce costs of the remaining design services.

Respectfully submitted,

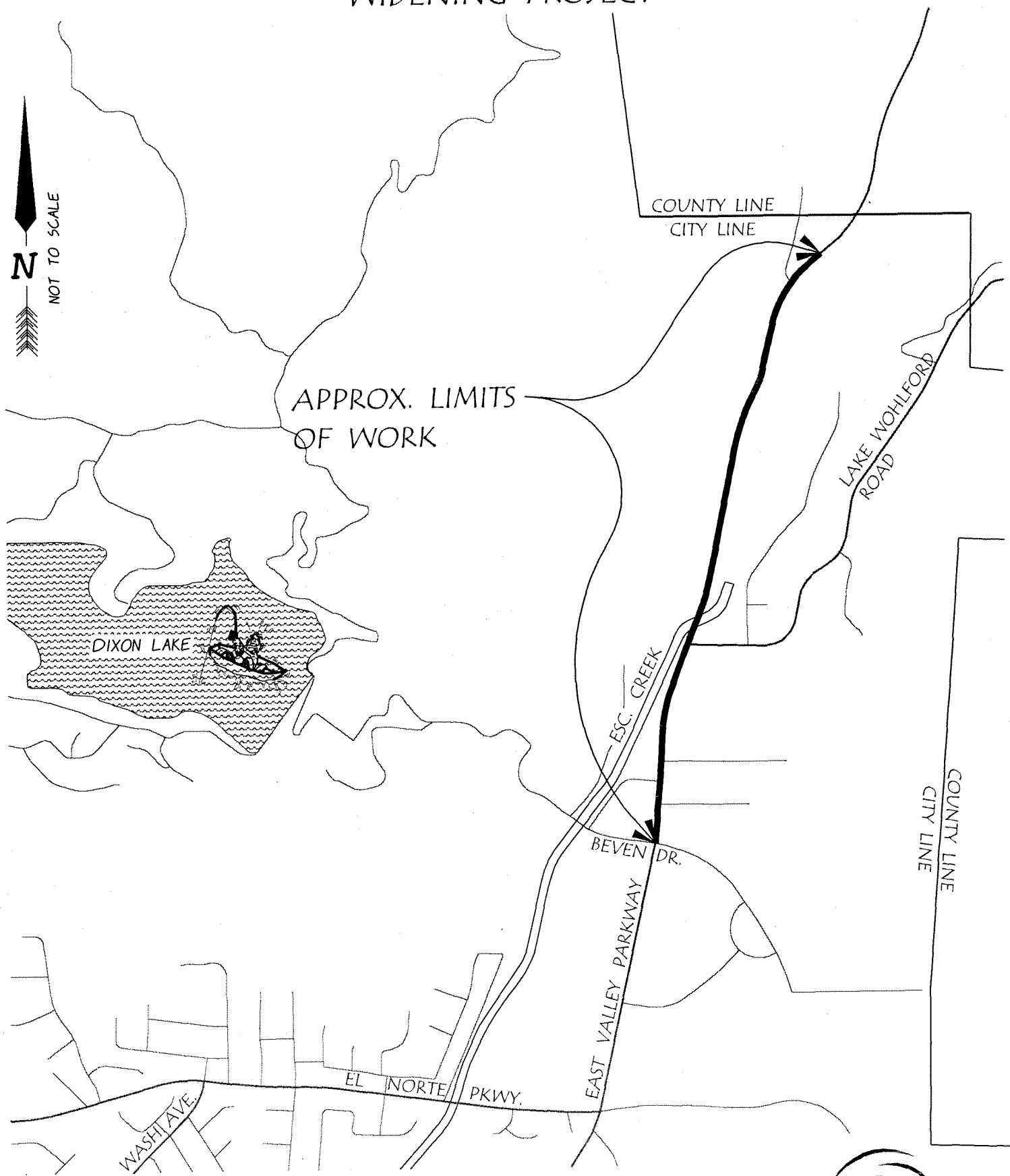


Edward N. Domingue, P.E.
Director of Engineering Services



Matthew C. Souttere
Associate Engineer

EAST VALLEY PARKWAY / VALLEY CENTER ROAD WIDENING PROJECT





CITY OF ESCONDIDO
 BUDGET ADJUSTMENT REQUEST

Date of Request: October 8, 2012
 Department: Engineering Services
 Division: Design
 Project/Budget Manager: Robb Zaino 4001
 Name Extension
 Council Date (if applicable): October 17, 2012
 (attach copy of staff report)

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

ML
 |

Project/Account Description	Account Number	Amount of Increase	Amount of Decrease
Widen E. Valley Pkwy & Valley Center Rd.	230-691705	\$345,713	
TransNet Fund Balance	230-3050		\$345,713

Explanation of Request:

The cost of Consultant services to complete design to widen E. Valley Pkwy/Valley Center Rd. from Beven Drive to County of San Diego improvements north of Lake Wohlford Rd. are \$675,713. Funds in the amount of \$400,000 were previously programmed in Account No. 230-691705 for this work. Staff is requesting that \$345,713 be transferred as shown above to pay remaining design costs and anticipated staff time.

APPROVALS

	<u>10/9/12</u>	_____	_____
Department Head	Date	City Manager	Date
	<u>10/11/12</u>	_____	_____
Finance	Date	City Clerk	Date

Distribution (after approval): Original: Finance

RESOLUTION NO. 2012-163

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR AND CITY
CLERK, TO EXECUTE, ON BEHALF OF THE
CITY, A CONSULTING AGREEMENT WITH
BUREAU VERITAS NORTH AMERICA INC.
FOR FINAL DESIGN OF THE EAST VALLEY
PARKWAY/VALLEY CENTER ROAD
WIDENING PROJECT

WHEREAS, it is in the best interest of the public to complete remaining street widening improvements on East Valley Parkway/Valley Center Road between Beven Drive and County of San Diego improvements approximately one quarter mile north of Lake Wohlford Road ("Project"); and

WHEREAS, Bureau Veritas North America Inc. completed preliminary engineering, traffic analysis, environmental assessment, and geotechnical work to establish the specific alignment plan for the East Valley Parkway/Valley Center Road Widening Project from Beven Drive to San Diego County improvements approximately one quarter mile north of Lake Wohlford Road; and

WHEREAS, the Director of Engineering Services recommends the execution of a Consulting Agreement ("Agreement") with Bureaus Veritas North America Inc. for final design of the Project for an amount of six hundred seventy-five thousand seven hundred thirteen dollars (\$675,713); and

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

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

1. That the above recitations are true.

2. That the Mayor and City Clerk are authorized to execute, on behalf of the City, an Agreement with Bureaus Veritas North America Inc. for the final design for widening improvements to East Valley Parkway/Valley Center Road from Beven Drive to County of San Diego improvements approximately one quarter mile north of Lake Wohlford Road, which is attached hereto as Exhibit "1" and incorporated by this reference.



CITY OF ESCONDIDO
CONSULTING AGREEMENT FOR DESIGN PROFESSIONALS

(ONLY for licensed architects, landscape architects, professional engineers, and professional land surveyors who are performing design services for the City)

This Agreement is made this ____ day of _ October __, 20 __.

Between: CITY OF ESCONDIDO
a Municipal Corporation
201 N. Broadway
Escondido, California 92025
Attn: Matthew C. Souttere
760-839-4574
("CITY")

And: Bureau Veritas North America Inc.
10620 Treena Street, Suite 200
San Diego, CA 92131
Attn: Phil Kern
858-451-6100
("CONSULTANT")

Witness that whereas:

- A. It has been determined to be in the CITY's best interest to retain the professional services of a consultant to complete Final Design of East Valley Parkway/Valley Center Road Street Widening Project; and
- B. The CONSULTANT is considered competent to perform the necessary professional services for CITY;

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

- 1. Services. The CONSULTANT will furnish all of the services as described in "Attachment A" which is attached and incorporated by this reference.
- 2. Compensation. The CITY will pay the CONSULTANT in accordance with the conditions specified in "Attachment A," in the sum of \$675,713. Any breach of this Agreement will relieve CITY from the obligation to pay CONSULTANT, if CONSULTANT has not corrected the breach after CITY provides notice and a reasonable time to correct it.
- 3. Scope of Compensation. The CONSULTANT will be compensated for performance of tasks specified in "Attachment A" only. No compensation will be provided for any other tasks without specific prior written consent from the CITY.

4. Duties. CONSULTANT will be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other services furnished by the CONSULTANT under this Agreement, except that the CONSULTANT will not be responsible for the accuracy of information supplied by the CITY.
5. Personnel. The performance of services under this Agreement by certain professionals is significant to the CITY. CONSULTANT will assign the persons listed on "Attachment B," which is attached and incorporated by this reference, to perform the Services described in Paragraph 1, and will not add or remove persons from the list without the prior written consent of the CITY. CONSULTANT will not subcontract any tasks under this Agreement without obtaining the advance written consent of the CITY.
6. Termination. Either CONSULTANT or the CITY may terminate this Agreement with thirty (30) days advance written notice.
7. City Property. All original documents, drawings, electronic media, and other material prepared by CONSULTANT under this Agreement immediately becomes the exclusive property of the CITY, and may not be used by CONSULTANT for any other purpose without prior written consent of the CITY.
8. Insurance.
 - a. The CONSULTANT shall secure and maintain at its own costs, for all operations, the following insurance coverage, unless reduced by the City Attorney:
 - (1) General liability insurance. Occurrence basis with minimum limits of \$1,000,000 each occurrence, \$2,000,000 General Aggregate, and \$1,000,000 Products/Completed Operations Aggregate; and
 - (2) Automobile liability insurance of \$1,000,000 combined single-limit per accident for bodily injury and property damage, unless waived as provided in 8(b) below; and
 - (3) Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship; and
 - (4) Errors and Omissions professional liability insurance with minimum coverage of \$1,000,000.
 - b. It is the parties' understanding that the use of a motor vehicle is not a primary subject of this Agreement. CONSULTANT acknowledges that operating a motor vehicle is outside the scope of this Agreement and occurs only at the convenience of the CONSULTANT. A waiver of automobile liability insurance is only effective if both sets of initials appear below, otherwise such insurance is required.

Acknowledged by CONSULTANT _____

Waiver appropriate by CITY _____

- c. Each insurance policy required above must be acceptable to the City Attorney:
 - (1) Each policy must provide for 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.

- (2) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
 - (3) Both the General Liability and the Automotive Liability policies must name the CITY specifically as an additional insured under the policy on a separate endorsement page. The endorsement must be ISO Form CG2010 11/85 edition or its equivalent for General Liability endorsements and CA 20-01 for Automobile Liability endorsements.
 - (4) The General Liability policy must include coverage for bodily injury and property damage arising from CONSULTANT's work including its ongoing operations and products-completed operations hazard.
 - (5) The General Liability policy must be primary and noncontributory and any insurance maintained by CITY is excess.
- d. In executing this Agreement, CONSULTANT agrees to have completed insurance documents on file with the CITY within fourteen (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. Indemnification. CONSULTANT (which in this paragraph 9 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless the CITY from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any of the following:
- a. Any claim of liability arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement, excepting only those claims resulting from the sole negligence, active negligence or intentional misconduct of CITY, its employees, officials, or agents, not including CONSULTANT;
 - b. Any personal injuries, property damage or death that CONSULTANT may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or
 - c. Any injury or death which results or increases by any action taken to medically treat CONSULTANT.
10. Anti-Assignment Clause. The CONSULTANT may not assign, delegate or transfer any interest or duty under this Agreement without advance written approval of the CITY, and any attempt to do so will immediately render this entire Agreement null and void.
11. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.
12. Independent Contractor. CONSULTANT is an independent contractor and no agency or employment relationship, either express or implied, is created by the execution of this Agreement.
13. Merger Clause. This Agreement and its Attachments, if any, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and any of its Attachments, the provisions of this Agreement must prevail.

14. Anti-Waiver Clause. None of the provisions in this Agreement will be waived by CITY because of previous failure to insist upon strict performance, nor will any provision be waived by CITY because any other provision has been waived, in whole or in part.
15. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.
16. Choice of Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in San Diego County, California.
17. Multiple Copies of Agreement/Counterparts. Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
18. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the CITY.
19. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below. Each party agrees to promptly send notice of any changes of this information to the other party, at the address first above written.
20. Business License. The CONSULTANT is required to obtain a City of Escondido Business License prior to execution of this Agreement.
21. Compliance with Applicable Laws, Permits and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. CONSULTANT shall obtain any and all licenses, permits, and authorizations necessary to perform services set forth in this Agreement. Neither CITY, nor any elected nor appointed boards, officers, officials, employees, or agents of CITY shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
22. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. CONSULTANT affirms that as an employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. CONSULTANT agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.

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

CITY OF ESCONDIDO

Date: _____

Sam Abed
Mayor

Date: _____

Diane Halverson
City Clerk

Date: _____

(Contractor signature)

Title

(The above signature must be notarized)

APPROVED AS TO FORM:

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

By: _____

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

East Valley Parkway Widening Project – Beven Drive to Northern City Limits		
TASK	TASK DESCRIPTION	DELIVERABLES
1	Project Management and Coordination	
	<p>Consultant will oversee and manage tasks within this scope of work based on a projected 8-month design schedule. Consultant will coordinate between the disciplines, including those services to be performed by subconsultants as described in this scope of work.</p> <p>Project Management and Coordination duties include the following:</p> <ul style="list-style-type: none"> ▪ Scheduling, attending, and preparing meeting minutes and action items for eight (8) monthly meetings. ▪ Preparing monthly progress reports ▪ Updating schedule and providing status updates ▪ Subconsultant coordination, management, and administration ▪ Environmental coordination ▪ Other Coordination/meetings not to exceed project budget line item 	<ul style="list-style-type: none"> ▪ Meeting agendas ▪ Meeting minutes and action items ▪ Monthly status / progress reports ▪ Hardcopy project schedules (monthly updates) ▪ Copies of Project Correspondence
2	Topographic and Utility Base Mapping	
	<p>2.1 Field Completion Survey</p> <p>Consultant will supplement existing survey field shots collected during previous design efforts with new field shots in areas where new development or improvements have occurred. Field completion survey will include the following tasks:</p> <ul style="list-style-type: none"> ▪ Recover horizontal and vertical control using previously established benchmarks ▪ Perform detailed ground survey and 50-foot cross sections at locations of new development. These areas include: <ul style="list-style-type: none"> ○ Beven Drive intersection and 100 feet in all four directions ○ Right turn pocket along the Community Lutheran Church property south of Lake Wohlford Road 	<ul style="list-style-type: none"> ▪ Field survey notes, electronic file and plot of survey data



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TASK	TASK DESCRIPTION	DELIVERABLES
	<p>2.1 Field Completion Survey (continued)</p> <ul style="list-style-type: none"> o Valley Center Road improvements completed in 2008 by the County (Station 97+00 to Station 103+00) ▪ Supplement existing 50-foot cross sections to extend beyond proposed improvements a minimum of 10 feet, and add 3 more sections for Lake Wohlford Road ▪ Perform detailed ground survey for existing driveways and buildings where improvements may be affected ▪ Locate visible utility appurtenances including manholes, valves, pedestals, cabinets, utility poles, exposed piping, mailboxes, etc. 	<ul style="list-style-type: none"> ▪ <i>Survey Notes and ASCII Points File</i>
	<p>2.2 Update 2004 Utility Base Map</p> <p>Consultant will confirm and update the 2004 Utility base map with information collected in Field Completion Survey, Task 2.1, and updated utility records provided by the City. Consultant will provide updated utility base map to City for their monthly utility coordination meeting to check for utility conflicts. If conflicts are determined, City staff will request updated utility records.</p>	<ul style="list-style-type: none"> ▪ <i>Updated Utility Base Map</i>
	<p>2.3 Update 2004 Topographic Base Map</p> <p>Consultant will revise the 2004 Topographic base map with information collected in Field Completion Survey, Task 2.1. Since aerial topographic surveying is not a part of this scope, Consultant will update existing base map with new topography based on new survey points and 2010 satellite imagery. Anticipated areas of revision are the Beven Drive intersection, the west side of the Community Lutheran Church property, and the roadway taper at the North City limits.</p> <p>Consultant will perform a field review with the updated base map to confirm that base map is accurate and comprehensive.</p>	<ul style="list-style-type: none"> ▪ <i>Updated Topographic Base Map</i>
	<p>2.4 Digital Terrain Model (DTM)</p> <p>Consultant will compile survey data and create a DTM of the existing ground using AutoCAD Civil 3D.</p>	<ul style="list-style-type: none"> ▪ <i>CAD drawing and XML file of DTM</i>



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3	Right of Way Coordination	
	<p>3.1 Update Right of Way Base Map</p> <p>The Right of Way base map from the previous efforts will be reviewed and verified using current title reports to be provided by the City. Consultant will coordinate with the City's Right of Way Manager on this effort.</p> <p>Based on preliminary research, it is anticipated that changes in existing right of way will occur at Beven Drive due to the recent completion of the Eureka Springs development. Consultant will update the Right of Way base map accordingly, showing existing and proposed Right of Way and existing property lines.</p>	<ul style="list-style-type: none"> ▪ CAD file and PDF of revised Right of Way Map
	<p>3.2 Property Acquisition Support (Plats and Legal Descriptions)</p> <p>11 plats and legals were prepared previously for properties impacted by the proposed roadway widening. Consultant will verify the accuracy of these plats and legals and check if any changes need to be made, including temporary construction and slope easements. Some properties have changed ownership since the previous efforts and those plats and legals will be updated accordingly. Based on a meeting with the City, the southernmost property on the east side (northeast corner of Beven Drive) will likely be revised to a full property acquisition.</p> <p>This scope assumes a maximum of 3 plat and legal updates and the remainder to involve minor verification only.</p> <p>Consultant will prepare a draft set of plats and legals and submit them to the City for review and comment. Final plats and legals will be signed by a licensed surveyor or engineer licensed to perform surveying in the State of California.</p>	<ul style="list-style-type: none"> ▪ Draft Plats and Legal Descriptions for 11 parcels ▪ Signed Plats and Legal Descriptions for 11 parcels



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TASK	TASK DESCRIPTION	DELIVERABLES
4	Hydromodification Design and Report	
	<p>4.1 Hydromodification Design</p> <p>Consultant will perform hydromodification pre- and post-project hydrology studies to determine necessary project BMPs for compliance with California Regional Water Quality Control Board Order R9-2007-0001, and the County's new Hydromodification Management Plan (HMP).</p> <p>The basic design layout will use the non-sidewalk area of the parkway for BMP performance. Design Management Areas (DMAs) will be delineated and BMPs designed using the County approved sizing tool. The results of the design calculations will be incorporated into the Street Improvement Plans for construction.</p>	<ul style="list-style-type: none"> ▪ <i>Hydromodification Design Calculations</i> ▪ <i>Hydromodification Design incorporated into Construction Plans</i>
	<p>4.2 Hydromodification Report</p> <p>Consultant will prepare a draft Hydromodification report for compliance with Order R9-220-0001 and the HMP, and submit to the City for review and approval. Comments will be incorporated into the draft Hydromodification report and a final report will be prepared and submitted to the City. Final Hydromodification report will be included in the SWMP to be prepared under Task 10.</p>	<ul style="list-style-type: none"> ▪ <i>Draft and Final Hydromodification Report (to be included in SWMP)</i>
5	Drainage Analysis – Review and Update	
	<p>5.1 Hydrology Study</p> <p>Consultant will review previous hydrology study, verify hydrologic methodology and calculations, and update, as necessary, to conform to the 2003 County Hydrology Manual and City's 2009 Drainage Design Standards. Watersheds will need to be re-drawn around the new Beven Drive, and the new storm drain built for Eureka Springs will be incorporated into the revised hydrology. An updated Hydrology Map will be prepared.</p>	<ul style="list-style-type: none"> ▪ <i>Hydrology Map and AES reports (to be included in final Drainage Report)</i>



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TASK	TASK DESCRIPTION	DELIVERABLES
	<p>5.2 Hydraulic Study</p> <p>Using the Hydrology Study, Consultant will perform hydraulic calculations to determine the size of inlets, catch basins, ditches, and underground storm drain piping. Based on the 100-year storm year frequency, a hydraulic grade line will be calculated and used for the sizing of the storm drain improvements. Hydromodification will be performed under a separate task but will be considered when determining final storm drain design.</p>	<ul style="list-style-type: none"> StormCAD and/or Flowmaster results (to be included in final Drainage Report)
	<p>5.3 Drainage Report</p> <p>Consultant will compile all hydrologic and hydraulic design calculations in a final report outlining the existing conditions, the calculation methodology, and recommendations for final design.</p> <p>Consultant will submit the Drainage Report at the 75% and 100% PS&E Submittals.</p>	<ul style="list-style-type: none"> Drainage Report at 75% and 100% PS&E Submittals
6	Prepare 75% PS&E	
	<p>6.1 Evaluate Alignment against Environmental Footprint</p> <p>Consultant will review alignment from previous design efforts and compare it to the approved 2004 environmental footprint. Consultant will coordinate this effort with the environmental consultant that prepared the 2004 environmental document. Areas of conflict and potential concern will be identified.</p> <p>Consultant will prepare a large scale exhibit overlaying the proposed alignment with the environmental footprint and present it to the City for evaluation of the final alignment. It is anticipated that some elements of the design, specifically the proposed walls from the 2004 alignment, may change based on the environmental footprint.</p>	<ul style="list-style-type: none"> Large scale exhibit of proposed final alignment (1"=20')



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TASK	TASK DESCRIPTION	DELIVERABLES
	<p>6.2 Prepare Roadway Model</p> <p>Once alignment is set and an approach to hydromodification has been established, Consultant will create horizontal and vertical alignments in Civil 3D. The road profile from the previous design efforts will be verified.</p> <p>Roadway assemblies (templates, cross sections) will be created and defined to follow the proposed roadway alignment. Roadway cross sections will be designed using City of Escondido standards. However, parkway and median improvements, with the incorporation of hydromodification, may be modified from standard to meet current NPDES requirements.</p> <p>Roadway assemblies will include the street's structural section, curbs, gutters, sidewalks, medians, walls (if necessary) and cut and fill slopes to existing.</p>	<ul style="list-style-type: none"> ▪ <i>Cross sections plotted every 50 feet showing both proposed surface and existing ground</i>
	<p>6.3 Prepare Street Improvement Plans</p> <p>Consultant will prepare street improvement plan and profile sheets for the widening of East Valley Parkway/Valley Center Road from Beven Drive to the City/County line (approximately 3000 feet). Widening will require improvements to the intersection of Lake Wohlford Road and minor alley-type street connections at Wohlford Drive, Norman Lane, and Lewis Lane.</p> <p>Proposed roadway will be a 6-lane major arterial from Beven to 400 feet north of Lake Wohlford Drive (approx. 2300 feet) and then transition to 4 lanes continuing to the City/County line (approx. 700 feet).</p> <p>Consultant will prepare street improvement plan and profile drawings for the proposed improvements. Drawings will utilize the latest City of Escondido title blocks to be provided by the City.</p> <p>Improvement Plans will include:</p> <ul style="list-style-type: none"> ▪ Title sheet ▪ General Notes and Legend Sheet ▪ Vicinity Map, Location Map, and Sheet Index ▪ Typical Section Sheet ▪ Detail Sheets ▪ Street Improvement Plan and Profile Sheets 	<ul style="list-style-type: none"> ▪ <i>(5) full-size and (2) half-size set of plans</i> ▪ <i>(1) electronic PDF of Plan Submittal</i>



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TASK	TASK DESCRIPTION	DELIVERABLES
	<p>6.3 Prepare Street Improvement Plans (continued)</p> <ul style="list-style-type: none"> ▪ Storm Drain Plan and Profile Sheets ▪ Driveway Sheets ▪ Erosion Control Plans 	
	<p>6.4 Specifications</p> <p>Consultant will prepare technical specifications including standard and special provisions. The Standard Specifications for Public Works Construction (Green Book) format will be used, 2012 edition. It is assumed that the City will provide one “boiler plate” copy in digital format of the City Standard Special Provisions. Federal requirements will be incorporated into the City Standard Specifications.</p>	<ul style="list-style-type: none"> ▪ (3) copies of Specifications ▪ (1) electronic PDF of Specifications
	<p>6.5 Opinion of Probable Construction Costs (Cost Estimate)</p> <p>Consultant will calculate quantities for each bid item identified on a sheet by sheet basis. Unit costs for each bid item will be determined using the City's, County's, and Caltrans' cost history. A 15% contingency will be added at the 75% submittal stage. All information will be organized in spreadsheet form showing Bid Item, Quantity, Unit Cost, and Total Cost.</p> <p>Consultant will prepare a bid item schedule. The bid item numbers will match the numbering system used for the engineer's opinion of probable cost.</p>	<ul style="list-style-type: none"> ▪ (3) copies of Estimate ▪ (1) electronic PDF of Estimate
7	Prepare 100% PS&E	
	<p>Consultant will review and log comments from City and outside party reviewers from the 75% submittal. Comments will be addressed and changes made to the PS&E as appropriate.</p> <p>PS&E will be updated to a 100% level. Updates will focus primarily on the details of the design. Updates will be made to the Specifications and Estimate. Estimate contingency will remain at 15%.</p> <p>No major changes in alignment or design are anticipated at this stage and therefore any major changes would be considered as extra work.</p>	<ul style="list-style-type: none"> ▪ Comment Review Log with Responses ▪ (5) full-size and (2) half-size set of plans ▪ (3) copies of Specs and Estimate ▪ (1) electronic PDF of PS&E Submittal



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TASK	TASK DESCRIPTION	DELIVERABLES
8	Prepare Final PS&E	
	<p>Consultant will review and log comments from City and outside party reviewers from 100% submittal. Comments will be addressed and changes made to the PS&E as appropriate.</p> <p>PS&E will be updated to a FINAL level. In-house QA/QC will be performed and final changes made. All in-house changes will be conveyed to the City for final approval. Once approved, Consultant will prepare a signed set of mylars and make the final submittal.</p>	<ul style="list-style-type: none"> ▪ <i>Comment Review Log with Responses</i> ▪ <i>(1) set of signed mylar drawings</i> ▪ <i>(1) full-size and (1) half-size set of plans</i> ▪ <i>(1) copy of Specifications and Estimate</i> ▪ <i>(1) electronic PDF of PS&E Submittal</i>
9	Storm Water Pollution Prevention Plan (SWPPP)	
	<p>Consultant will prepare a SWPPP in conformance with the California Stormwater Quality Association (CASQA) template for traditional site improvements to comply with the new Statewide General Construction Stormwater Permit (Order No. 2009-0009-DWQ) as issued by the State Water Resources Control Board. Components for preparation of the SWPPP include the following:</p> <ul style="list-style-type: none"> ▪ Assessment of Risk Level for the proposed improvements ▪ Preparation of Draft SWPPP for Sections 1-7 of CASQA's SWPPP template ▪ Preparation of Final SWPPP 	<ul style="list-style-type: none"> ▪ <i>Draft SWPPP</i> ▪ <i>Final SWPPP</i>
10	Storm Water Management Plan (SWMP)	
	<p>Consultant will prepare a Storm Water Management Plan (SWMP) to describe the pollutants of concern, hydrologic conditions of concern (if any), and permanent storm water Best Management Practices (BMPs) to be implemented in accordance with the San Diego Regional Water Quality Control Board (RWQCB) and the City of Escondido and County of San Diego current storm water quality requirements and standards identified in the Water Quality Control Plan for the San Diego Basin, dated September 1994, and the Countywide Model Standard Urban Stormwater Mitigation Plan (SUSMP), dated January 2011.</p>	<ul style="list-style-type: none"> ▪ <i>Draft SWMP</i> ▪ <i>Final SWMP</i>



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TASK	TASK DESCRIPTION	DELIVERABLES
11	Geotechnical Study Update	
	<p>Consultant will perform the following duties as necessary to meet the requirements of the latest Caltrans Seismic Design Criteria and AASHTO LRFD Bridge Design Specifications, 4th Edition, 2007, with California Amendments and other applicable codes:</p> <ul style="list-style-type: none"> ▪ Review the current project plans ▪ Coordinate with the project structural and civil engineers ▪ Review the existing geotechnical report ▪ Perform a site visit ▪ Update the project geotechnical recommendations and foundation design of the proposed bridge. The update will use the existing field and laboratory data; no additional subsurface exploration or laboratory testing will be performed. 	<ul style="list-style-type: none"> ▪ <i>Draft Addendum Geotechnical Report with project updates</i> ▪ <i>Response to one set of review comments</i> ▪ <i>Final Addendum Geotechnical Report with project updates</i>
12	Structural Design	
	<p>Consultant will perform structural engineering services for the proposed bridge widening over Escondido Creek and sound walls near Dog Park.</p> <p>12.1 Bridge Type Selection</p> <p>Consultant will perform the following duties:</p> <ul style="list-style-type: none"> ▪ Review as-built plans of the existing bridge. ▪ Prepare Type Selection Report for the proposed widening in accordance with Office of Special Funded Projects (OSFP) Information and Procedures Guide Section 4-2. ▪ Prepare a General Plan and Foundation Plan for the proposed widening. ▪ Submit Type Selection Report for City and Caltrans review. ▪ Attend a Type Selection Meeting, make corrections as necessary and resubmit. 	<ul style="list-style-type: none"> ▪ <i>Bridge Type Selection Report</i>



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TASK	TASK DESCRIPTION	DELIVERABLES
	<p>12.2 Bridge PS&E</p> <p>Once bridge type has been approved and the final roadway geometry is set, Consultant will design all elements required for bridge widening. PS&E submittals will be incorporated into submittals for Street Improvement Design at the 75%, 100%, and Final submittal levels. As a part of this design the following tasks will be performed:</p> <ul style="list-style-type: none"> ▪ Prepare final bridge design based on AASHTO LRFD Bridge Design Specifications, Fourth Edition, with interims from Caltrans. ▪ Prepare seismic analysis and design in accordance with the latest edition of Caltrans Seismic Design Criteria. ▪ Perform a seismic evaluation of the existing bridge to determine if seismic retrofit will be necessary. ▪ Prepare quantities, final engineer's estimate of probable cost, bid item list, and estimated construction schedule. ▪ Perform an independent check of the bridge widening design. ▪ Provide technical special provisions based on the Standard Specifications for Public Works Construction (Green Book), 2012 edition. 	<ul style="list-style-type: none"> ▪ <i>Bridge Plans at 75%, 100%, and Final Submittals</i>
	<p>12.3 Sound Wall PS&E</p> <p>Consultant will design sound walls in accordance with the 2010 California Building Code. Walls will consist of a reinforced concrete foundation with a masonry block wall stem. Wall heights and locations will be per the 2004 environmental documents. Wall locations will be depicted on the street improvement plans and a separate sheet will be provided for cross sections and details.</p> <p>Consultant will provide technical special provisions to accompany sound wall plan and prepare a final engineer's estimate of probable construction costs for sound walls.</p>	<ul style="list-style-type: none"> ▪ <i>Sound Wall Plans at 75%, 100%, and Final Submittals</i>



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TASK	TASK DESCRIPTION	DELIVERABLES
13	Traffic and Lighting	
	<p>13.1 Traffic Signal Modification Plan</p> <p>The project will require the modification of two traffic signals to meet the new widened conditions. These are proposed at the intersections of East Valley Parkway with Beven Drive and Lake Wohlford Road.</p> <p>Consultant will prepare traffic signal modification plans with all appropriate construction details as required by the City. The base plan will show centerlines, right-of-way lines, relevant existing or proposed street improvements, utilities of record, and existing traffic controls and improvements. The plan will conform to the requirements of the City, will reference the latest edition of Standard Plans and Specifications, and will be designed in the specific format required or requested to meet their approval.</p> <p>It is assumed that a traffic signal interconnection between these two signals will need to be implemented or reestablished as part of this construction. This will be accomplished through concise notes on the traffic signal plan(s). We estimate two (2) sheets will be prepared at a scale of 1"=40'.</p>	<ul style="list-style-type: none"> ▪ <i>Traffic Signal Modification Plans at 75%, 100%, and Final Submittals</i>
	<p>13.2 Signing and Striping Plans</p> <p>Consultant will prepare a striping plan that will include work necessary to install or modify the traffic signing and striping that conforms to the requirements of the City and references the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD) or other necessary Standard Plans and Specifications. The plans would be designed in the specific format required or requested by the City to meet their approval. It is estimated that three (3) sheets will be prepared at a scale of 1"=40'.</p>	<ul style="list-style-type: none"> ▪ <i>Signing and Striping Plans at 75%, 100%, and Final Submittals</i>



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TASK	TASK DESCRIPTION	DELIVERABLES
	<p>13.3 Street Lighting Plans</p> <p>Consultant will prepare street lighting plans between the intersections of Beven Drive and Lake Wohlford Road. Plans will show the existing street light facilities in the vicinity and call out electrical service connections for the new lighting equipment. The plans will conform to any requirements listed in the general/specific plan for this area; however, traditional (non-ornamental) street lights were seen along the corridor and are expected to be used in this design as well. Street light spacing used from the previous road section will be maintained as part of the new road section, unless otherwise directed by the City Engineer. We estimate three (3) sheets will be prepared at a scale of 1"=40'.</p> <p>Consultant will work with the electric utility to coordinate any new service that needs to be provided as part of the street lighting for this project.</p>	<ul style="list-style-type: none"> ▪ <i>Street Lighting Plans at 75%, 100%, and Final Submittals</i>
14	Landscaping and Irrigation	
	<p>Based on a preliminary meeting with the City, Consultant will be required to submit a Concept Plan to the City's Appearance Committee to obtain approval of the landscaping theme for the proposed roadway.</p> <p>14.1 Landscape Concept Plan</p> <p>Consultant will prepare a Landscape Concept Plan (LCP) showing the limits of the project, the location of medians, pavings, trees and shrub plantings. The theme for the LCP will continue the existing theme south of the project limits in Eureka Springs.</p> <p>A landscape concept statement will describe the goals for the overall streetscape theme and aesthetics. A plant legend will list the proposed landscape plantings. An irrigation system concept statement will also describe the goals and objectives for providing irrigation to the site.</p> <p>LCP will be prepared in exhibit form at a scale of 1"=20' and presented to the City's 'Appearance Committee' for review and comment.</p>	<ul style="list-style-type: none"> ▪ <i>Landscape Concept Plan (1"=20')</i>



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TASK	TASK DESCRIPTION	DELIVERABLES
	<p>14.2 Landscape and Irrigation Plans</p> <p>Consultant will prepare landscape and irrigation plans based on the approved Landscape Concept Plan in Task 14.1. Landscape and Irrigation Plans will include the following:</p> <ul style="list-style-type: none"> ▪ Median Paving Construction Plans and Details ▪ Planting Legend and Notes ▪ Planting Plans ▪ Planting Details ▪ Irrigation Legend and Notes ▪ Irrigation Plans ▪ Irrigation Details <p>Consultant will prepare technical specifications and opinion of probable construction costs in the same manner as with the Street Improvement Plans.</p> <p>PS&E submittals will be incorporated into submittals for Street Improvement Design at the 75%, 100%, and Final submittal levels.</p>	<ul style="list-style-type: none"> ▪ <i>Landscape and Irrigation Plans at 75%, 100%, and Final Submittals</i>
15	Environmental Services and Permitting	
	<p>Based on preliminary research of the 2004 Environmental document, further environmental effort may be required if:</p> <ol style="list-style-type: none"> 1. Guidelines specific to this project have changed, or 2. Proposed roadway improvements fall outside the approved environmental footprint. <p>The following scope of work is provided as optional:</p> <p>15.1 Jurisdictional Delineation</p> <p>The approved jurisdictional delineation was completed using (now outdated) guidelines. If requested by the City, required by Caltrans, or if the project footprint shifts to exceed the approved impact area, Consultant will conduct a jurisdictional delineation pursuant to current U.S. Army Corps of Engineers (Corps) and California Department of Fish and Game (CDFG) guidelines. The delineation will be conducted in accordance with the Arid West Supplement to the 1987 Wetlands Delineation Manual, which reflects the new required methods by the Corps. Jurisdictional wetland boundaries within the areas of proposed impacts will be determined based on the three parameters of vegetation, hydrology and soil.</p>	<ul style="list-style-type: none"> ▪ <i>Jurisdictional Delineation Report</i>



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TASK	TASK DESCRIPTION	DELIVERABLES
	<p>15.1 Jurisdictional Delineation (continued)</p> <p>Please note that only the Corps and CDFG can make a final determination of jurisdictional boundaries and the report will be submitted to these agencies for confirmation. During coordination by the U.S. Army Corps of Engineers with the U.S. Fish and Wildlife Service during Clean Water Act Section 404 permitting, updates to biological information may be requested. Likely future tasks, if this occurs, are addressed below.</p>	
	<p>15.2 Preparation/Submittal of Permit Applications</p> <p>In accordance with Project Design Measures/Permits P-2 through P-4 of the 2004 MMRP, Consultant will prepare and submit permit applications and agreement requests for the proposed project from the vicinity of Lake Wohlford Road north to the project limits. Permitting efforts would be supported by a jurisdictional delineation report (see Optional Task C.1). Anticipated permits include:</p> <ul style="list-style-type: none"> ▪ 404 Permit. Based on prior field assessment, it is currently assumed that the project will require the preparation and submittal of a Clean Water Act Nationwide Section 404 Permit to the Corps. ▪ 401 Water Quality Certification. Consultant will prepare and submit a 401 Water Quality Certification application to the State Water Resources Control Board (SWRCB), which also regulates discharges to Waters of the State under authority of the Porter-Cologne Water Quality Act and, in certain cases, requires an Application/Report of Waste Discharge (ROWD). <p>1602 Streambed Alteration Agreement. HELIX will prepare and submit a Division 2, Chapter 6, Section 1602 Streambed Alteration Agreement request to the CDFG for project effects on areas under CDFG jurisdiction.</p>	<ul style="list-style-type: none"> ▪ <i>Permit Application and Agreement Requests for 401, 404, and 1602 Permits</i>
	<p>15.3 Permit Processing Management</p> <p>The effort necessary to “process” the project’s permits and reports can vary depending upon the type of permit involved, staff assignments and project priorities at the regulatory agencies, the presence of sensitive species, and mitigation negotiations, among other factors.</p>	<ul style="list-style-type: none"> ▪ <i>Permit Processing Correspondence</i>



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	<p>15.4 Potential Bird Surveys</p> <p>Since the 2004 document, environmental surveys of the following birds may be required/requested from the U.S. Fish and Wildlife Service due to the possible migration of habitat into the project area:</p> <ul style="list-style-type: none"> ▪ Coastal California Gnatcatcher Southern Willow Flycatcher 	<ul style="list-style-type: none"> ▪ <i>Bird Survey Report</i>
	<p>15.5 Biological Resources Technical Report Update</p> <p>An addendum would be prepared for the existing technical report. This would consist of text summarizing any changes from previously mapped conditions within the current proposed build area, conclusions regarding the habitat assessments, a graphic of the updated vegetation in the project area, and if necessary, a graphic depicting substantive differences between the current year and year 2001 conditions. Mitigation requirements will be confirmed or amended as appropriate based on current conditions and refined engineering data regarding ultimate project footprint (including any temporary construction effects).</p>	<ul style="list-style-type: none"> ▪ <i>Addendum to the existing Biological Resources Report</i>
	<p>15.6 CEQA/NEPA Summary Documents</p> <p>Compliance with CEQA is required for the state wetland permits, as well as City conformance with state law. Compliance with NEPA is required to retain federal funding expectations assumed to support project construction. Even if there is some shifting of the project impact footprint during final design, it is expected that potential impacts would be in line and overall consistent with the types of impacts identified for the project during 2003 certification of the EIR under CEQA and 2004 preparation of the Finding of No Significant Impact (FONSI) under NEPA. As a result, it is anticipated that the City will require preparation of an addendum based on the above studies, to be approved during review of grading permits. For cost-estimating purposes, it is assumed that the addendum would not exceed 10 pages and four graphics, and that the document would be revised one time in response to City comments. Consistent with these assumptions, it is assumed that Caltrans in-house staff would complete documentation of less than substantial impacts based on the updated technical studies.</p>	<ul style="list-style-type: none"> ▪ <i>Addendum to the existing CEQA/NEPA documents</i>



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TASK	TASK DESCRIPTION	DELIVERABLES
16	Retaining Wall Design (Optional Task only to be performed by City Authorization)	
	<p>16.1 Geotechnical Investigation for Retaining Wall</p> <p>Cutting into the rock slope on southbound East Valley Parkway north of the Escondido Creek Bridge may require construction of soil nail retaining walls. Consultant will perform geologic mapping and characterize the strength and structure of these rock slopes and provide geotechnical recommendations for a soil nail type retaining structure where these cuts are required. Consultant proposes only to perform surface mapping; no drilling or sampling is proposed. This requires two days for geologic mapping and rock structure evaluation which will be performed by a certified engineering geologist, plus additional engineering analysis and recommendations.</p>	<ul style="list-style-type: none"> ▪ <i>Geotechnical Report with Basis of Design and Recommendations for Soil Nail Retaining Walls</i>
	<p>16.2 Retaining Wall PS&E</p> <p>Due to the proximity of the environmental footprint, the retaining walls anticipated to be constructed for this project would require additional environmental analysis. For this reason walls are shown as “optional” to the scope pending approval by the City. If retaining walls are approved, Consultant would perform the following duties for retaining wall design:</p> <ul style="list-style-type: none"> ▪ Prepare type selection memo to document the appropriate walls for this location, and submit for City and Caltrans submittal, review and acceptance. ▪ Prepare final wall design of the two walls based on AASHTO LRFD Bridge Design Specifications, Fourth Edition, with interims from Caltrans (Section 11 – Abutments, Piers and Walls). ▪ Prepare quantities, final engineer’s estimate of probable cost, bid item list, and estimated construction schedule. ▪ Perform an independent check of the wall design. ▪ Provide technical special provisions based on the Standard Specifications for Public Works Construction (Green Book), 2012 edition 	<ul style="list-style-type: none"> ▪ <i>Retaining Wall Plans (Optional)</i>



UNDERSTANDINGS AND EXCLUSIONS

Items to be excluded:

- Bid Support and Addenda
- Construction Support
- Caltrans Permits
- Permitting Fees
- Building Demolition and Abatement
- Obtain Preliminary Title Reports
- Preparation of CLOMR/LOMR
- Potholing for Existing Utilities
- Utility Relocation Design
- New Utility inquiries or Utility or As-built Research at City
- NCTD coordination

Items to be provided by the City:

- Preliminary Title Reports
- Eureka Springs As-built Plans
- Eureka Springs Drainage Study
- General Plan Amendment



EXHIBIT B
COST PROPOSAL

NAME: East Valley Parkway Widening Project PROJECT NO.: TBD City PM Robb Zaino (619) 825-3825
 FIRM: Bureau Veritas NA W.O. NO.: NA BV PM Philip Kern (658) 863-2107
 DESCR: Beven Drive to Northern City Limits JOB NO.: TBD DATE: 9/20/2012
 MULTIPLIER: _____ DIRECT: 1.10 SUBCONSULTANTS: 1.00

LABOR COSTS													
TASK NO.	NO. OF SHEETS	TASK DESCRIPTION								TOTAL HOURS	COST	%	
			A	B	C	D	E	F	G				
			PRINCIPAL	SENIOR PM	PROJECT ENGINEER	CADD DESIGNER	ENGR TECH	ADMIN					
		Prepare DRAFT SWMP	\$210.00	\$175.00	\$140.00	\$96.00	\$80.00	\$55.00			38	\$4,310.00	1%
		Prepare FINAL SWMP, upload to SMARTS		4	10	24					38	\$4,380.00	1%
11		GEOTECHNICAL STUDY UPDATE									TASK TOTAL	\$14,880.00	2%
		Update Seismic and Foundation Design Information									0	\$4,380.00	1%
		Engineering Analyses									0	\$3,120.00	0%
		Draft and Final Report									0	\$7,380.00	1%
12		STRUCTURAL DESIGN									TASK TOTAL	\$214,230.00	26%
		Bridge Type Selection									0	\$22,000.00	3%
		Existing Bridge Seismic Evaluation									0	\$8,900.00	1%
		Prepare Bridge PS&E									0	\$158,550.00	19%
		Caltrans PS&E Coordination									0	\$14,800.00	2%
		Prepare Sound Wall PS&E		4	16	32					52	\$9,980.00	1%
13		TRAFFIC AND LIGHTING									TASK TOTAL	\$29,000.00	4%
		Prepare Traffic Signal Modification Plan									0	\$14,000.00	2%
		Prepare Signing and Striping Plans									0	\$7,500.00	1%
		Prepare Lighting Plans									0	\$7,500.00	1%
14		LANDSCAPING AND IRRIGATION									TASK TOTAL	\$48,025.00	6%
		Landscape Concept Design and Presentation									0	\$6,745.00	1%
		Prepare 75% Submittal									0	\$22,825.00	3%
		Prepare 100% Submittal									0	\$13,635.00	2%
		Prepare Final Submittal									0	\$4,820.00	1%
15		ENVIRONMENTAL SERVICES & PERMITTING									TASK TOTAL	\$68,718.00	8%
		Jurisdictional Delineation									0	\$9,163.00	1%
		Preparation/Submittal of Permit Applications									0	\$12,085.00	1%
		Permit Processing Management									0	\$10,500.00	1%
		Potential Bird Surveys									0	\$10,360.00	1%
		Biological Resources Technical Report Update									0	\$5,025.00	1%
		CEQA/NEPA Summary Documents									0	\$15,480.00	2%
		Environmental Project Management and Coordination + ODCs									0	\$6,125.00	1%
16		OPTIONAL TASKS (N.I.C)									TASK TOTAL	\$155,705.00	19%
		Geotechnical Investigation for Retaining Wall									0	\$9,705.00	1%
		Prepare Retaining Wall PS&E									0	\$148,000.00	18%
PROJECT LABOR TOTALS			4	187	889	952	362	152	0		2528	\$545,463.00	100%
PERCENTAGES			0.2%	7.4%	34.4%	37.7%	14.3%	6.0%	0.0%				

DIRECT COSTS				
TASK NO.	TASK DESCRIPTION	UNITS	w/profit	%
1	Reproduction/Graphic Materials		2,000.00	74%
2	Deliveries and Federal Express		200.00	7%
4	Mileage		500.00	19%
DIRECT COSTS TOTAL			2,970.00	100%
TOTAL BUDGET			\$834,448.00	

\$675,713

EXHIBIT B
COST PROPOSAL

NAME: East Valley Parkway Widening Project PROJECT NO.: TBD City PM Robb Zaino (619) 825-3825
 FIRM: Bureau Veritas NA W.O. NO.: NA BV PM Philip Kern (858) 863-2107
 DESCR: Beven Drive to Northern City Limits JOB NO.: TBD DATE: 9/20/2012
 MULTIPLIER: DIRECT: 1.10 SUBCONSULTANTS: 1.00

LABOR COSTS													
TASK NO.	NO. OF SHEETS	TASK DESCRIPTION	A	B	C	D	E	F	G	TOTAL HOURS	COST	%	
			PRINCIPAL	SENIOR	PROJECT ENGINEER	CADD DESIGNER	ENGR TECH	ADMIN	SUBCONSULTANTS				
			\$216.00	\$178.00	\$140.00	\$96.00	\$80.00	\$68.00					
1		PROJECT MANAGEMENT AND COORDINATION											
		Monthly Meetings based on 8-month schedule		30	80			20		130	\$17,550.00	2%	
		Monthly Progress Reports		4	16			8		28	\$3,380.00	0%	
		Schedule and Schedule Updates		4	16			8		28	\$3,380.00	0%	
		Subconsultant Management & Administration		16	80			96		96	\$14,000.00	2%	
		Environmental Compliance / Coordination		8	16					24	\$3,840.00	0%	
		Other Coordination & Meetings	4	8	24					36	\$5,800.00	1%	
		TASK TOTAL									\$47,550.00	6%	
2		TOPOGRAPHIC AND UTILITY BASE MAPPING											
		Field Completion Survey								\$13,920.00	0	\$13,920.00	2%
		Update 2004 Utility Base Map			4			8		12	\$1,200.00	0%	
		Update 2004 Topographic Base Map		2	10	48				60	\$8,310.00	1%	
		Base Map Field Verification			8			12		20	\$2,080.00	0%	
		Build Digital Terrain Model (DTM)			8	32				40	\$4,160.00	1%	
		TASK TOTAL									\$27,870.00	3%	
3		RIGHT OF WAY COORDINATION											
		Coordinate with City ROW Staff		2	8					10	\$1,470.00	0%	
		Update Right of Way Base Map								\$4,880.00	0	\$4,880.00	1%
		Revise Final Plats and Legals, Sign, and Submit to City								\$2,085.00	0	\$2,085.00	0%
		TASK TOTAL									\$8,435.00	1%	
4		HYDROMODIFICATION DESIGN AND REPORT											
		Perform Hydromodification Design		4	30	32	60			128	\$12,740.00	2%	
		Prepare Draft and Final Hydromodification Report		4	24			40		68	\$8,260.00	1%	
		TASK TOTAL									\$19,000.00	2%	
5		DRAINAGE ANALYSIS - REVIEW AND UPDATE											
		Review 2004 Hydrology Study		2	8					8	\$1,190.00	0%	
		Field Review and Report any changed Conditions			8					8	\$1,120.00	0%	
		Update Report and Hydrology Map		2	24		24	10		60	\$8,180.00	1%	
		Review 2004 Hydraulic Calculations		2	8					10	\$1,470.00	0%	
		Update Calculations			24		24			48	\$5,280.00	1%	
		Revise 2004 Drainage Report		2	8		24	10		44	\$3,940.00	0%	
		QA/QC Revised Report		4	4		10			18	\$2,080.00	0%	
		Prepare Submittals to City at 75% and 100%			10		20	20		50	\$4,100.00	0%	
		TASK TOTAL									\$25,340.00	3%	
6		PREPARE 75% PS&E											
		Check Alignment against Environmental		4	16	12				32	\$4,080.00	0%	
		Prepare Roadway Model in AutoCAD Civil 3D		2	24			80		108	\$10,110.00	1%	
		Prepare Title Sheet		1	2	8				11	\$1,215.00	0%	
		Prepare Notes and Legend Sheet		1	4	8				13	\$1,495.00	0%	
		Prepare Vicinity/Location Map Sheet		1	4	16				21	\$2,255.00	0%	
		Prepare Typical Section Sheet		1	4	16				21	\$2,255.00	0%	
		Prepare General Details Sheets		1	8	32				41	\$4,335.00	1%	
		Prepare Street Improvement Plan and Profile Sheets		8	40	200				248	\$28,000.00	3%	
		Prepare Storm Drain Plan & Profile Sheets		4	32	58				92	\$10,500.00	1%	
		Prepare Driveway / Off-site Improvement Details		2	8	32				42	\$4,510.00	1%	
		Prepare Erosion Control Plans		2	8	32				42	\$4,510.00	1%	
		Prepare Technical Specs; procure boiler plate from City		2	12			8		22	\$2,470.00	0%	
		Perform Quantity Take-off on a Sheet by Sheet Basis		1	8		40			49	\$4,495.00	1%	
		Prepare Cost Estimate in Excel with 25% contingency		2	8		20			30	\$3,070.00	0%	
		Perform QA/QC on 75% PS&E		6	4					10	\$1,810.00	0%	
		Revise PS&E			4	16				20	\$2,080.00	0%	
		Prepare and Submit 75% Submittal			4	8				12	\$1,320.00	0%	
		TASK TOTAL									\$86,310.00	10%	
7		PREPARE 100% PS&E											
		Review 75% comments (all parties); Prepare Comment Log		4	8					12	\$1,820.00	0%	
		Address Comments; Make Corrections to Plans		2	8	24				34	\$3,750.00	0%	
		Update Title, Typ. Section, Notes & Legend Sheets		1	8	24				33	\$3,575.00	0%	
		Update Street Improvement Plan and Profile Sheets		1	8	16				25	\$2,815.00	0%	
		Update Storm Drain Plan & Profile Sheets		1	8	24				33	\$3,575.00	0%	
		Update Driveway / Off-site Improvement Details		1	24	40				65	\$7,335.00	1%	
		Update Erosion Control Plans		1	8	16				25	\$2,815.00	0%	
		Update General Details Sheets		1	24	40				65	\$7,335.00	1%	
		Update Technical Specifications		10	48			8		68	\$8,910.00	1%	
		Update Quantity Take-off on a Sheet by Sheet Basis		1	8		32			41	\$3,855.00	0%	
		Update Cost Estimate in Excel with 15% contingency		2	2		8			12	\$1,270.00	0%	
		Revise PS&E		2	4	16				22	\$2,430.00	0%	
		Prepare and Submit 100% Submittal			4	8				12	\$1,320.00	0%	
		TASK TOTAL									\$50,805.00	6%	
8		PREPARE FINAL PS&E											
		Review 100% comments (all parties); Prepare Comment Log		4	8					12	\$1,820.00	0%	
		Address Comments; Make Corrections to Plans, Specs, Est.		2	16	40				58	\$6,390.00	1%	
		Perform QA/QC on FINAL PS&E and revise		6	4	16				28	\$3,130.00	0%	
		Prepare and Submit FINAL PS&E Submittal		2	4	8				14	\$1,870.00	0%	
		TASK TOTAL									\$13,010.00	2%	
9		STORM WATER PREVENTION POLLUTION PLAN (SWPPP)											
		Prepare DRAFT SWPPP		2	20	32		12		68	\$6,850.00	1%	
		Prepare FINAL SWPPP		2	8	12		8		30	\$3,050.00	0%	
		TASK TOTAL									\$9,900.00	1%	
10		STORM WATER MANAGEMENT PLAN (SWMP)											
		Identify Pollutants/Conditions of Concern and BMPs			3	8				11	\$1,180.00	0%	



**BUREAU
VERITAS**

August 28, 2012

Mr. Robert Zaino, PE
Assistant Director of Engineering Services
City of Escondido
201 North Broadway
Escondido CA 92025

**Subject: Final Proposal for Engineering Services
East Valley Parkway Widening Project – Beven Drive to Northern City Limits**

Dear Robb:

Enclosed is our final proposal for engineering services for the East Valley Parkway Widening Project. We appreciate this opportunity to work with you in completing this anticipated roadway widening project connecting the communities of Valley Center and Escondido. This proposal is based on the following understandings:

- Environmental documents were prepared by Helix Environmental in 2004 and were recently updated. Our research indicates that additional environmental review and permitting efforts may be required based on new regulatory requirements and potential changes in field conditions.
- A 30% to 50% level street improvement design was developed in 2004 by Bureau Veritas (then Berryman & Henigar). While much of this effort can be applied towards final design, both design standards and field conditions have changed since that time.
- The anticipated construction cost is expected to be approximately \$6.5 million.

Our key staff for this project will be Steve Smith, PE (Principal-in-Charge), Phil Kern, PE (Project Manager), and David Berryman, PE (Assistant Project Manager). Our proposed subconsultant team to assist in the final design includes:

Subconsultant	Role on Project
Aguirre & Associates	Surveying and Right-of-Way
Group Delta Consultants, Inc.	Geotechnical Engineering
Simon Wong Engineering	Structural/Bridge Engineering
KOA Corporation	Traffic and Lighting Design
Estrada Land Planning	Landscape/Irrigation Design

With this team, 8% of design costs are being allocated to Underutilized Disadvantaged Business Enterprises (UBEs).

Bureau Veritas North America, Inc.

10620 Treena Street, Suite 200
San Diego, CA 92131

Main: (858) 451-6100

Fax: (858) 451-2846

www.us.bureauveritas.com

Mr. Robert Zaino, PE
August 28, 2012
Page 2 of 2



Resolution No. 2012-163
EXHIBIT 1
Page 26 of 26

We are available to meet with you to review this proposal and to answer any questions you may have. We look forward to completing delivery of this very important project for the City of Escondido and surrounding communities in the very near future.

Sincerely,

Philip R. Kern, PE, M.ASCE
Project Manager

Stephen K. Smith, PE
Principal-in-Charge

Enclosures: Exhibit A – Scope of Work
Exhibit B – Cost Proposal

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 13

Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Edward N. Domingue, Director of Engineering Services
Debra Lundy, Real Property Manager

SUBJECT: Lease Agreement with Network Cabling, Inc. at 2120 Harmony Grove Road

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-165 authorizing the Real Property Manager and City Clerk to execute a Lease Agreement with Network Cabling at 2120 Harmony Grove Road.

FISCAL ANALYSIS:

Rental revenue in the amount of \$250/month will be deposited into the general fund.

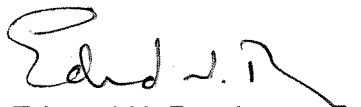
PREVIOUS ACTION:

N/A

BACKGROUND:

Network Cabling has its office located nearby and is lacking secured parking for its company vehicles and equipment. The company would like to utilize up to 18 spaces in the City's secured parking lot at 2120 Harmony Grove Road for parking of its company vehicles, trailers and limited storage of equipment. The use under this proposed Lease Agreement will not impact the existing tenants and will provide the City with rental revenue while the City's plan to relocate the Public Works Yard to this location is temporarily delayed.

Respectfully submitted,


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


Debra Lundy
Real Property Manager

RESOLUTION NO. 2012-165

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE REAL PROPERTY MANAGER AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A LEASE AGREEMENT WITH NETWORK CABLING, INC.

WHEREAS, the City of Escondido ("City") purchased certain real property located at 2120 Harmony Grove Road for the relocation of its Public Works Yard; and

WHEREAS, the City's plans to relocate the Public Works Yard to this location have been temporarily delayed; and

WHEREAS, Network Cabling, Inc. desires to have a secure parking lot for parking of its company vehicles, trailers and limited storage of company equipment; and

WHEREAS, the City and Network Cabling, Inc. desire to enter into a Lease Agreement to allow Network Cabling use of 18 designated parking spaces within the City's secured parking lot; and

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

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 Real Property Manager and City Clerk are authorized to execute, on

behalf of the City, the Lease Agreement with Network Cabling, Inc., which is attached hereto as Exhibit "1" and incorporated by this reference.



City of Escondido

LEASE AGREEMENT

PREMISES:

2120 Harmony Grove Road

LESSEE:

Network Cabling, Inc.

TERM: One (1) Year

CITY OF ESCONDIDO
LEASE AGREEMENT INDEX

Clause No.	Title	Page No.
1	Definition of Terms.....	1
2	Administration	2
3	Term	2
4	Termination of Lease	2
5	Options to Renew.....	3
6	Vacation of Premises.....	3
7	Rent	3
8	Late Payment.....	3
9	Cost of Living Adjustment.....	3
10	Security Deposit	3
11	Utilities Payments	3
12	Taxes, Assessments and Fees.....	4
13	Acceptance and Maintenance.....	4
14	Alterations.....	5
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18	Pets	6
19	Notices.....	6
20	Right of Inspection.....	6
21	Right to Show Premises	6
22	Insurance	6
23	Indemnification	8
24	Costs and Attorney's Fees.....	8
25	Non-Discrimination.....	9
26	Supersedure	9
27	Hazardous and/or Contaminated Soil and Material	9
28	Choice of Law	9
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30	Americans with Disabilities Act	9

Exhibit A Premises



CITY OF ESCONDIDO
LEASE AGREEMENT

This Agreement is made this _____ day of _____, 2012.

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

And: NETWORK CABLING, INC
2121 Enterprise Street
Escondido, CA 92029
("Lessee")

Witness that whereas:

A. City desires to rent to Lessee and Lessee desires to rent from City certain public property located at 2120 Harmony Grove Road, for the purpose of storing company vehicles, trailers and limited equipment to be contained in a container not to exceed 20 feet in length. The Property is described in Attachment A, which is incorporated by this reference.

NOW THEREFORE, it is mutually agreed by and between City and Lessee as follows:

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

- d. "Lessee" means Network Cabling, Inc., and does not include its heirs, assigns, or successors-in-interest.
2. ADMINISTRATION. This Lease shall be administered on behalf of City by the Lease Administrator, whose address is:

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

and on behalf of Lessee by Mike Hart, President, whose address is:

Network Cabling, Inc.
Attn: Mike Hart, President
2121 Enterprise Street
Escondido, CA 92029

3. TERM. The term of this Lease shall be one (1) year, commencing on November 1, 2012.
4. TERMINATION OF LEASE.
- 4.1 Each party shall have the right to terminate this Lease without cause for any reason by giving ninety (90) days prior written notice to the other party.
- 4.2 City shall have the right to terminate this Lease by giving seven (7) days prior written notice to Lessee for any of the following events:
- 4.2.1 Lessee's failure to comply with the following clauses in this Lease:
- Acceptance and Maintenance, Paragraph 13
 - Alterations, Paragraph 14
 - Use, Paragraph 15
 - Occupancy and Assignment, Paragraph 16
 - Conduct, Paragraph 17
 - Insurance, Paragraph 22
 - Americans with Disabilities Act (ADA), Paragraph 29
- 4.2.2 If the City discovers at any time during the lease term that the Lessee or any other party has used, is using, or will use the Premises in an unlawful

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

5. OPTIONS TO RENEW. This Lease may be extended two additional 1-year terms upon written consent by the City. Lessee shall submit a written request to exercise each renewal option at least thirty (30) days in advance of the lease termination date.

6. VACATION OF PREMISES.
 - 6.1 Upon termination of this Lease for any reason, Lessee shall peaceably vacate and deliver the Premises to City in the same condition as Lessee found them upon its acceptance of the Premises hereunder, excepting ordinary wear and tear and conditions caused by acts of God.

 - 6.2 Upon such termination, Lessee shall immediately:
 - 6.2.1 Arrange and pay for the disconnection of all utilities and services ordered by Lessee;

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

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

7. RENT. In consideration of the possession and use of the Premises, Lessee shall deliver and pay rent to City during the term of this Lease in the amount of \$250.00 per month, on or prior to the 5th day of each month.

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

9. COST OF LIVING ADJUSTMENT. The rent amount specified in Paragraph 7 shall be increased three percent (3%) annually on each anniversary of the date first written above.

10. SECURITY DEPOSIT. No security deposit shall be required under this Agreement.

11. UTILITIES PAYMENTS. N/A

12. TAXES, ASSESSMENTS, AND FEES.

- 12.1 The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of personal property taxes levied on such interest. Lessee shall be responsible for the payment of, and shall pay before delinquent, all taxes, assessments, and fees assessed or levied upon Lessee, on said Premises or any interest therein, on any buildings, structures, machines, appliances, or other improvements of any nature whatsoever, or on any interest therein.
- 12.2 Lessee further agrees not to allow such taxes, assessments, or fees to become a lien against said premises or any improvement thereon. Nothing herein contained shall be deemed to prevent or prohibit Lessee from contesting the validity of amount of any such tax, assessment, or fee in any manner authorized by law.

13. ACCEPTANCE AND MAINTENANCE.

- 13.1 Lessee hereby acknowledges that Lessee has inspected the Premises, that Lessee accepts said Premises "as is" and "where is," that the Premises are in a good and sanitary order, condition, and repair. Lessee hereby accepts the Premises as such.
- 13.2 Lessee agrees to take good care of the Premises and all improvements, alterations, fixtures, and appurtenances thereon. Lessee agrees to make all repairs in and about the Premises, including painting, which may be necessary to preserve them in good order and condition. Said repairs, if any, shall be made in a good and professional manner, and at least equal to the condition and quality of the repaired items at the inception of this Lease. Lessee shall promptly pay the expenses of such repairs. Lessee agrees to be solely responsible for all costs of maintenance and repair.
- 13.3 In the event Lessee fails to properly maintain the premises as required by City, then City may notify Lessee in writing of said failure. In the event Lessee fails to perform said maintenance within thirty (30) days after such notice by City, City may perform such maintenance, and the cost thereof including, but not limited to, the cost of labor, material, and equipment, shall be paid by Lessee to City within ten (10) days from receipt by Lessee of a cost statement from City.

13.4 Noncompliance by Lessee with any provision of this clause shall allow the City to immediately terminate this Lease, pursuant to Paragraph 4.2 above.

14. ALTERATIONS.

14.1 Lessee shall not paint, alter, cut, add to, or otherwise change the appearance, structure, or condition of the Premises without the prior written consent of the Lease Administrator and only after obtaining applicable permits.

14.2 Any improvements made with the consent of the Lease Administrator shall become a fixture to the realty and shall remain on and be surrendered with the Premises upon termination of this Lease.

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

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

15.1 Parking of company vehicles, trailers and limited storage of company equipment to be contained within a container not to exceed 20 feet, in accordance with the provisions and requirements contained in any permits required by the City of Escondido Planning Department.

15.2 Lessee shall not use, nor permit the use of, the Premises other than as described in Paragraph 15.1 above. In any case where Lessee is, or should reasonably be, in doubt as to the propriety of any particular use, Lessee may request, and will not be in breach or default if Lessee abides by, the written determination of the Lease Administrator that such use is or is not permitted.

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

16. OCCUPANCY AND ASSIGNMENT. The Premises shall only be occupied by Lessee except with prior written consent of the Lease Administrator. Lessee may not assign any interest in this Lease to any other party, at any time, including a transferee of a controlling interest in Lessee. Lessee's noncompliance with this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

17. CONDUCT.

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

17.2 Lessee's use shall not interfere with the use of other tenants occupying the Premises. Access to and from the Leased Premises is non-exclusive and shall under no circumstances be obstructed by Lessee.

17.3 Lessee shall not violate, or permit the violation of, any City or County ordinance, or state or federal law, in or about the Premises.

17.4 Noncompliance by Lessee with any provision of this Paragraph 17 shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

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

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

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

21. RIGHT TO SHOW PREMISES. [This paragraph is intentionally left blank.]

22. INSURANCE.

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

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

- 22.1.2 Automobile liability insurance of \$1 Million combined single-limit per accident for bodily injury and property damage; and
- 22.1.3 Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship
- 22.2 Each insurance policy required above must be acceptable to the City Attorney:
- 22.2.1 Each policy must name the City specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy.
- 22.2.2 Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
- 22.2.3 All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
- 22.3 Lessee agrees to deposit with City, on or before the effective date of this Lease, one Certificate of Insurance for each of the policy or policies necessary to satisfy the insurance provisions of this Lease and to keep such insurance in effect during the entire term of this Lease. Said Certificate of Insurance shall be reviewed by, and acceptable to, the City Attorney, prior to commencement of the Lease Term. Lessee will also deposit with the City within 60 days of the Effective Date of this Lease, an Additional Insured Endorsement naming City specifically and separately as a "additional insured", with the exception of the worker's compensation policy. The appropriate endorsements described in Paragraph 22.2 above shall follow within sixty (60) days. Noncompliance by Lessee with any provision of this Clause shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.
- 22.4 City shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the Lease Administrator, the insurance provisions in this Lease do not provide adequate protection for City and

for members of the public using the Premises, City may require Lessee to obtain insurance sufficient in coverage, form and amount to provide adequate protection from and against the kind and extent of risks which exist or are foreseeable at the time a change in insurance is required. City's requirements shall be reasonable, but shall be designed to assure adequate protection of the City's interests. The Lease Administrator shall notify Lessee in writing of changes in the insurance requirements and, if Lessee does not deposit with City within sixty (60) days of receipt of such notice a new Certificate of Insurance for each policy or policies of insurance incorporating such changes, this Lease shall be deemed in default without further notice to Lessee and may be forthwith terminated by the Lease Administrator, pursuant to Paragraph 4.2 above.

22.5 The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury or loss attributable to any act or omission of it or its agents, customers or guests in connection with this Lease or with use or occupancy of the Premises.

22.6 Noncompliance by Lessee with any provision of this Paragraph 22 shall allow the Lease Administrator to terminate this Lease pursuant to Paragraph 4.2 above.

23. INDEMNIFICATION. Lessee shall defend, indemnify, and hold harmless City, its officers, agents, and employees from and against any and all claims, demands, and liabilities for loss of any kind or nature which City, its officers, agents, or employees may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected with this Agreement or with the occupancy and use of the Premises by Lessee, its invitees, visitors, or any other persons whatsoever. Lessee further agrees to pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorney's fees incurred by City on account of any such claims, demands, or liabilities. However, the provisions of this Agreement shall not be construed to indemnify City for claims or acts arising from City's sole negligence.

24. COSTS AND ATTORNEY'S FEES. In the event legal action is brought to enforce the terms of or to declare a termination of this Lease for reason of breach thereof, the

unsuccessful party shall pay all of the successful party's costs of such action, together with reasonable attorney's fees, in an amount to be fixed by the court.

25. NONDISCRIMINATION. Lessee herein covenants that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of physical or mental disabilities, race, color, creed, religion, sex, marital status, national origin or ancestry in the use, occupancy, tenure or enjoyment of the leased premises. Lessee shall not establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, or use of occupancy by customers, tenants or vendees in the leased premises.
26. SUPERSEDURE. This Lease, upon becoming effective, shall supersede any leases or rental agreements heretofore made or issued for the Premises between the City and Lessee.
27. HAZARDOUS AND/OR CONTAMINATED SOIL AND MATERIAL. Lessee will not place or permit to be placed materials and/or contaminated soils on the premises which under federal, state, or local law, statute, ordinance, or regulations require special handling in collection, storage, treatment, and/or disposal. Lessee also hereby covenants and agrees that, if at any time it is determined there are materials and/or contaminated soils located on the premises which under any environmental requirement require special handling in collection, storage, treatment, or disposal, Lessee shall notify City. Within thirty (30) days after written notice to City or from City, Lessee shall commence to take and thereafter diligently complete, at Lessee's sole expense, such actions as may be necessary to comply with environmental requirements.
28. CHOICE OF LAW. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in North San Diego County, California.
29. SPECIAL PROVISIONS. Lessee hereby acknowledges that Lessee waives all rights to any form of relocation assistance provided for by local, state, or federal law to which Lessee may be entitled by reason of this Lease.
30. AMERICANS WITH DISABILITIES ACT (ADA). It is the duty of the Lessee while operating under this Lease to comply with all local, state, and federal laws, including, but not limited to, the Americans with Disabilities Act and to indemnify City from any violation of any such law. Failure to comply with a provision of local, state, or federal law is grounds for the Lease Administrator's immediate termination of this Lease.

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

CITY OF ESCONDIDO

Date: _____

By: _____
Debra Lundy, Real Property Manager

Date: _____

By: _____
Diane Halverson, City Clerk

Date: _____

NETWORK CABLING, INC.

By: _____

Print Name and Title

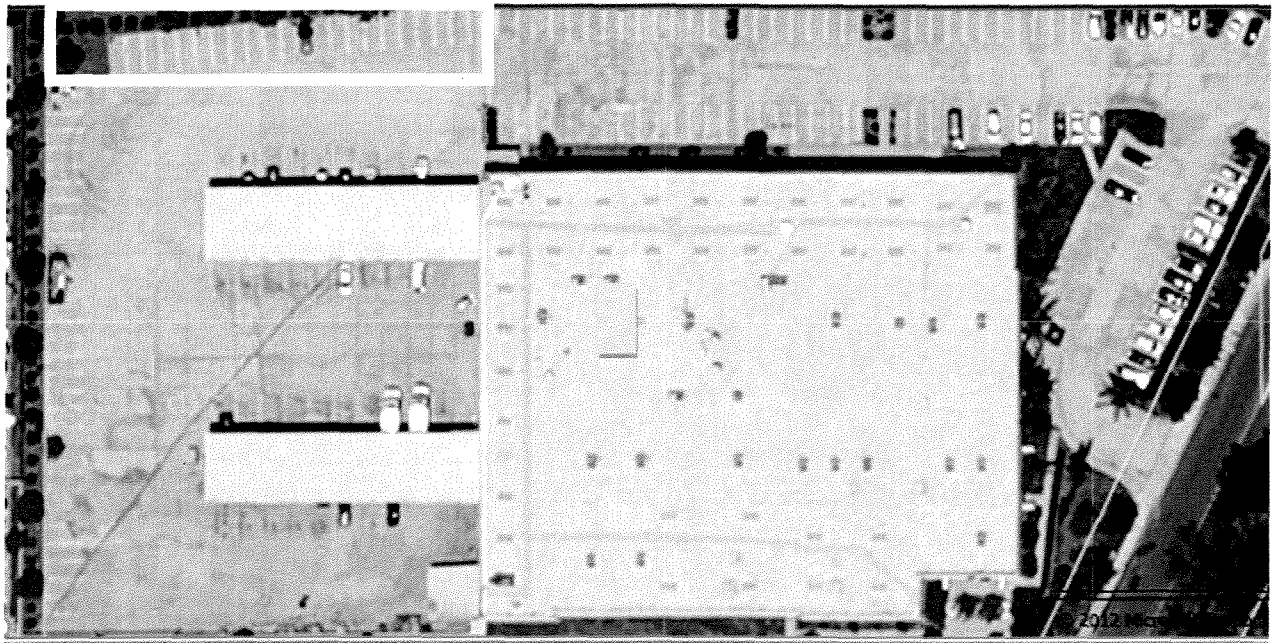
APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
Jeffrey R. Epp, City Attorney

By: _____

ATTACHMENT "A"
LEASED PREMISES

Resolution No. 2012-165
EXHIBIT 1
Page 13 of 13

Eighteen (18) parking spaces located within the first row of the secured parking lot of 2120 Harmony Grove Road, Escondido, CA 92029, as depicted below, with non-exclusive access to/from the leased premises:



CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 14

Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Edward N. Domingue, Director of Engineering Services
Debra Lundy, Real Property Manager

SUBJECT: First Amendment to Lease Agreement with Koochen Vagner's Brewing Company dba Stone Brewing Company at 2120 Harmony Grove Road

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-164 authorizing the Real Property Manager and City Clerk to execute a First Amendment to Lease Agreement with Stone Brewing Company at 2120 Harmony Grove Road.

FISCAL ANALYSIS:

The monthly rent deposited into the general fund will be increased by \$413.40 to compensate for the additional 636 square feet of leased premises requested under this First Amendment to Lease Agreement.

PREVIOUS ACTION:

On May 4, 2011, Council adopted Resolution 2011-53 approving of the Original Lease agreement.

BACKGROUND:

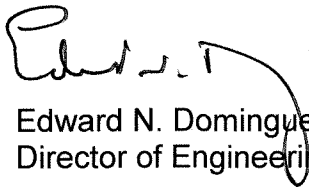
The City and Stone Brewery Company ("Stone") entered into a lease agreement effective May 1, 2011, for its food processing operation and offices. The lease agreement expires on April 30, 2014. Stone is expanding its operations and is requesting the use of three (3) additional offices within the building in order to accomplish its expansion. The purpose of this First Amendment to the Lease Agreement is to amend the leased premises to include three (3) additional offices spaces, totaling approximately 636 square feet, and to update the rent accordingly.

Additionally, the original lease agreement anticipated that the City would begin utilizing the building in the summer of 2011 and provided that, after July 2011, Stone would provide the City with an accounting of its utilities billings for the period of March 1, 2011 to July 31, 2011, and that the City and Stone would negotiate a monthly cap for the City's portion of utilities. Since the City's project has been delayed, this First Amendment will amend Section 11 "Utilities" to eliminate these dates and

STONE BREWRY FIRST AMENDMENT TO LEASE
OCTOBER 17, 2012
Page 02

provide that utilities costs will be addressed upon City's occupancy based on the costs for the year immediately preceding City's occupancy.

Respectfully submitted,



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



Debra Lundy
Real Property Manager

RESOLUTION NO. 2012-164

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE REAL PROPERTY MANAGER AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A FIRST AMENDMENT TO LEASE AGREEMENT WITH KOOCHEN VAGNER'S BREWING COMPANY DBA STONE BREWING COMPANY

WHEREAS, the City of Escondido ("City") owns certain real property located at 2120 Harmony Grove Road; and

WHEREAS, the City entered into a three-year lease agreement with Stone Brewing Company commencing on May 1, 2011, and expiring on April 31, 2014 ("Original Lease Agreement"); and

WHEREAS, Stone Brewing Company desires to expand its leased premises by an additional 636 square feet of office space to accommodate growth; and

WHEREAS, the City and Stone Brewing Company desire to enter into a First Amendment to Lease Agreement ("First Amendment") to amend the leased premises to reflect an additional 636 square feet of office space and adjust the rent accordingly; and

WHEREAS, Section 11 of the Original Lease Agreement contemplated that the City would occupy a portion of the building and begin paying its share of utilities in the Summer of 2011 and the City's plans to occupy the building have been delayed; and

WHEREAS, the City and Stone Brewing Company desire to amend Section 11 of the Original Lease Agreement to address deferring the City's utilities payments until

such time as the City actually occupies the building; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the First Amendment.

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 Real Property Manager and City Clerk are authorized to execute, on behalf of the City, the First Amendment with Koochen Vagner's Brewing Company, dba Stone Brewing Company, which is attached hereto as Exhibit "1" and incorporated by this reference.



CITY OF ESCONDIDO
FIRST AMENDMENT TO LEASE AGREEMENT

(2120 Harmony Grove)

This "First Amendment" is made this _____ day of _____, 20__.

Between: City of Escondido,
201 North Broadway
Escondido, California 92025
("City")

And: Koochen Vagner's Brewing Company
dba Stone Brewing Company
1999 Citracado Parkway
Escondido, CA 92029
("Lessee")

WITNESSES THAT WHEREAS:

- A. City and Lessee entered into a three (3) year Lease Agreement dated May 19, 2011, ("ORIGINAL AGREEMENT") for the lease of real property for the purpose of operating a food processing facility and business offices, at 2120 Harmony Road, Escondido, California (the "Premises"); and
- B. Per the terms of the ORIGINAL AGREEMENT, Lessee was to occupy Suites "B" and "C" and City was to occupy Suite "A" of the Premises.
- C. Lessee now desires to expand its operations on the Premises and, in order to accommodate this growth, Lessee would like to add three (3) office spaces within Suite "A" into its leased premises; and
- D. City is agreeable to Lessee's requested expansion of its leased premises and pursuant to the terms below, City is willing to rent three (3) office spaces within Suite "A" to Lessee for additional consideration.

NOW THEREFORE, it is mutually agreed by and between City and Lessee as follows:

1. Section 7 (Rent) of the ORIGINAL LEASE which reads, "In consideration of the possession and use of suites "B" and "C" of the Premises, LESSEE shall deliver and pay rent to CITY during the term of this Lease in the amount of \$11,587.50

per month, on or prior to the third day of each month. Monthly rent payments shall be adjusted annually pursuant to Section 9 herein.”

SHALL BE DELETED in its entirety and replaced with:

In consideration of the possession and use of Suites “B”, “C” and three (3) office spaces in Suite “A” of the Premises, as depicted on Exhibit “A”, LESSEE shall deliver and pay rent to CITY during the life of this Lease in the amount of \$12,348.53 per month, on or prior to the third day of each month. Monthly rent payments shall be adjusted annually pursuant to Section 9 herein.

2. Section 11 (Utilities Payments) of the ORIGINAL AGREEMENT which reads, “LESSEE agrees to provide and pay for all of LESSEE’S and all of CITY’s utilities and services necessary for the occupancy and shared use of the Premises (suites “A”, “B”, and “C”), including, but not limited to: gas, water, electricity, sewage charges or septic service. However, after July 31, 2011, LESSEE will provide CITY with copies of the utility and service bills LESSEE paid for the period of March 1, 2011 through July 31, 2011. At such time, LESSEE and CITY will negotiate in good faith an amount to represent the reasonable monthly cap on the utility and service payments (“Utilities Cap”) to be paid by LESSEE on CITY’S behalf for the remainder of the Lease. In no event shall LESSEE’S utility and service payments on behalf of CITY exceed the Utilities Cap for any given month. LESSEE shall provide and pay for trash and telephone service for LESSEE’S operations. CITY shall pay for trash and telephone service for CITY’S operations.”

SHALL BE DELETED in its entirety and replaced with:

LESSEE agrees to provide and pay for all of LESSEE’s and all of CITY’s utilities and services necessary for the occupancy and shared use of the Premises (Suites “A”, “B”, and “C”), including, but not limited to: gas, water, electricity, sewage charges or septic service. However, after CITY takes occupancy of the remaining portions of Suite “A” not leased by LESSEE, LESSEE will provide CITY with copies of the utility and service bills LESSEE paid for the Premises for the year immediately preceding CITY’s occupancy. At such time, LESSEE and CITY will negotiate in good faith an amount to represent the reasonable monthly cap on the utility and service payments (“Utilities Cap”) to be paid by LESSEE on CITY’s behalf for the remainder of the Lease. In no event shall LESSEE’S utility and service payments on behalf of CITY exceed the Utilities Cap for any given month. LESSEE agrees and understands that the Utilities Cap only pertains to LESSEE’s payment of utilities and services on CITY’s behalf and in no way affects LESSEE’s obligation to pay for its own utilities and services used on the Premises. LESSEE shall provide and pay for trash and telephone service for LESSEE’s operations. CITY shall pay for trash and telephone service for CITY’s operations

3. All other terms and conditions of the ORIGINAL AGREEMENT shall remain in full force and effect.
4. This FIRST AMENDMENT and the ORIGINAL AGREEMENT, together with their respective attachments, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

CITY OF ESCONDIDO

Date: _____

Debra Lundy
Real Property Manager

Date: _____

Diane Halverson
City Clerk

LESSEE

Date: _____

Its: _____

Approved as to Form:

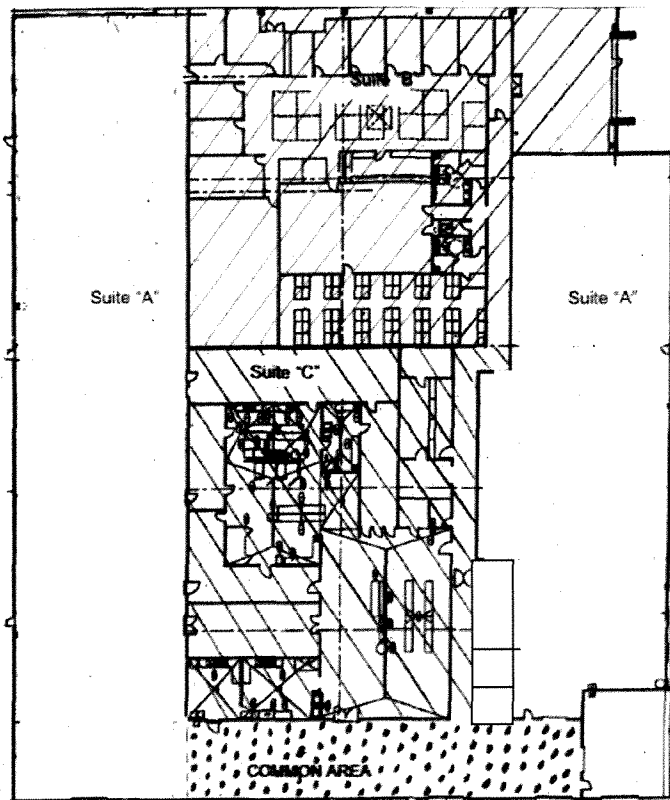
Office of the City Attorney
JEFFREY R. EPP, City Attorney

By: _____
Deputy City Attorney

EXHIBIT "A"

Expanded Leased Premises

Includes Suites "B", "C" and three (3) office spaces within Por. of Suite "A" totaling approximately 636 square feet of additional space.



ORDINANCE NO. 2012-18

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING CHAPTER 12 OF THE
ESCONDIDO MUNICIPAL CODE TO ALLOW
GRADING OF MOBILE FOOD FACILITIES
THAT PREPARE FOOD

WHEREAS, California Government Code Section 50022.9 authorizes a city to adopt a county ordinance or code by reference and the City of Escondido has adopted the San Diego County Code food regulations as codified in Escondido Municipal Code Chapter 12; and

WHEREAS, fixed location food facilities throughout San Diego County are currently scored against food safety criteria by County Inspectors and assigned an A, B, or C letter grade; and

WHEREAS, on July 11, 2012, the San Diego County Board of Supervisors approved an ordinance that will expand the letter grading system to mobile food facilities; and

WHEREAS, although most mobile food facilities are prohibited in the City of Escondido, the County Director of Environmental Health has asked the City to adopt this ordinance to standardize the procedures for all food facilities within the County of San Diego; and

WHEREAS, the changes contained in this ordinance will assist customers to easily identify vendors in compliance with health and safety regulations and to make safe dining choices.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. 2003-_____ File No. _____

Ord No. 2003-_____

Agenda Item No.: 16
Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council

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

SUBJECT: Amendment to California Public Employees' Retirement System (CalPERS) Contract to Provide Section 20475 (Different Level of Benefits), Section 21353 (2% at age 60), and Section 20037 (Three-Year Final Compensation) for Miscellaneous Employees

RECOMMENDATION:

Approval of a Resolution of Intention No. 2012-175 and the initial reading of Ordinance No. 2012-20 to amend the CalPERS contract to provide a second-tier level of benefits for employees hired after adoption of the 2% at 60 retirement benefit calculation and a three-year final compensation calculation for Miscellaneous Employees.

FISCAL ANALYSIS:

Decreases in the City's CalPERS employer rate will occur as employees are hired into the Second Tier. Accordingly, budget reduction for City's budgets will be realized in future years.

BACKGROUND:

The City approved the 2% at 60 CalPERS retirement benefit changes to the following Miscellaneous Employees Groups: Resolution 2011-81 - Maintenance & Operations in June 2011; Resolution 2011-103 – Administrative, Clerical and Engineering in August 2011; Resolution 2011-104 – Supervisory in August 2011; Resolution 2012-125 – Non-Sworn Police in July 2012; Resolution 2012-139 – Unclassified, Clerical, Technical, Eligible Part-Time, Management and Elected Officials in August 2012.

While labor negotiations with Non-Sworn Police concluded in July 2012, CalPERS required the City to wait to amend the CalPERS contract as the City was in the middle of the process amending the Sworn Police 2% at 50 CalPERS contract. The Sworn Police amendment process concluded on September 30, 2012. CalPERS allows one contract change at a time. In addition, new California legislation, AB340, was signed into law, causing questions with regards to the timing and benefits of submitting the 2% at 60 CalPERS contract amendment. After review, it was determined that it is financially beneficial for the City to implement the reduced level of benefits – 2% @ 60 prior to December 31, 2012.

Accordingly, the City will be providing a second-tier of pension benefits for Miscellaneous Employees employed after the date of an amendment to the CalPERS contract and for new employees with prior reciprocal public service. The current CalPERS pension benefit would be reduced from 3% at 60 to 2% at 60 (Section 21353) and the final compensation calculation would be reduced from a one-year to a three-year final compensation calculation (Section 20037).

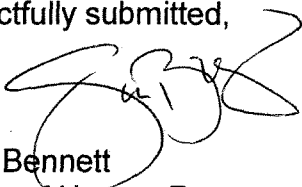
In general, the City will have three levels (tiers) of CalPERS Miscellaneous retirement benefits:

- First Tier – Current City of Escondido employees will continue with the 3% at 60 CalPERS retirement benefit.
- Second Tier – Effective December 23, 2012, newly hired employees will receive the above 2% at 60 CalPERS retirement if the new employee has less than a six month “break in public service” with another reciprocal public agency.
- Third Tier - Effective January 1, 2013, newly hired employees will receive the state mandated formula, per AB 340, of 2% at 62 if the new employee has no prior reciprocal public agency service or if there has been a “break in public service” of more than six months from another reciprocal public agency.

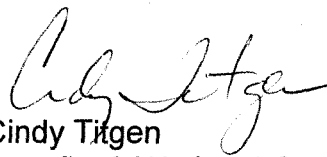
Approval of the Resolution of Intention No. 2012-175 and initial reading of the Ordinance No. 2012-20 is the first step in the process to amend the CalPERS contract. The City is required to certify its action and its compliance with Government Code Section 7507 (Disclosure of future annual cost increase or change). Once the City certifies its action, and at least 20 days has elapsed, the final step of the process is a second reading and adoption of Ordinance 2012-20, which is scheduled for November 14, 2012. The effective date of the CalPERS amendment is December 23, 2012, which is the first day of the payroll following thirty (30) days of the adoption of Ordinance No. 2012-20.

Therefore, staff requests approval of a Resolution of Intention No. 2012-175 and the initial reading of Ordinance No. 2012-20 to amend the CalPERS contract for Miscellaneous Employees to provide Section 20475 (Different Level of Benefits), Section 21353 (2% at 60), and Section 20037 (Three-Year Final Compensation) effective December 23, 2012.

Respectfully submitted,



Sheryl Bennett
Director of Human Resources



Cindy Titgen
Benefits & Workers' Compensation Manager

RESOLUTION NO. 2012-175

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, OF ITS INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY OF ESCONDIDO FOR MISCELLANEOUS MEMBERS

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement system by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20475 (Different Level of Benefits), Section 21353 (2% @ 60 formula) and Section 20037 (Three-Year Final Compensation) for miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract.

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

1. That the above recitations are true.

2. That the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement system, a copy of said amendment being attached hereto, as "Exhibit A" and by this reference made a part hereof.



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Escondido

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective November 1, 1958, and witnessed August 6, 1958, and as amended effective August 1, 1964, December 1, 1968, July 1, 1973, January 1, 1974, February 7, 1975, July 1, 1977, November 1, 1978, August 1, 1980, July 1, 1982, June 28, 1987, December 25, 1988, June 25, 1989, May 27, 1990, January 1, 1991, June 1, 1991, October 9, 1993, January 20, 1996, May 25, 1996, January 2, 1998, July 12, 1998, July 11, 1999, January 9, 2000, November 12, 2000, June 24, 2001, September 26, 2004, July 1, 2007, May 27, 2012 and September 30, 2012 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective September 30, 2012, and hereby replaced by the following paragraphs numbered 1 through 18 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 60 for local miscellaneous members and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after November 1, 1958 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.

3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
 - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
 - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.

- (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
 - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
- a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
- a. **PROGRAM PERSONNEL HIRED ON OR AFTER JULY 1, 1973;
AND**
 - b. **BUS DRIVERS HIRED ON OR AFTER FEBRUARY 7, 1975.**
6. Prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
7. This contract shall be a continuation of the contract of the Escondido Community Development Commission, hereinafter referred to as "Former Agency". The accumulated contributions, assets and liability for prior and current service under the Former Agency's contract shall be merged pursuant to Section 20508 of the Government Code. Such merger occurred July 1, 1996.

8. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment before and not on or after July 1, 2007 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to December 31, 1973, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
9. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment on or after July 1, 2007 and not entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract shall be determined in accordance with Section 21354.3 of said Retirement Law, subject to the reduction provided therein for service prior to December 31, 1973, termination of Social Security, for members whose service has been included in Federal Social Security (3% at age 60 Full and Modified).
10. The percentage of final compensation to be provided for each year of credited current service as a local miscellaneous member entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a local fire member entering membership in the fire classification on or prior to May 27, 2012 and for those local police members entering membership in the police classification on or prior to September 30, 2012 shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
12. The percentage of final compensation to be provided for each year of credited current service as a local fire member entering membership for the first time in the fire classification after May 27, 2012 and for those local police members entering membership for the first time in the police classification after September 30, 2012 shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
13. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21574 (Fourth Level of 1959 Survivor Benefits).

- b. Sections 21624 and 21626 (Post-Retirement Survivor Allowance) for local safety members only.
- c. Section 20614, Statutes of 1978, (Reduction of Normal Member Contribution Rate). From November 1, 1978 and until June 28, 1987, the normal local safety member contribution rate shall be 2.75%. Legislation repealed said Section effective September 29, 1980.
- d. Section 20690, Statutes of 1980, (To Prospectively Revoke Section 20614, Statutes of 1978).
- e. Section 20042 (One-Year Final Compensation) for those local fire members entering membership on or prior to May 27, 2012, local police members entering membership on or prior to September 30, 2012 and local miscellaneous members entering membership on or prior to the effective date of this amendment to contract.
- f. Section 20965 (Credit for Unused Sick Leave).
- g. Section 21024 (Military Service Credit as Public Service).
- h. Section 20692 (Employer Paid Member Contributions Converted to Payrate During the Final Compensation Period) for local police members only.
- i. Section 21548 (Pre-Retirement Option 2W Death Benefit).
- j. Section 20475 (Different Level of Benefits). Section 21362 (2% @ 50 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local fire members entering membership for the first time in the fire classification after May 27, 2012.

Section 21362 (2% @ 50 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local police members entering membership for the first time in the police classification after September 30, 2012.

Section 21353 (2% @ 60 Full Formula) and Section 20037 (Three-Year Final Compensation) are applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract.

14. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on August 1, 1980. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
15. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
16. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
17. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

18. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF ESCONDIDO

BY _____
KAREN DE FRANK, CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

ORDINANCE NO. 2012-20

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING AN AMENDMENT TO THE
CONTRACT BETWEEN THE CITY OF
ESCONDIDO AND THE BOARD OF
ADMINISTRATION OF THE CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT
SYSTEM

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

SECTION 1. That an amendment to the contract between the City Council of the
City of Escondido and the Board of Administration, California Public Employees'
Retirement System is hereby authorized, a copy of said amendment being attached
hereto as a marked Exhibit "A," and by such reference made a part hereof as though
herein set out in full.

SECTION 2. The Mayor of the City of Escondido is hereby authorized,
empowered, and directed to execute said amendment for and on behalf of said Agency.

SECTION 3. This Ordinance shall take effect 30 days after the date of its
adoption and prior to the expiration of 15 days from the passage thereof shall be
published at least one time in a newspaper of general circulation, published and
circulated in the City of Escondido and thenceforth and thereafter the same shall be in
full force and effect.



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Escondido

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective November 1, 1958, and witnessed August 6, 1958, and as amended effective August 1, 1964, December 1, 1968, July 1, 1973, January 1, 1974, February 7, 1975, July 1, 1977, November 1, 1978, August 1, 1980, July 1, 1982, June 28, 1987, December 25, 1988, June 25, 1989, May 27, 1990, January 1, 1991, June 1, 1991, October 9, 1993, January 20, 1996, May 25, 1996, January 2, 1998, July 12, 1998, July 11, 1999, January 9, 2000, November 12, 2000, June 24, 2001, September 26, 2004, July 1, 2007, May 27, 2012 and September 30, 2012 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective September 30, 2012, and hereby replaced by the following paragraphs numbered 1 through 18 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 60 for local miscellaneous members and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after November 1, 1958 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.

3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
 - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
 - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.

- (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
 - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
- a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
- a. **PROGRAM PERSONNEL HIRED ON OR AFTER JULY 1, 1973;
AND**
 - b. **BUS DRIVERS HIRED ON OR AFTER FEBRUARY 7, 1975.**
6. Prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
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8. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment before and not on or after July 1, 2007 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to December 31, 1973, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
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 - a. Section 21574 (Fourth Level of 1959 Survivor Benefits).

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- c. Section 20614, Statutes of 1978, (Reduction of Normal Member Contribution Rate). From November 1, 1978 and until June 28, 1987, the normal local safety member contribution rate shall be 2.75%. Legislation repealed said Section effective September 29, 1980.
- d. Section 20690, Statutes of 1980, (To Prospectively Revoke Section 20614, Statutes of 1978).
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- f. Section 20965 (Credit for Unused Sick Leave).
- g. Section 21024 (Military Service Credit as Public Service).
- h. Section 20692 (Employer Paid Member Contributions Converted to Payrate During the Final Compensation Period) for local police members only.
- i. Section 21548 (Pre-Retirement Option 2W Death Benefit).
- j. Section 20475 (Different Level of Benefits). Section 21362 (2% @ 50 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local fire members entering membership for the first time in the fire classification after May 27, 2012.

Section 21362 (2% @ 50 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local police members entering membership for the first time in the police classification after September 30, 2012.

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15. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
16. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
17. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

18. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF ESCONDIDO

BY _____
KAREN DE FRANK, CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. 2012-161 File No. _____

Ord No. _____

Agenda Item No.: 17
Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Barbara J. Redlitz, Director of Community Development
SUBJECT: Amendment to the Interim Downtown Specific Plan (PHG 12-0016)

STAFF RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-161 approving the proposed amendment to the Interim Downtown Specific Plan. A copy of the complete SPA text is available online at: <http://www.escondido.org/Data/Sites/1/media/staffreports/PC/PHG12-0016.pdf>

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission voted 5-2 (Weber and Johns: no) to recommend approval of the specific plan amendment on September 25, 2012.

PROJECT DESCRIPTION:

A request to amend the Interim Downtown Specific Plan text involving a number of actions in various districts: 1) permitting restaurants to have outdoor food cooking, 2) modifying the matrix of permitted and conditional uses regarding primary and secondary educational facilities, general retail home furnishings, hardware/home improvement, food and liquor sales, wine and beer tasting, and miscellaneous government operations, 3) refining standards for special events, outdoor dining, and the outdoor display and sale of merchandise, 4) simplifying and clarifying development and application standards with regard to design review procedures, and 5) performing other minor text and graphic edits as appropriate.

LOCATION:

The Downtown Specific Plan Area (SPA) encompasses approximately 460 acres extending from I-15 and West Valley Parkway to Palomar hospital, between Washington Avenue and Fifth Avenue.

FISCAL ANALYSIS:

None

GENERAL PLAN ANALYSIS:

Specific Planning Area No. 9 (Downtown Specific Plan) of the General Plan notes the Downtown Specific Plan shall provide a range of retail, office, financial, cultural and residential opportunities. The goal of the specific plan is to create an efficiently organized and aesthetically pleasing downtown with a distinct identity and high-quality image while facilitating the safe movement of people and vehicles in the area. The proposed amendment to the Interim Downtown Specific Plan would be consistent with the General Plan because the proposal increases business opportunities, clarifies existing provisions, and expands permitted land uses with the purpose of revitalizing business activities in the downtown.

ENVIRONMENTAL REVIEW:

The proposed amendment is exempt from the California Environmental Quality Act in accordance with CEQA Section 15061(b)(3), "General Rule." A Notice of Exemption was issued on September 17, 2012. No significant issues remain unresolved through compliance with code requirements and the recommended conditions of approval in staff's opinion.

PREVIOUS ACTION:

A comprehensive Downtown Specific Plan update was conducted in 2005 involving numerous amendments including expanding the SPA boundaries, consolidating and realigning land use districts, updating permitted land uses, and amending development standards pertaining to building heights, setbacks and densities.

Phase I of the comprehensive update involving certain land uses and development standards were adopted in 2007. Modifications to the downtown parking requirements were adopted in 2011. The General Plan Specific Plan boundaries were expanded in conjunction with the comprehensive General Plan Update last May. Rezoning of those properties included in the expanded Downtown Specific Plan will occur as part of the comprehensive zoning update. Phase II amendments of the Downtown SPA text involving building heights, densities, buildout and setbacks were evaluated in the General Plan Update EIR and will be considered for adoption in early 2013.

BACKGROUND:

A specific plan for downtown was first approved by the City Council in 1992 and has been amended periodically over the years. The minor amendments proposed for consideration listed in the project description (page 1) address recent requests to serve existing and proposed business in downtown, as well as address City Council direction regarding the consolidation of design review responsibilities.

PLANNING COMMISSION RECOMMENDATION AND SUMMARY:

The Planning Commission voted 5-2 (Weber and Johns: no) to recommend approval of the specific plan amendment on September 25, 2012. The commissioners all agreed with minimal discussion that the amendments would increase downtown business opportunities. However, Chairman Weber and Commissioner Johns felt that the proposal to add primary and secondary schools as a Conditional Use for a two-block portion of the Historic Downtown District would impede the plan's vision for a vibrant downtown with an 18-hour environment.

ANALYSIS:

Following is a discussion on the key text amendments of the Specific Plan with hard copies of the specific pages included as Exhibit "A" in this staff report. A complete electronic version of the SPA text is online at: <http://www.escondido.org/Data/Sites/1/media/staffreports/PC/PHG12-0016.pdf>

A. Revisions to the Permitted Use Matrix (Figure II-2, Page II-3 – Page II-8)

Amendments to the permitted use matrix would respond to changing market conditions and facilitate new business opportunities. The changes involve: expanding home furnishings and hardware uses in the Historic Downtown and Parkview Districts, and changing wine and beer tasting establishments from a conditional to permitted land use throughout downtown (Page II-4). Specialty food establishments exceeding 7,000 square feet currently require a Conditional Use Permit; the proposed amendment would eliminate that requirement (Page II-5). Primary and secondary schools would be allowed with a Conditional Use Permit on the north side of East Valley Parkway between Kalmia and Ivy Streets. Miscellaneous Government Operations would be allowed with a Conditional Use Permit throughout downtown, which is consistent with other zones in the city (Page II-8).

B. Revisions to Sidewalk Cafes (Page VII-1 – Page VII-5)

In urban areas it is not unusual for restaurant dining to occur outdoors on private property as well as other public lands (i.e. public parks, plazas and open space areas). The specific plan text only provides guidance for sidewalk cafes. The proposed modification adds flexibility by classifying outdoor dining as all dining conducted outdoors on private and/or other public lands. The amendment will benefit existing and future restaurants and expand dining opportunities in the downtown area.

C. Provisions for Open – Air Barbeques (Page VII-5 – Page VII-6)

Adding provisions for open-air barbeques are intended to address recent requests from restaurants. Staff has relied on the adopted Department of Environmental Health (DEH) and California Retail Food requirements in crafting the development standards. Open-air barbeques are exempt from air quality regulations. A comment received from the County Air Pollution Control District cited public nuisance concerns regarding smoke and odors. The amendment requires City approval for outdoor barbeques, compliance with DEH regulations and City zoning code provisions pertaining to smoke and odors, and retains the ability to modify, suspend, or revoke outdoor barbeques based on non-compliance.

D. Revisions to Sidewalk Vendors / Pushcarts (Page VII-6 – Page VII-7)

The proposed amendment consolidates provisions for outdoor sales and distinguishes between outdoor sales occurring on public property versus private property, as well as during special events versus regular business operations. The modifications are intended to clarify certain ambiguities and issues involving the outdoor sale of merchandise on private property during special events.

E. Revisions to Promotional Signs and Special Events (Pages VI-1, VI-15 – VI-16, VII-8)

The proposed amendment would refine signage pertaining to promotional events and expand opportunities for special events that occur outdoors on private property and would give the Director of Community Development discretion regarding parking requirements.

F. Revisions to Implementation and Administration (Chapter VIII)

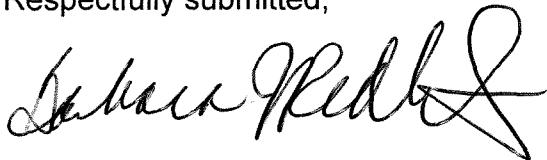
Last year, the City Council reorganized the development review process by consolidating the Design Review Board's responsibilities between staff, Planning Commission, and Historic Preservation Commission. Numerous references to the Design Review Board are contained throughout the Specific Plan text (refer to document) with most references contained in Chapter VII. Staff has edited the document to reflect the appropriate review procedure and eliminated references to the Design review Board to reflect City Council direction.

G. Summary of other Miscellaneous Amendments (Troughout SPA Text)

Other miscellaneous edits have been incorporated into the text (not shown in Exhibit "A") involving:

1. Modifying Figure II-1 depicting downtown Urban Trails to include the Maple Street pedestrian Plaza (Page III-10).
2. Provisions for converting restaurant on-site parking to outdoor dining on a case by case basis in concert with a previous SPA Amendment eliminating parking requirements in Vehicle Parking Districts 1 and 2 (Page III-17).
3. Removing references to Design Review Board approval and replacement with staff or Planning Commission approval as appropriate (throughout text).
4. Modifying Figure III-4 to add information regarding adopted setback requirements (Page III-25).
5. Retitling section "*Resolution of Conflicts*" to "*Director Determinations*" involving no changes to current policies (Page III-27).

Respectfully submitted,

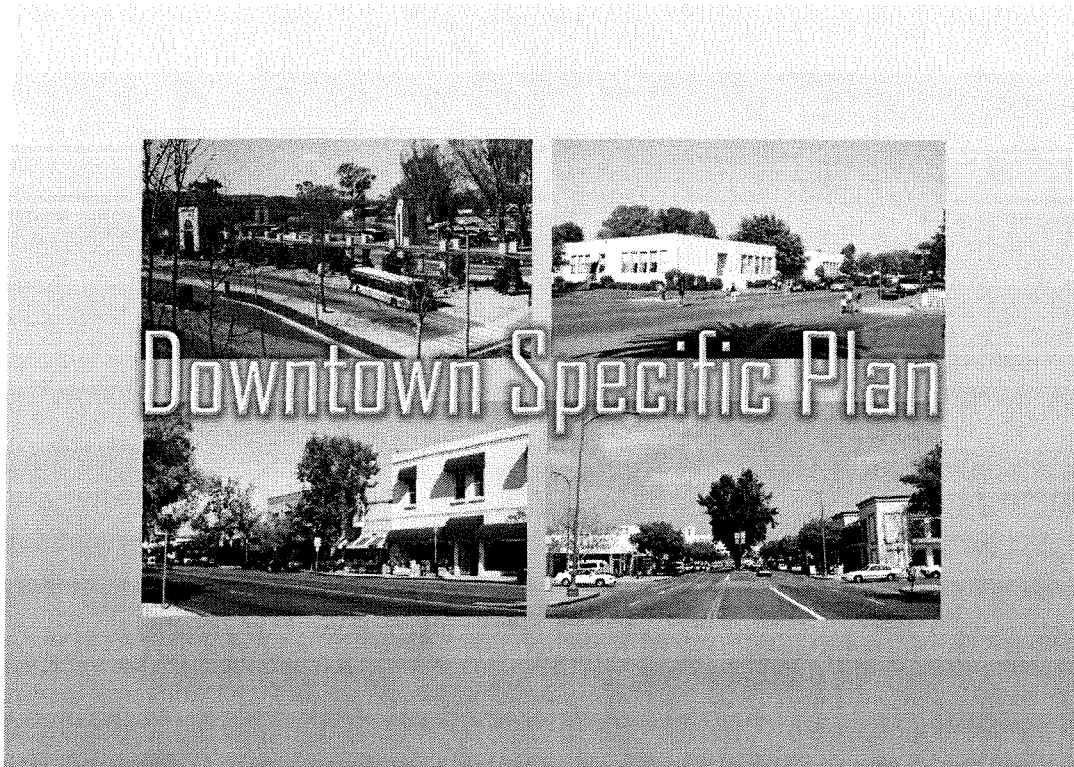


Barbara J. Redlitz
Director of Community Development



Jay Petrek
Principal Planner

EXHIBIT A



INTERIM SPECIFIC PLAN

***Adopted on March 21, 2007
Resolution 2007-35***

Revised October 17, 2012



File No.: 2006-34-SPA / ER 2006-11

Note: This exhibit contains key excerpts of the Specific Plan text amendment. The complete Specific Plan text is on file in the Planning Division and online at:
<http://www.escondido.org/Data/Sites/1/media/staffreports/PC/PHG12-0016.pdf>

Interim Downtown Specific Plan
As Amended by the City Council

July 11, 2007	Resolution 2007-70 (R)..... Effective July 11, 2007 (Southern Gateway District G.3 – Page V-42)
August 22, 2007.....	Resolution 2007-147..... Effective August 22, 2007 (Southern Gateway District G.3 – Page V-42)
October 17, 2007	Resolution 2007-170..... Effective October 17, 2007 (Vehicle Parking District No. 1 – Page III-20 Figure III-4 Development Standards – Page III-27 Business Promotions/Special Events – Page VI-16 Community Events – 125)
August 20, 2008.....	Resolution 2008-163..... Effective August 20, 2008 (Joint-Use, Daytime/Nighttime Parking Provisions – Page III-15 – III-16 Minor revisions to the design standards – Page - various)
November 12, 2008.....	Resolution 2008-189..... Effective November 12, 2008 (To refine prohibited Uses Pawn Shops, etc. – Page II-3 Temporary Political/Campaign Offices – Page II-5)
July 8, 2009	Resolution 2009-84..... Effective July 8, 2009 (Automobile dealership conversions - Page VIII-2 Figure II-2 Permitted Use Matrix - Page II-3 - II-8)
March 10, 2010	Resolution 2010-29..... Effective March 10, 2010 (Amend Figure II-2 Permitted Use Matrix - assembly uses & retail furniture sales- Page II- 4 & II-7 Amend Figure II-1 Map of Districts within the SPA - Page II-2 Amend Section III.C permitted uses in existing structures - Page III-31 Amend Figure III-4 Land Use District Dev Standards & Section VI.A.4.a - to modify required setbacks for signs - Page III-27 & Page VI-12
July 13, 2011	Resolution 2011-90..... Effective July 13, 2011 Revised Permitted Use Matrix – Pages II-3 – II-8 Amend SP to eliminate parking space requirements in the core downtown area and modify minimum retail storefront depth in the retail core area Pages III-15 – III-21 and V-6 – V-8, V-15 & V-36
October 17, 2012	Resolution 2012-161..... Effective October 17, 2012 <u>Amend SP to 1) Permit restaurant open-air barbequing (Page VII-5),</u> <u>2) Modify matrix of permitted and conditional uses regarding primary and</u> <u>secondary educational facilities, general retail home furnishings,</u> <u>hardware/home improvement, food and liquor sales, wine and beer</u> <u>tasting, and miscellaneous government operations (Pages II-3 – II-8);</u> <u>3) Refine standards for special events, outdoor dining, and the outdoor</u> <u>display and sale of merchandise; (Pages VII-1 – VII-8)</u> <u>4) Simplify and clarify development and application standards with</u> <u>regard to design review procedures (Pages VIII-1 – VIII -4)</u> <u>5) Perform other minor text and graphic edits as appropriate</u>

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4. Special Events – Article 4 of the City of Escondido Municipal Code
5. Affordable Housing Bonus - Ordinance 92-19 of the Escondido Zoning Code
6. Escondido Business Enhancement Zone - Ordinance 92-13 of the Escondido Zoning Code
7. Outdoor Display and Sales of Retail Merchandise - Ordinance 92-43 of the Escondido Zoning Code
8. Sign Regulations - Article 66 of the Escondido Zoning Code

**FIGURE II-2
PERMITTED USE MATRIX**

LAND USE		HD	PV	CCU	GT	M	SG	CN
RESIDENTIAL AND LODGING (in accordance with Figure II-3A)								
Bed-and-breakfast establishments							C	C
Residential-care facilities							C	C
Hotels and Motels (subject to submittal requirements and findings for other commercial zones in the City)	C	C	C	C	C	C		
Residential above ground floor in specified areas, in conjunction with permitted non-residential use on ground floor (refer to Figure II-3 for appropriate locations and housing types)	P	P9	P	P	P	P	P	P
Residential, on ground floor in specified areas (refer to Figure II-3 for appropriate locations and housing types)	P7, P8	P8, P9	P8	P8	P8	P	C	P
GENERAL RETAIL*								
New merchandise sold in department stores, drugstores, pharmacies, and retail establishments selling toys, flowers, gifts, stationery, jewelry, leather, apparel, shoes (including repair), china, glassware, pottery, crafts, cigars, yardage goods, pets, hobbies, art supplies, video sales and rental, music (including incidental recording, instruction and instrument repair) books/magazines/newspapers, sporting goods, bicycles/cameras/electronics/office business/small household appliance sales and service, and other similar retail goods and incidental services NEC. Prohibited uses include retail uses with across the board maximum pricing or "everything under" pricing and surplus goods.	P	P	P	P	P	P	P3	P6
Previously owned goods and merchandise including antiques, collectibles, coins, consignment and stamps, excluding pawn shops, second hand and thrift stores.								
Automobile supply stores with, or without, incidental installation						P		P3

NOTES:

P = Permitted C = Conditional Use Permit required

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- 3 Only permitted on Escondido Boulevard.
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- 5 Only when integrated into a residential project.
- 6 Only permitted on either side of the alley between Pennsylvania Avenue and East Valley Parkway.
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- 10 Not allowed along Grand Avenue on ground floor between Grand and adjacent alleys.
- 11 Permitted on Local Historic Register properties.
- * Existing automobile dealerships were a non-conforming use at the time of adoption of the Interim Downtown Specific Plan. Conversion of these sites to a new, substantially different, use shall require plot plan review pursuant to Article 16 of the Escondido Zoning Code.

NOTE: Should a conflict arise between this matrix and the land-use district text, the land use district text discussion shall take precedence in determining the appropriateness of the land use.

DISTRICTS:

- HD Historic Downtown
- PV Park View
- CCU Centre City Urban
- GT Gateway Transit
- M Mercado
- SG Southern Gateway
- CN Creekside Neighborhood

LAND USE									
GENERAL RETAIL (continued)	HD	PV	CCU	GT	M	SG	CN		
Carpet and floor covering and installations									
Large appliance sales	P7	P	P	P	P1	P3			
Home Furnishings with retail display (not including "mattress only", carpet, drapery, and discount furniture stores)	P	P	P	P	P1	P3			
Hardware, paint, glass, tools, home improvement	P4, P7	P	P	P	P1	P1, P3			
Medical equipment sales/rentals and supplies	P7		P	P		P3			
Outdoor vending machines		P							
EATING AND DRINKING ESTABLISHMENTS*									
All types of eating establishments providing meal service from an on-site operating commercial-grade kitchen, and/or dessert service from an on-site operating commercial-grade freezer/refrigerator facility with, or without, incidental sale of alcohol (including micro-breweries and outdoor dining, but with no drive-through), with no live amplified entertainment or dancing	P	P	P	P	P	P3, P11			
Eating establishments (as defined above) with indoor amplified entertainment and/or dancing	P	C	C	C	P	C3			
Wine- and beer-tasting establishments (only with retail sales involving related merchandise that includes a significant portion of the sales area)	CP	CP	CP	CP	CP	C3P3			
Drinking establishments, bars and nightclubs serving alcohol with or without live entertainment and/or dance	C	C	C	C	C	C3			

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- M Mercado
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LAND USE		HD	PV	CCU	GT	M	SG	CN
FOOD AND LIQUOR SALES (excluding convenience and package stores)*								
Specialty foods, including imported and/or unique food products, produce, candy, baked goods, meat, etc., specialty liquor sales involving off-sale unique brands of beer, wine, and distilled spirits (establishments exceeding 7,000 SF of sales area require a Conditional-Use Permit)		P	P	P	P	P	P3	
General grocery stores exceeding 7,000 SF of sales area with, or without, alcohol sales		P7	P	P				
GENERAL OFFICE AND FINANCIAL SERVICES*								
Administrative, business and professional offices, employment agencies, secretarial services, realtors/real estate offices and counseling services, travel and ticket agencies		P2	P	P	P	P	P	P6
Short-term political campaign offices with a maximum duration of six months		P	P	P	P	P	P	P6
Financial institutions, banks, savings and loans (excluding check cashing and/or payday loans as a primary use), visitor and information center (including Downtown Business Association), governmental services, police and fire stations		P	P	P	P	P	P	P6
Off-site sales and call centers		P10					P	P6
HEALTH AND PERSONAL SERVICES*								
Medical/dental/optical/offices, clinics and laboratories, licensed alternative health-care establishments, day spas, excluding acupuncture and massage establishments as primary uses.		P2	P		P	P	P	P6
Barber, beauty salons including cosmetology involving ear piercing, permanent eye and lip lining, excluding other body piercing, body art, and inking parlors		P	P	P	P	P	P3	C1, 5, 6

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LAND USE	HD	PV	CCU	GT	M	SG	CN
SPECIALTY SERVICES (includes similar ancillary uses NEC)*							
Animal services to include pet training, boarding (indoor only), pet spas, pet day care and veterinary clinics	P7		P	P			P6
Photographic developing and photocopy services, watch and clock repair, locksmiths	P	P	P	P	P	P	P6
Music recording/practice studios	P2	P4	P	P	P	P4	P1, 6
Custom-furniture upholstery and repair	P7					P3	
Picture framing shops	P	P4	P	P	P	P3	
Postal services including parcel delivery (public/private)	P2	P	P	P	P	P	P
Cleaning and laundering services without on-site cleaning	P7	P1	P1	P1		P1, 4	C1, 5, 6
Cleaning establishments and laundries, self-service or coin operated	P10	P				C	C1, 5, 6
Mortuaries	C10	C				C	C6
Tailors and dressmakers and alterations	P2	P	P	P	P	P	C5, 6
ENTERTAINMENT, RECREATION AND CULTURAL*							
Dance facilities, pinball and electronic game arcades	C		C		C		
Athletic clubs, health studios	P7	P	P	P	P	P3	P6

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LAND USE									
ENTERTAINMENT AND RECREATION (continued)									
	HD	PV	CCU	GT	M	SG	CN		
Galleries and studios pertaining to artists, craft workers and photographers (including incidental developing and printing), libraries, museums, etc., including incidental sale of merchandise pertaining to the primary use	P	P	P	P	P	P	P6		
Dance studios and schools	P2		P	P	P	P3	P6		
Marital arts schools and training facilities	P10		P	P	P	P3	P6		
Entertainment establishments (including internet cafes) with incidental sale of food or alcohol (excluding incidental entertainment in restaurants)	C	C	C	C	C	C3			
Parks - general recreation	P	P	P	P	P	P	P		
Roller-skating and bowling alleys and similar indoor arena sports			P	P	C				
Swimming pools and schools		P					P6		
Theater, live and motion picture	P	P	P	P					
SOCIAL, PROFESSIONAL, RELIGIOUS ORGANIZATIONS*									
Churches, synagogues, temples, missions, religious reading rooms, and other religious activities (not allowed within Grand Ave. "historic retail core area")	C	C	C	C	C	C	C		
Social and professional organizations that conduct group and/or membership meetings on the premises, including political, veterans, civic, labor, charitable and similar organizations	C2	C	C	C	C	C	C		
Youth Organizations		C	C	C	C	C	C		

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LAND USE	HD	PV	CCU	GT	M	SG	CN
EDUCATION*							
Educational facilities for adults	C10	P	C	P	P	P	C6
Daycare facilities	C10	C	C	C	C	C	C6
Schools-(primary and secondary education)	C6	C	C	C	C	C	C
COMMUNICATIONS (wireless facilities subject to Article 34)							
Broadcasting (radio and/or television stations)	C7	C	C	C	P	C	C6
Newspaper printing and publishing	C7		C1	C1	C1	C1	C6
TRANSPORTATION AND MISCELLANEOUS SERVICES*							
Car-rental services, excluding maintenance and repair of vehicles			C	C			
Parking lots (municipal)	P	P	P	P	P	P	P
Parking lots (private full fee)	C	C	C	C	C	C	C
Taxicab, trolley, shuttle and pedicab stands	P	P	P	P	P	P	P
Transit stations and car-rental services, including maintenance and repair				P			
Seasonal sales not exceeding 30 days, (including pumpkin, Christmas tree and wreath sales between October 1 and December 31, both dates inclusive, to the extent permitted by other statutory and ordinance provisions). Any structures and materials used for seasonal sales shall be removed from the premises immediately after December 31 and the property shall be restored to a neat condition	P	P	P	P	P	P	P
Miscellaneous Government Operations	C	C	C	C	C	C	C

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Downtown Specific Plan

SIGN CRITERIA & GUIDELINES

VI. SIGN CRITERIA AND GUIDELINES

A. PURPOSE STATEMENT

The purpose of establishing sign standards and guidelines is to encourage an "uncluttered" atmosphere with signs that portray graphic excellence and enhance economic revitalization, as well as a quality image for the Downtown Area. The primary intent of these standards is to establish consistency for all signage within a parcel as well as a compatible system of signage throughout the area. These standards and design criteria establish sign placement, letter type, sign styles, and other design-related restrictions.



Sign regulations establishing limits for the number of signs per property, the placement of signs, and the height and area of signs are included in each District Section of this document. The Design Guidelines presented herein are supplementary to the City's Sign Ordinance. The standards contained in these sections may be modified through the ~~Design Review Board~~ public hearing process to meet the goals and objectives of the Design Guidelines. All signs shall comply with the Downtown Specific Plan's requirements, any additional provisions of these sections, and the following sections of the Citywide Sign Ordinance (Article 66):

- Definitions;
- Permit Administration;
- Construction and Maintenance;
- Sign Standards - General
- Supergraphic Sign Standards;
- Sign Standards related to historic buildings and historic signs,
- Enforcement and penalties; and
- Nonconforming signs.

1. TYPES OF SIGNS

a. Public Signage

A system of public signage provides a unique identity to the community and should include Downtown identification signs, street signs, special-use signs, historical plaques, and directional signs. The public-sign system should include:

- 1) A downtown logo to be used on appropriate signs;
- 2) Entry point identity signs;
- 3) Consistent design for street signs, special use signs, and historical plaques incorporating the logo;
- 4) Landscaping at entry points and key areas; and

Downtown Specific Plan

SIGN CRITERIA & GUIDELINES

- (d) Identify Center Name or Address - For commercial renters, a **minimum of 10%** of the pole sign area shall be devoted to identification of the center by address or both name and address. Commercial centers shall display the range of store addresses for that center. Only the name of the center and major tenants shall be included on such signs. Decorative poles, trim, or architectural features shall be provided to unify the total sign.
- (e) No Changeable Copy - Pole signs shall not have changeable copy or price signs - (See Monument Signs).
- (f) Illumination - Pole signs may have individual, illuminated, channel letters that are back-lit (halo-lit). External and indirect lighting, consistent with the Outdoor Lighting Ordinance, is permitted in lieu of individually illuminated letters.

2) Design Guidelines - The following design guidelines apply to all pole signs:

- (a) Uniform Design of Tenant Signs - Where freestanding signs include the names of tenants, these signs shall be limited to the width of the twin poles or architectural feature, and should be uniform in size, color, and lettering style.
- (b) No Single Poles - Pole signs shall be mounted on twin poles. Monument signs or signs, designed as a solid architectural feature, may be substituted for pole signs.

B. BUSINESS PROMOTIONS/SPECIAL PROMOTIONAL EVENTS

Commercial grand opening and similar promotional event signage on private property may be approved by the Community Development Director for a limited period of time in all Districts, to publicize grand openings and special events such as new management and promotional sales. The regulation of these signs shall be as follows:



1. At least 2 weeks in advance of a special promotional event, the business owner shall notify the Planning Division, by registered letter, of the dates of the special-promotional event and the types of signs to be used. The sizes and locations of the signs also shall be indicated.

2. Special-Promotional event signs shall be limited to a maximum of 60 days per calendar year per business, not to exceed 30 consecutive days at any time.

Downtown Specific Plan

SIGN CRITERIA & GUIDELINES

3. Special-Promotional event signs may include balloons, flags, search lights, beacons, pennants, streamers, banners, portable signs, or other similar devices. Balloons may not exceed 24 inches in any dimension.
4. One special-promotional event banner is allowed for each street frontage, except for individual in-line shops in commercial centers where one banner is allowed for each building face fronting a parking lot or street.
5. Each special-promotional event banner shall not exceed 72 square feet in area.
6. No special-promotional event signage (of any type) may be displayed on, or attached to, any public property, including telephone or utility poles, traffic-control signs or other such devices, street lights, or other structures located on public property.
7. No special-promotional event signage, of any type, shall interfere with, or restrict, vehicular or pedestrian access or visibility.
8. Special-Promotional event signs may be subject to a separate fee payable to the City of Escondido.



Downtown Specific Plan

SIGN CRITERIA & GUIDELINES

C. COMMUNITY EVENTS

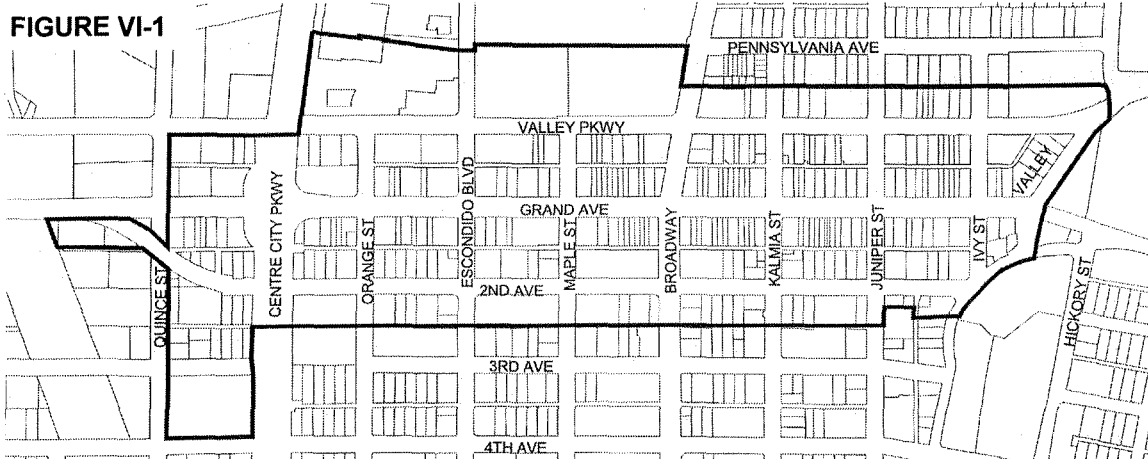
A community event is one that is intended to attract community-wide participation, is held on public or private property within the Downtown Specific Plan area, is open to the public, and is temporary in nature. Examples of special community events include exhibits, parades, street fairs, celebrations, concerts, etc. Community events shall comply with all local, state and federal regulations where applicable. Special sign programs shall be coordinated and prepared with the Downtown Business Association. No signs shall be permitted within the Downtown Specific Plan area for events occurring in venues outside that boundary, except for events sponsored by the City or held on City-owned property.



Community events signs shall be of a sufficient size and placed in appropriate locations, as determined by the Director of Community Development and the Downtown Business Association. Sign requests shall be submitted to the Planning Division for review and approval by the Director of Community Development.

D. FREESTANDING SIDEWALK SIGNS

A freestanding sidewalk sign shall mean a movable, single, or double-faced sign located within the public right-of-way (sidewalk), or within private entries or courtyards, which complies with all of the design specifications delineated below. Freestanding sidewalk signs shall communicate only information about businesses located in the building fronting on that portion of the sidewalk or private area where the sign is located. Freestanding sidewalk signs shall be allowed only in the Historic Downtown District, the Mercado District and portions of the Park View and Centre City Urban Districts that front on Valley Parkway as depicted in Figure VI-1.



Downtown Specific Plan

SPECIAL USES

VII. SPECIAL USES

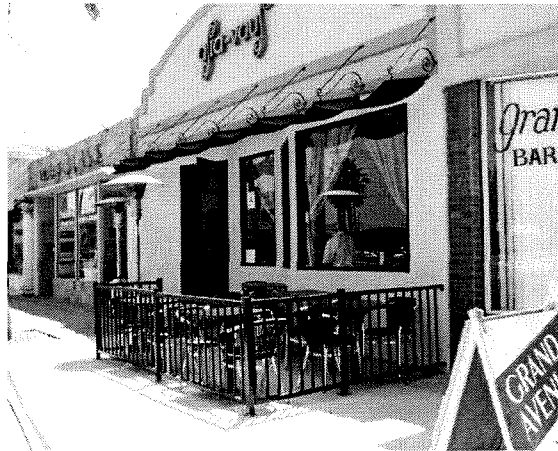
A. PURPOSE STATEMENT

Unique and special uses outdoors and in the public right-of-way of the Downtown area are encouraged to enhance the pedestrian ambiance. However, reasonable regulation of these uses is necessary to protect public health, safety, and welfare. The purpose of this section is to set forth the conditions and requirements under which special uses, as defined below, may be permitted to operate by approval of the Community Development Director within the downtown area.

1. SIDEWALK CAFES/OUTDOOR DINING

a. Definition

~~A sidewalk cafe~~ Outdoor dining is any group of tables and chairs, and its authorized decorative and accessory devices situated and maintained outdoors upon the public property, sidewalk/right-of-way areas and/or outdoors on private property for use in connection with the consumption of food and beverage sold to the public from, or in, an adjoining indoor restaurant.



b. Encroachment Permit Required

All outdoor dining areas shall be approved by the Planning Division. An Encroachment Permit from the Engineering Division is required for any proposed sidewalk cafe/outdoor dining which is proposed within the on public property/right-of-way.

c. Limitations and Requirements

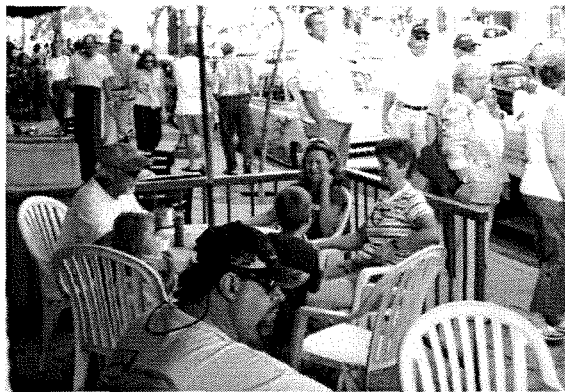
~~A sidewalk cafe~~ Outdoor dining may be permitted only in districts that allow indoor restaurants, and then only if the sidewalk cafe/outdoor dining is situated adjacent to an indoor restaurant (as specified below) and the sidewalk cafe's/outdoor dining operation is incidental to, and a part of, the operation of such adjacent indoor restaurant.

- 1) Existing indoor restaurants shall conform to all sections of the Municipal Code in order to be eligible for approval of sidewalk-outdoor dining services.

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- 2) ~~A sidewalk cafe~~Outdoor dining may be located on the ~~public sidewalk~~property areas immediately adjacent to, and abutting, the indoor restaurant which operates the ~~cafe~~restaurant, provided that the area in which the ~~sidewalk cafe~~outdoor dining is located extends no farther along ~~the sidewalk's~~in length than the actual ~~sidewalk~~frontage of the operating indoor restaurant and all other applicable provisions of this section are fulfilled.
- 3) ~~A sidewalk cafe~~Outdoor dining shall ~~be that is~~be located on an ~~area of the public sidewalk~~area immediately adjacent to, or abutting, the indoor restaurant which operates the ~~cafe~~outdoor dining area and shall ~~comply with~~comply with. ~~All all applicable provisions of this section, shall be fulfilled and the majority of the area in which the sidewalk cafe is located shall be situated on the public sidewalk directly in front of, or beside, the indoor restaurant that operates the cafe. The~~Any area of the public sidewalk that would be enclosed for the use of an outdoor cafe ~~outdoor dining shall provide direct access to the adjacent restaurant for staff and customer use. be considered as being directly in front of, or beside, the indoor restaurant for the purposes of this subsection.~~shall provide direct access to the adjacent restaurant for staff and customer use. be considered as being directly in front of, or beside, the indoor restaurant for the purposes of this subsection.
- 4) An indoor restaurant may be permitted to operate ~~only one sidewalk cafe~~multiple outdoor dining areas, ~~however, outdoor dining on the adjacent public and each sidewalk cafe~~however, outdoor dining on the adjacent public and each sidewalk cafe shall be confined to a single location on the sidewalk.
- 5) ~~A~~Outdoor dining utilizing public property areas ~~sidewalk cafe~~may be permitted only where the sidewalk is wide enough sufficient area is available to adequately accommodate both the usual pedestrian traffic in the area and the operation of the proposed ~~cafe~~outdoor dining.
- 6) All outdoor dining tables and chairs located on the public sidewalk shall be set back to provide a 4- foot minimum of 'free and clear' sidewalk area to accommodate pedestrian traffic. This distance may be reduced to 3 feet when street trees and/or a landscaped parkway area exist subject to City approval and in compliance with Americans with Disabilities Act (ADA) provisions. Tables or chairs shall not be situated within 8 feet of any designated bus stop.
- 7) All outdoor dining furniture on public property (including tables, chairs, umbrellas, and planters) shall be movable. Umbrellas shall be secured with a minimum base of not less than 60 pounds. Outdoor heaters, amplified music, or speakers shall require Plot Plan approval from the Planning Division.



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- 8) No sign shall be allowed at any ~~outdoor cafe~~outdoor dining area, except for the name of the establishment and/or product name on an umbrella valance only.
- 9) The outdoor preparation of food and associated bussing facilities are prohibited within the public right of way at sidewalk cafes(note: open-air barbecues are subject to provisions stated elsewhere in this chapter). Presetting of tables with utensils, glasses, napkins, condiments, etc., is prohibited. All outdoor dining exterior surfaces within the cafe shall be easily cleanable and shall be kept clean at all times by the business owner. Restrooms for the ~~cafe~~outdoor dining shall be provided in the adjoining indoor restaurant, and the ~~cafe~~outdoor dining seating capacity shall be ~~counted~~included to determine the restroom requirements of the indoor restaurant.
- 10) Trash storage areas for the ~~sidewalk cafe~~outdoor dining shall not be permitted ~~within the outdoor dining area or on adjacent sidewalk area~~on public property. The business owner shall remove all trash and litter as it accumulates. The business owner shall be responsible for maintaining the outdoor dining area, including the sidewalk surface and furniture, as well as adjacent areas, in a clean and safe condition.
- 11) Outdoor dining Hours—hours of operation shall be identical to those of the indoor restaurant, unless reduced by the approved Plot Plan conditions of approval. Tables, chairs, and all other furniture used in the operation of an outdoor cafe shall be removed from the ~~side-walk~~public property areas and stored indoors whenever the ~~cafe~~restaurant is not in operation.
- 12) ~~Outside seating~~Outdoor dining area square footage that does not a) impact required parking and b) exceed 50% of the inside seating area square footage shall not require additional parking, except for provisions outlined in Vehicle Parking Districts #1 and #2.



Downtown Specific Plan

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13) The City shall have the right and power, acting through the City Manager or his designee, to prohibit the operation of outdoor dining within public property areas ~~a sidewalk cafe~~ at any time because of anticipated, or actual, conflicts ~~in the use of the sidewalk area~~. Such conflicts may arise from, but are not limited to, ~~scheduled festivals, public events, parades~~ special events, repairs to the ~~street or sidewalk~~ public property areas, and/or emergencies which might occur in the area. To the extent possible, the business owner shall be given prior written notice of any time period during which the operation of the ~~sidewalk cafe~~ outdoor dining would be prohibited by the City. Any failure to give prior written notice shall not affect the right and power of the City to prohibit the ~~cafe's~~ outdoor dining's operation at any particular time.

d. Alcohol Service Requirements

~~A sidewalk cafe~~ Areas established for outdoor dining may serve only food and beverages prepared or stocked for sale at the adjoining indoor restaurant, provided that the service of beer and/or wine, solely for on-premises consumption by customers within the area of the ~~sidewalk cafe~~ outdoor dining has been authorized by the Community Development Director as part of the site plan approval. Each of the following requirements also shall be met:

1) ~~The~~ Any area authorized for the ~~sidewalk cafe~~ outdoor dining within public property areas shall be identified in a manner approved by the Community Development Director which clearly separates and delineates it from the ~~areas of the sidewalk~~ public property areas to remain open to ~~pedestrian traffic~~ public use.

2) The ~~sidewalk cafe~~ outdoor dining operation shall be duly licensed, or prior to the service of any beer and/or wine at the cafe shall be duly licensed by State authorities to sell beer and/or wine, or both, for consumption within the outdoor dining area ~~of the sidewalk cafe~~.



3) ~~Sidewalk cafes~~ Outdoor dining within public property areas in which alcohol would be served shall be separated physically from the ~~pedestrian traffic~~ public use areas by appropriate fencing/barriers approved by the Community Development Director as part of the site plan approval process. Required fencing/barriers shall be a minimum of 3 feet in height, but not to exceed 4 feet in height, and shall not be permanently fixed to the ~~sidewalk~~ public property area. Fencing/barriers shall be made of durable materials, self-supporting and weighted to withstand overturning by wind or contact, and complement the design of the structure. Typical materials include, but are not limited to, wrought iron, post-and-chain, planters, or picket fencing.

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e. Findings and Conditions

The Community Development Director shall make findings that the proposed operation meets the limitations of this section in connection with approval of any sidewalk cafe outdoor dining. The Community Development Director may impose such conditions in granting approval, as deemed needed to assure that the proposed ~~operation~~ outdoor dining would meet the operating requirements and conditions set forth in this section and to ensure that the public safety and welfare would be protected.

f. Revocation

The right to operate a ~~sidewalk cafe~~ outdoor dining operations may be revoked by the Community Development Director upon a finding that one or more conditions of this section have been violated, or that the ~~sidewalk cafe~~ outdoor dining is being operated in a manner which constitutes a nuisance, or that the operation of the ~~sidewalk cafe~~ outdoor dining unduly impedes or restricts the movement of pedestrians ~~past the sidewalk cafe~~ the public on public property areas.

g. Liability/Insurance

Any individual/business applying for a ~~sidewalk cafe~~ outdoor dining within public property areas, with or without alcohol sales, shall agree to indemnify and hold harmless the City of Escondido in the event of any property damage or personal injury that arises from any accident involving the use being located ~~within the public right-of-way on public property~~. Proof of liability insurance, naming the City of Escondido as additionally insured shall be provided to the City prior to issuance of Encroachment Permit approval and shall provide that the policy shall not terminate, or be canceled, prior to the expiration date without 30 days advance written notice to the City.

2. OPEN-AIR BARBEQUES

a. Definitions

Open-air barbeque is a piece of equipment designed for barbequing food, where the food is prepared outdoors by cooking directly over hot coals, heated lava, hot stones, gas flame, or other method approved by the San Diego County Department of Environmental Health (DEH).

b. Limitations and Requirements

The provisions for permitting the long-term use of an open-air barbeque shall only apply to approved food facilities where the open-air barbeque is operated on private property, on the same premises as, in reasonable proximity to, and in conjunction with a permanent food facility that is approved for food preparation operating under the same business license.

Downtown Specific Plan

SPECIAL USES

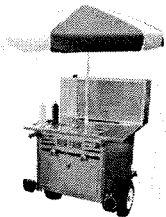
- 1) The location and placement of the open-air barbeque shall be approved by the City prior to operation. Decorative features (i.e. screening walls, fencing, etc.) shall be incorporated into the design and/or placement of the open-air barbeque to enhance its appearance to the satisfaction of the City.
- 2) The open-air barbeque shall comply with California Retail Food Code requirements and DEH guidelines and shall obtain appropriate approvals from the DEH.
- 3) The open-air barbeque shall be subject to conditions including but not limited to size, location, venting, separation, orientation, hours of operation, etc. in order to minimize public nuisances related to smoke and odors in compliance with the performance criteria identified in Section 33-570(1) of the Escondido Zoning Code.
- 4) Open-air barbeque operations may be modified, suspended or revoked based on non-compliance with city standards and/or nuisance complaints.

23. SIDEWALK VENDORS/PUSHCARTS/OUTDOOR DISPLAY AND SALE OF MERCHANCISE

a. General Provisions

The long-term, permanent and/or regularly scheduled outdoor display and sale of merchandise shall be permitted in Downtown, subject to the provisions of Ordinance 92-43, Article 73 of the Escondido Zoning Code with the following exceptions:

b. Public Right-of-Way and/or Public Property



Vending—The outdoor display and sale of merchandise (including food) within on the public right-of-way (i.e. streets and sidewalks) that is identical and accessory to items sold indoors to the adjacent establishment shall be limited to the items listed under “c. Private Property.” The outdoor display and sale of merchandise (including food) within the public right-of-way that is not identical and accessory to items sold indoors to the adjacent establishment, and/or the display and sale of merchandise on other public property (i.e. municipal buildings, parks, public parking lots, etc. excluding the Center for the Arts), shall not be allowed within the Downtown Specific Planning Area, ~~except~~only in conjunction with for special events specifically approved by the City or as provided by the Outdoor Display and Sale of Retail Merchandise (Ordinance 92-43). Outdoor display and sale of retail food and/or merchandise, including pushcarts, shall be permitted at the Center for the Arts, subject to specific criteria approved by Resolution of the City Council. (Note: open-air barbeques are subject to provisions stated elsewhere in this chapter)

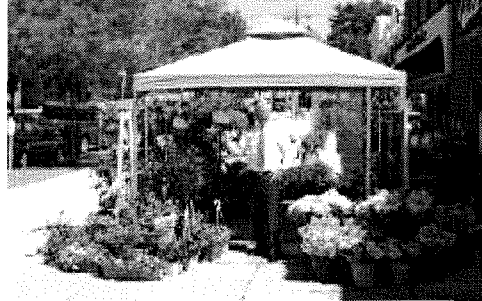
Downtown Specific Plan

SPECIAL USES

3. ~~OUTDOOR DISPLAY AND SALE OF MERCHANDISE~~

c. Private Property

The ~~Outdoor~~ outdoor display and sale of retail ~~the~~ following merchandise on private property shall be permitted in Downtown, subject to the provisions of Ordinance 92-43, Article 73 of the Escondido Zoning Code, with the exception that only the following items are acceptable for outdoor display, if permitted by the underlying district in which the associated business is located and identical and accessory to items sold indoors of the establishment requesting the permit for outdoor display and sale:



- Antiques
- Artwork
- Bicycles
- Books
- China and Glassware
- Clothing
- Crafts
- Flowers and Plants (to include seasonal /Christmas trees)
- Food Sales (Note: open-air barbeques are subject to provisions stated elsewhere in this chapter)
- Jewelry
- Newspaper, and Magazines
- Shoes
- Sporting Goods

The outdoor display and sale of merchandise on private property not identical and accessory to items sold indoors of the establishment requesting the permit shall not be allowed within the Downtown Specific Planning Area, except for special events specifically approved by the City.



Downtown Specific Plan

SPECIAL USES

4. SPECIAL EVENTS

a. General Provisions

Special events shall include the temporary use of public property, including, but not limited to, streets, sidewalks, municipal parking lots, public open space areas, and publicly-owned property, and parks, or the temporary use of private property including but not limited to private parking lots, open space areas, building rooftops and/or vacant lots, etc. (excluding events held within enclosed buildings and/or in outdoor dining areas). Special events are for the purpose of conducting a public, private and/or City-sponsored single event, or re-occurring activity involving a specified duration (i.e. parade, concert, farmer's market, sales/promotional activity, any other or special enterprise or occasion, etc.) or any event which substantially restricts the public's normal, typical, or customary use, level of use, or ability to use such property approved by the City. Special events shall be permitted according to the provisions of Ordinances 92-8 of the City of Escondido (see Article 4 of the Escondido Municipal Code).

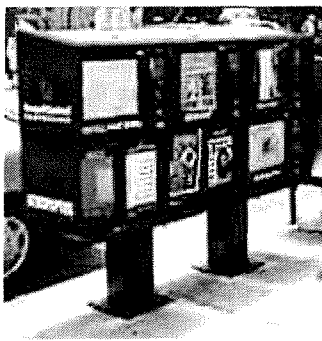
b. Public Right of Way and/or Public Property Special Events

Special events on public property as described above shall be subject to the provisions of Chapter 16, Article 4 (Special Events) of the Municipal Code.

c. Private Property Special Events

Special events, on private property that occur in private parking lots, open space areas, on building rooftops and/or vacant lots, etc. (excluding events held within enclosed buildings and/or in outdoor dining areas) shall require issuance of a Temporary Use Permit. Parking requirements for such special events shall be determined by the Director of Community Development on a case-by-case basis subject to the anticipated need and availability of parking in the vicinity.

5. NEWSPAPER VENDING BOXES



Newspaper vending boxes are allowed within the Downtown Specific Plan Area subject to the provisions of Article 15 of the Escondido Municipal Code. An encroachment permit shall be required for all newspaper vending boxes located within the public right-of-way.

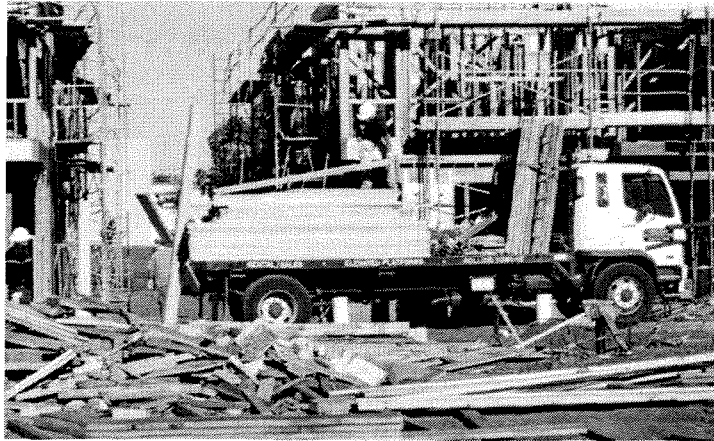
Downtown Specific Plan

IMPLEMENTATION & ADMINISTRATION

VIII. IMPLEMENTATION AND ADMINISTRATION

A. PURPOSE STATEMENT

The Escondido Downtown Area Specific Plan sets forth a variety of implementation measures in the form of policies, land use and development regulations, design principles, and guidelines. This Interim Downtown Specific Plan affects private property primarily through regulation of land uses and physical property improvements. Implementation of these regulations shall be achieved largely through the planning approval and design review process utilizing the decision-making authority of the Planning Commission and City Council.



All construction and development within the Specific Plan Area shall comply with the provisions of the Interim Downtown Specific Plan. If any issues arise which are not covered by this document, the most applicable provisions of the Escondido Zoning Code shall prevail, as determined by the Community Development Director.

1. DESIGN REVIEW AND PERMIT PROCESS

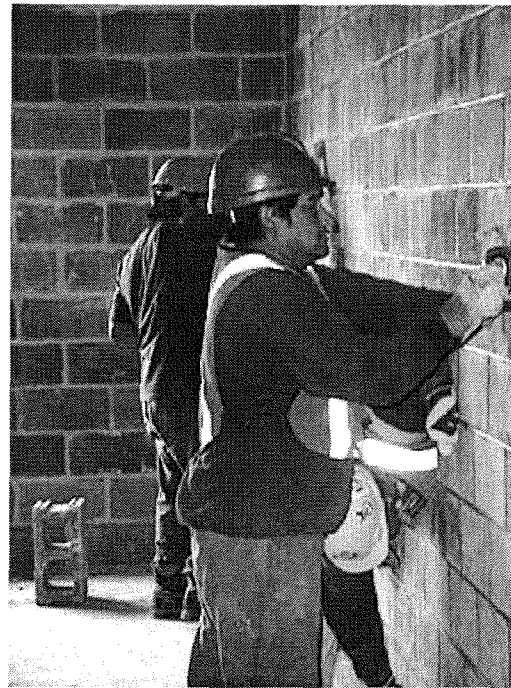
All new construction and work on the exterior of a building, or site, in the Specific Plan Area (including signs, but excluding minor repairs) shall require design review by staff and/or by the ~~Design Review Board~~ Historic Preservation Commission and/or Planning Commission pursuant to Figure VIII-1, to determine conformance with the design guidelines and policies provided in this document. ~~These determinations—Determinations are recommendations to~~ by the Director of Community Development ~~whose decision may be appealed to the Planning Commission.~~ The Historic Preservation Commission and Planning Commission decisions may be appealed to the City Council. The design review and permit process shall include the following steps:

- a. **Initial Meetings** - Meet with the Planning Division staff to discuss plans and any documentation which illustrates the proposed work.
- b. **Application Submittal** - Submit the plans to the Planning Division. Staff shall review the project for compliance with this document and to determine completeness.

Downtown Specific Plan

IMPLEMENTATION & ADMINISTRATION

- c. **Minor projects** - Projects which include restoration, exterior changes to the structures, exterior painting, minor demolitions, minor changes to the site (grading, paving, landscaping, etc.), and placement or removal of exterior objects, shall be reviewed by the Planning Division staff for compliance with this document. Staff may refer projects to the ~~Design Review Board~~ Historic Preservation Commission and/or Planning Commission. Staff will issue a Certificate of Appropriateness if the project complies with the guidelines.
- d. **Major projects** - Projects including all new construction (primary structure, outbuildings, additions), demolition, relocation, significant changes to the site (grading, paving, landscaping, etc.), public right-of-way improvements, any project requiring a Plot Plan Approval, including minor plot plan review for the conversion of existing or vacant automobile dealerships to a new, substantially different use, or a Conditional Use Permit, will be reviewed by staff or the Planning Commission who ~~Design Review Board (DRB)~~. DRB will review the project based on the design guidelines outlined in this document and either:
- Issue a Recommendation of Approval or Conditional Approval; or
 - Disapprove the proposed work and provide the applicant with a written statement either giving the reasons for disapproval; or identifying recommended modifications to the proposed work.
- e. **Projects Requiring Building Permits** - New construction, additions, exterior changes to a structure, demolition, relocation, placement or removal of exterior objects, shall be submitted to the Building Division for permit issuance. The Building Division shall route the plans to the Engineering Division to determine necessary public improvements if the value of the work exceeds preset standards. The Building Division shall issue a Building Permit or return the plans to the applicant for necessary modifications.
- f. **Projects Requiring Grading Permits** - Projects that require a Grading and/or an Encroachment Permit shall be submitted for review by the Engineering Division. An Encroachment Permit shall be required for any work within the public right-of-way, such as driveways, curb cuts, sidewalks, curb and gutter, as well as street pavement.



Downtown Specific Plan

IMPLEMENTATION & ADMINISTRATION

- g. Project Completion** - The Building Inspector shall check the work for compliance to the approved plans upon completion of the project.

2. PUBLIC HEARING PROCESS

Projects that require a Public Hearing, such as a Conditional Use Permit or Planned Development application, shall be scheduled for Planning Commission consideration (and City Council, as appropriate) ~~after Design Review Board consideration.~~ The Planning Commission (and City Council, as appropriate) shall:

- a. Approve, or conditionally approve, the project** - The applicant shall be provided with a list of applicable conditions.
- b. Disapprove the project** - The applicant shall be provided with a written statement giving the reasons for disapproval.

3. SPECIFIC PLAN AMENDMENT INITIATION

Projects that require a Specific Plan Amendment shall be scheduled for City Council for initiation prior to formal application submittal. The City Council shall consider whether the requested amendment satisfies the criteria identified in Chapter I Section C of the Downtown Specific Plan Strategic Goals as well as the General Provisions identified in Chapter III, Section C. The City Council shall:

- a. Initiate the amendment** - Staff shall receive the project for processing. Projects initiated for processing shall be evaluated by the ~~Design Review Board (as appropriate)~~ and the Planning Commission prior to formal City Council consideration, or
- b. The initiation request shall be denied.**

Downtown Specific Plan

IMPLEMENTATION & ADMINISTRATION

**Figure VIII-1
ACTIVITY CONSTRUCTION REVIEW PROCESS**

Type of Work to be Done:	COA Required Reviewed by:		Building Permit Issued by: Bldg. Div.	Engineering Permits Issued by: Engin. Div.
	Staff	DRB HPC/PC		
<u>New Construction:</u>				
Primary Structure	X	X	X	
Accessory Structures	X	H	X	
Additions (including porch enclosures, dormers, etc.)	X	H	X	
Additions to Commercial Properties	X	XH	X	
<u>Removal, Demolition</u>				
	X	H		
<u>Relocation</u>				
	X	XH	X	
<u>Exterior Changes to the structure and material restoration changes:</u>				
Architectural details and decorative elements: (fish scale, shingles, dentils, shutters, siding, brick, stucco, metal, roof material, porches, columns, cornices, trim, railing, ornamentation, etc.)	X	H	X	
Painting – exterior	X			
Roofs (changes in shape, eaves, ornament)	X ¹	HX ¹	X	
Staircases, steps (exterior)	X ¹	HX ¹	X	
Doors	X		X	
Windows, skylights	X		X	
Mechanical systems (roof top and window units, exhaust fans, vents)	X ¹	HX ¹	X	
Storm windows, doors, security grills	X		X	
Satellite dishes	X		X	
Solar collectors	X		X	
<u>Changes and modifications to the site:</u>				
Grading	X			X ²
Parking lots (pavement and landscaping)	X			X ²
Surface paving	X			
Landscaping	X ¹			
Public right-of-way improvements (curb & gutters, sidewalks, street paving, driveways, curb cuts, street furniture, outdoor dining areas, etc.)	X			X ³
	X			X ³
Swimming pools	X			
Light fixtures	X			
Removal of specimen vegetation	Pursuant to Article 55, Sections 33-1068A – 33-1069			
<u>Signs</u>	X			
<u>Fencing walls, retaining walls</u>	X		X ⁴	

X = Review required for all buildings.

H = Review required for properties listed on the City's Historic Local Register only.

1. Review required for all structures EXCEPT single-family residences NOT on the Historic Local Register.
2. Grading Plan Approval and Grading Permit required for over 1 foot of fill, over 2 feet of cut, or over 200 cubic yards.
3. Encroachment Permit required for any work in the public right-of-way.
4. Fences over 6' high, retaining walls over 3' high.

RESOLUTION NO. 2012-161

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING AN AMENDMENT TO THE INTERIM DOWNTOWN SPECIFIC PLAN TO PERMIT OUTDOOR FOOD COOKING, MODIFY THE PERMITTED USE MATRIX, REFINE STANDARDS FOR SPECIAL EVENTS, OUTDOOR DINING, AND OUTDOOR SALES AND DISPLAY, SIMPLIFY AND CLARIFY DEVELOPMENT AND APPLICATION STANDARDS REGARDING DESIGN REVIEW, AND PERFORMING MINOR TEXT AND GRAPHIC EDITS

Applicant: City of Escondido
Planning Case No.: PHG 12-0016

WHEREAS, on September 25, 2012, the Planning Commission recommended approval to consider a request involving a number of actions in various districts: 1) permitting restaurants to have outdoor food cooking; 2) modifying the matrix of permitted and conditional uses regarding primary and secondary educational facilities, general retail home furnishings, hardware/home improvement, food and liquor sales, wine and beer tasting, and miscellaneous government operations; 3) refining standards for special events, outdoor dining, and the outdoor display and sale of merchandise; 4) simplifying and clarifying development and application standards with regard to design review procedures; and 5) performing other minor text and graphic edits as appropriate, all within the 460-acre Downtown Specific Plan Area ("SPA"); and

WHEREAS, the City Council held a duly noticed public hearing to consider the proposal, the staff report, the notice of exemption, the recommendation of the Planning Commission, and the public testimony presented at the hearings; and

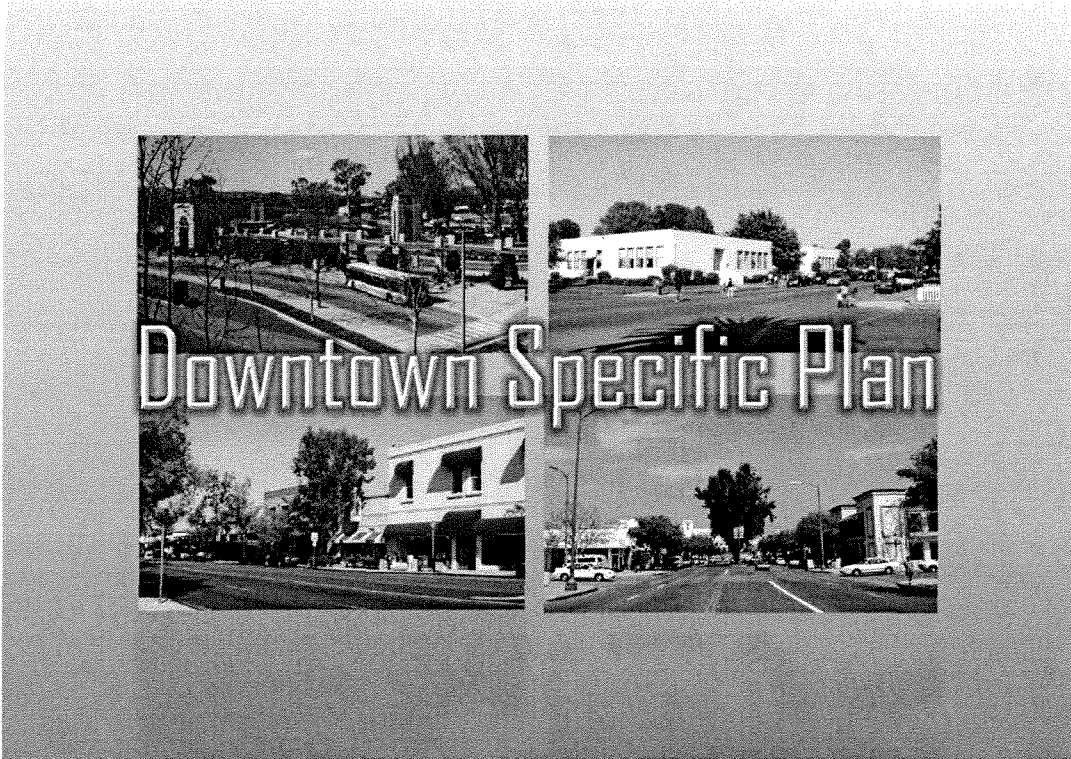
WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve said amendments to the Interim Downtown Specific Plan;

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

1. That the above recitations are true.

2. That the City Council has reviewed and considered the Notice of Exemption, which was issued pursuant to the California Environmental Quality Act, Section 15061(b)(3), "General Rule," and has determined that it adequately addresses all the environmental issues associated with the project.

3. That upon consideration of the environmental review, all material in the staff report (a copy of which is on file in the Planning Division), the recommendation of the Planning Commission, public testimony presented at the hearings, and all other oral and written evidence on this project, the City Council hereby approves the proposed amendments to the Interim Downtown Specific Plan set forth in Exhibit "A," which is attached to this resolution and incorporated by this reference, and which a complete copy is on file in the Planning Division.



INTERIM SPECIFIC PLAN

***Adopted on March 21, 2007
Resolution 2007-35***

Revised October 17, 2012



File No.: 2006-34-SPA / ER 2006-11

Note: The complete Specific Plan text is on file in the Planning Division.



CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 18
Date: October 17, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Barbara J. Redlitz, Director of Community Development
SUBJECT: Bicycle Facilities Master Plan (PHG 12-0018)

STAFF RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-162 approving the Bicycle Facilities Master Plan.

PLANNING COMMISSION RECOMMENDATION:

On September 11, 2012, the Planning Commission voted 5-0 to recommend approval of the proposed Bicycle Facilities Master Plan.

PROJECT DESCRIPTION:

A comprehensive update to the Bicycle Facilities Master Plan adopted in 1993.

LOCATION:

Citywide to include the Escondido General Plan Planning Area.

FISCAL ANALYSIS:

The total cost to implement the recommended projects identified in the plan is estimated to be about \$4.38 million, with the majority of that cost split equally between completion of the Class I bike paths (1.07 miles) and Class II bike lanes (49.68 miles). The updated Bike Master Plan also includes up to 50 miles of recommended Class III bike routes. It is understood that the bikeway system would be implemented over time, as funding opportunities become available through grant programs, implementation of roadway improvements, regular roadway maintenance, or during the planning and entitlement process for new development and other projects.

GENERAL PLAN ANALYSIS:

Bicycle Network Policy 4.1 directs the City to maintain and implement a Bicycle Master Plan that enhances existing bicycle routes and facilities; defines gaps and needed improvements; prescribes an appropriate Level of Service; outlines standards for their design and safety; describes funding

resources; and involves the community. The Escondido Bicycle Master Plan update presents a renewed vision for bicycle transportation, recreation, and quality of life in Escondido. This vision is closely aligned with the new General Plan's mobility, sustainability, health, economic, and social goals.

ENVIRONMENTAL REVIEW:

The proposal is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15301(c) "Existing Facilities," and 15304(h) "Minor Alterations to Land."

BACKGROUND:

In 1993 the City of Escondido adopted a comprehensive Bicycle Facilities Master Plan to plan and develop bicycle facilities in Escondido. This was the second such document prepared by the City. A previous Bicycle Master Plan was approved in 1975 that proposed a 45-mile network of facilities for bicyclists. When the 1993 Bicycle Master Plan was developed, approximately four miles of the 45 mile system initially proposed has been constructed.

The 1993 Master Plan identified a system of 93 miles consisting of approximately 84 miles of Class II bicycle lanes. The estimated cost to install the proposed bikeway system was approximately \$2.5 million dollars projected over a period of 15 years through build-out, as defined in the 1990 General Plan. Since then, approximately 37 miles of Class II bicycle lanes and approximately 9.1 miles of Class I bicycle paths have been constructed throughout the City's Planning Area. The City also has received more than \$9 million in bicycle facility grant funds that have gone towards a variety of bicycle and pedestrian improvements.

This plan is a comprehensive update of the 1993 Bicycle Facilities Master Plan. The City's growth and new General Plan necessitated an update to better address local bicycle travel needs and to serve regional long-distance travel, and also to compliment the goals and policies of the General Plan. The new Bicycle Facilities Master Plan will provide a framework for the future development of the City's bicycle network and also makes the City eligible certain State funding for bicycle projects. The Master Plan update was primarily funded by a grant from SANDAG.

PLANNING COMMISSION RECOMMENDATION AND SUMMARY:

On September 11, 2012, the Planning Commission voted 5-0 (Caster and Winton absent) to recommend approval of the proposed Bicycle Facilities Master Plan. The Commission discussed various elements of the plan and questioned the appropriateness of the proposed location of certain bike routes where the current roadway conditions may not be safe to direct bicyclists. Commissioner Johns felt the plan should focus on ensuring the bicycle network provides for convenient and safe routes. Commissioner Spann felt the "Missing Link" section of the Escondido Creek Bike Path should provide for an alternative route through Grape Day Park, as envisioned in the Revealing Escondido Creek Vision Plan. The "Missing Link" analysis in the update recommends a preferred alternate route that provides direct access to and around Grape Day Park with enhanced sidewalk improvements along Valley Parkway. The plan does not preclude future alternative routes within Grape Day Park and the City Hall Complex or along the channel through any future planning efforts concerning park improvements. The recommended plan is a long-range planning tool and individual sections only would be implemented when funding was available and/or appropriate street improvements have

been completed. The installation of Class II bike lanes could be implemented along several completed sections of Collector Streets throughout the City, but would require restriping these streets to allow for reduced lane widths to support a five-foot-wide bike lane, and also eliminating on-street parking in certain instances.

The proposed Bicycle Master Plan includes several modifications since the Planning Commission hearing which include the following:

- Consolidation and simplification of the Executive Summary along with expansion of the Bicycle Facility Key Findings and Recommendations to clarify implementation priorities.
- Update to Tables ES 1 and ES 2 in the Executive Summary to provide more precise figures regarding the total bikeway system and estimated costs.
- Modification of Chapter 4 "Goals, Objectives and Policies" to reflect the recommendations of the Planning Commission and to streamline/consolidate the extensive list of goals and policies identified within the General Plan concerning transportation/mobility and bicycle facilities, and also to reflect the efforts to support and enhance the Escondido Creek Trail.
- Update photos and graphics throughout the document.
- Addition of a detailed list of recommended bicycle paths, lanes and routes to correspond to the maps.

A complete copy of the Bicycle Facilities Master Plan (PHG 12-0018) is available at the following link:

<http://www.escondido.org/planning.aspx>

PUBLIC INPUT:

Staff conducted two public workshops at the Escondido City Hall on January 20, 2007, and March 12, 2012, to solicit input and identify key concerns of bicyclists. The first workshop was intended to solicit comments on existing conditions and concerns residents had regarding the City's bikeway system and develop a vision statement along with goals and objectives for implementation. The second workshop was a presentation on the recommendations for bicycle facilities, goals and policies, and a review of the draft plan. A questionnaire also was posted on the City's website to solicit more comments through the second workshop.

ANALYSIS:

The recommended goals, objectives and polices contained in the plan provide the long-term vision and serve as the foundation of the Escondido Bicycle Master Plan. There are three key objectives for the Bicycle Master Plan: **1)** to evaluate the existing bicycle network in the City and identify gaps, deficiencies and bicyclists needs; **2)** to establish goals, objectives and policies that are consistent with and expand upon the Escondido General Plan's Mobility and Infrastructure Element; and **3)** to develop a feasible bikeway plan with proposed projects that will provide safe, efficient and convenient bicycle travel in Escondido and to provide connection to regional destinations.

The planned system builds upon existing bicycle facilities throughout the City with enhancements to overall connectivity, support facilities and safety and education programs, which ultimately will result in a more bicycle friendly community. The anticipated result is an increase in overall bicycling and commuters choosing to ride a bicycle. Upon completion, the bikeway system would contain


approximately 10 miles of Class I bike paths, 87 miles of Class II bike lanes and 51.5 miles of Class III bike routes. In addition to a proposed system of bike facilities and infrastructure, the plan includes Caltrans bikeway standards, conceptual designs for bicycle lanes and paths, maps of existing and proposed bicycle facilities, funding sources, and an implementation plan. The bikeway system will endeavor to be a complete system emphasizing local and regional continuity and connectivity.

Staff feels the document provides the City with a strong framework for improving bicycling through 2030 and beyond. This document also satisfies the requirements of the California Bikeway Transportation Act (BTA) which upon approval by the California Department of Transportation (Caltrans) makes the City of Escondido eligible for federal bicycle funding.

Respectfully Submitted,



Barbara J. Redlitz
Director of Community Development



Jay Paul
Associate Planner



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

Notice of Exemption

To: San Diego County Recorder's Office
 Attn: Deputy City Clerk
 P.O. Box 121750
 San Diego, CA 92112-1750

From: City of Escondido
 201 North Broadway
 Escondido, CA 92025

Project Title/Case No.: PHG 12-0018 (Bicycle Facilities Master Plan)

Project Location - Specific: Citywide

Project Location - City: Escondido, **Project Location - County:** San Diego

Description of Project: A comprehensive update to the previously adopted 1993 Bicycle Facilities Master Plan as directed by the City's General Plan policies (2012).

Name of Public Agency Approving Project: City of Escondido

Name of Person or Agency Carrying Out Project:

Name Jay Paul, Associate Planner, City of Escondido Telephone (760) 839-4537

Address 201 N. Broadway, Escondido, CA 92025

Private entity School district Local public agency State agency Other special district

Exempt Status: Categorical Exemption. Section 15301(c) "Existing Facilities" and 15304 (h) "Minor Alterations to Land."

Reasons why project is exempt:

The planned bikeway system builds upon existing bicycle facilities throughout the City with enhancements to overall connectivity, support facilities, safety and education programs. The proposed bicycle facilities contained in the plan would be located within the existing public right-of-way. The proposed bicycle network would not impact any sensitive resources or habitat areas. In addition to a proposed system of bike facilities and infrastructure, the plan includes Caltrans bikeway standards, conceptual designs for bicycle lanes and paths, maps of existing and proposed bicycle facilities, funding sources, and an implementation plan, which would not result in any adverse impacts to the environment.

In staff's opinion, the Bicycle Facilities Master Plan for planning and implementation of bicycle facilities and infrastructure throughout the City and planning area does not have the potential for causing a significant effect on the environment.

Lead Agency Contact Person: Jay Paul, Planning Division Area Code/Telephone/Extension (760) 839-4537

Signature:  August 27, 2012
 Date

Signed by Lead Agency Jay Paul, Associate Planner

Date received for filing at OPR: N/A

RESOLUTION NO. 2012-162

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
APPROVING THE BICYCLE MASTER PLAN

Applicant: City of Escondido
Planning Case No.: PHG 12-0018

WHEREAS, the State Legislature encourages the establishment of bicycle transportation systems, and authorizes cities to prepare their own bicycle transportation plan; and

WHEREAS, adoption of a bicycle master plan will assist the City of Escondido ("City") in meeting the needs of commuter and recreational bicycle users, and will assist the City in efforts to obtain local, state and federal funds for bikeways and related facilities; and

WHEREAS, the 2012 Bicycle Master Plan Update has been prepared pursuant to that Legislative authority and for these purposes; and

WHEREAS, on September 11, 2011, the Planning Commission recommended approval of the Escondido Bicycle Master Plan update; and

WHEREAS, the City Council held a duly noticed public hearing to consider the proposal, the staff report, the notice of exemption, the recommendation of the Planning Commission, and the public testimony presented at the hearings; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve said Bicycle Master Plan.

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

1. That the above recitations are true.

2. That the City Council has reviewed and considered the Notice of Exemption, which was issued pursuant to the California Environmental Quality Act, Sections 15301(c) "Existing Facilities" and 15304 (h) Minor Alterations to Land," and has determined that it adequately addresses all the environmental issues associated with the project.

3. That upon consideration of the environmental review, all material in the staff report (a copy of which is on file in the Planning Division), the recommendation of the Planning Commission, public testimony presented at the hearings, and all other oral and written evidence on this project, the City Council hereby approves the proposed 2012 Bicycle Master Plan described in Exhibit "A," which is attached to this resolution and incorporated by this reference, and which a complete copy is on file in the Planning Division.

Bicycle Master Plan



City of Escondido

Case File No. PHG 12-0018

City Council
Sam Abed, Mayor
Marie Waldron, Deputy Mayor
Olga Diaz, Council Member
Ed Gallo, Council Member
Michael Morasco, Council Member

Staff Recognition
Jay Paul, Associate Planner-Project Manager
Jay Petrek-Principal Planner
Peggy Chapin – Contract Planner
Homi Namdari-Assistant City Engineer
Ali Shahzad-Associate Engineer, Traffic
Samuel Cottrell-Associate Engineer, Design
Daniel Hildebrand-GIS Manager
Jennifer Kay-GIS Technician

Adopted by City Council Resolution No. 2012-162 on October 17, 2012

**Note: The complete Master Plan and Appendices is
on file in the Planning Division.**

RENT REVIEW BOARD

For City Clerk's Use:

APPROVED **DENIED**

Reso No. RRB _____ File No. _____

Ord No. RRB _____

Agenda Item No.: 19
Date: October 17, 2012

TO: Honorable Chairman and Members of the Rent Review Board
FROM: Jerry Van Leeuwen, Director of Community Services
SUBJECT: Greencrest Mobilehome Park Short-form Rent Increase Application

STAFF RECOMMENDATION:

- Consider the short-form rent increase application submitted by Greencrest Mobilehome Park.
- If approved, adopt Rent Review Board Resolution No. 2012-11 granting an increase of 75% of the change in the Consumer Price Index, or 1.244% (an average of \$5.16), for the period of June 30, 2011, to June 30, 2012. The application meets the eligibility criteria for submittal of a short-form rent increase application.

INTRODUCTION:

Greencrest Mobilehome Park ("Park") 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 ("Ordinance") and the short-form procedures as outlined in the Rent Review Board Guidelines (Section 12). 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:

Greencrest is an all age Mobilehome park located at 541 W. 15th Avenue in Escondido. The Park contains 129 spaces, and 67 spaces are subject to rent control. The remaining spaces are either rentals or subject to a long-term lease.

Common facilities include a clubhouse, a community swimming pool and a playground. Also, laundry facilities are available to the residents for a fee.

PARK OWNER'S REQUEST:

The Park owner is requesting an increase of 75% of the change in the CPI for the past year. The CPI period covered by this application is June 30, 2011, to June 30, 2012. Seventy-five percent (75%) of the change in the CPI for the period of consideration is 1.244%. The

current average monthly base rent per space of the spaces affected is \$414.62. The average increase requested is approximately \$5.16 per space, per month.

RENT INCREASE HISTORY:

This is the 11th application for a rent increase filed by the Park since the Ordinance was implemented. The Park last came before the Rent Review Board in November 2011, for a hearing on a short-form application where the Board granted an increase based on 75% of the one-year change in CPI, an average of \$10.10 per space, per month.

RESIDENT MEETING AND COMMENTS:

The Resident meeting was held September 24, 2012, at 6:00 p.m. in the Park's clubhouse. Six residents attended the meeting. Residents were briefed on the short-form procedures and the process, including their need to appear at the hearing and sign-in if they wish to protest the short-form application. The meeting was also attended by the Park owner's representative, Jim Younce and the Park Manager, Leticia Amavisca, and City staff, Karen Youel.

Resident issues and concerns included the need for additional ventilation in the laundry room. The laundry room was rehabilitated in the past year and inspected by City staff; residents acknowledged that the laundry room is built to code. Other issues included speeding in the Park, stray cats, non-residents using the trash bins and flies/mosquitoes around the trash bind.

CODE ENFORCEMENT ISSUES:

The Code Enforcement Division conducted a health and safety inspection of the common areas of the Park on September 26, 2012 and noted two existing code violations. A copy of the Code Inspection Report is attached as "Exhibit A." The Park owner's representative and resident manager received a copy of the report. The Park was re-inspected on October 8, 2012; all health and safety code violations noted in the Inspection Report have been corrected.

ADDITIONAL FACTORS AFFECTING THE APPLICATION:

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

Respectfully Submitted,



Jerry Van Leeuwen
Director of Community Services



Exhibit : "A"

DATE: SEPTEMBER 27, 2012

TO: HONORABLE CHAIRMAN AND MEMBERS OF THE RENT CONTROL BOARD

FROM: BRIAN GUSTAFSON, CODE ENFORCEMENT MANAGER 

SUBJECT: GREENCREST MOBILEHOME PARK

Greencrest Mobilehome Park was inspected on September 26, 2012, with the lighting inspection conducted the morning of September 27, as a result of an application for a rent increase having been filed. There were two violations found during the site inspection and no violations found during the lighting inspection; the inspection report is attached.

A resident meeting was held on September 24, 2012, attended by six residents, Jim Younce, three managers and one city staff member. There was no resident representative identified or present at the inspection and no resident form turned in to staff.

There were four open code enforcement cases in this park during the past year, all pertaining to individual space issues.

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



September 27, 2012

MOBILEHOME PARK RENT CONTROL
CODE ENFORCEMENT INSPECTION REPORT

Park Name: Greencrest Mobilehome Park
541 W. 15th Ave.
Escondido, CA 92025

Park Owner: GC MHP L L C
301 E. 17th St., Ste. 208
Costa Mesa, CA 92627

Park Manager: Leticia Amavisca **Phone:** (760) 745-4352

Inspection Date: 09/26/12 **Inspectors:** S. Moore

The following report is based on the inspection of the mobile home park conducted under provisions outlined in the California Health & Safety Code, Division 13, Part 2.1; the California Code of Regulations, Title 25; the Escondido Zoning Code, Article 45; and the Escondido Municipal Code. This inspection report only addresses health and safety issues related to the common facilities and areas in the mobile home park for which maintenance, repair and operations is the responsibility of the owners and managers of the park.

General Violations:

1. Repair/replace the access gate on the swimming pool fence, so that it self-closes and self-latches in accordance with the California Building Code. 25 CCR 1042, per CBC 3109

2. Repair the leak in the feeder(s) of the swimming pool chlorinator. 25 CCR 1608 (e)

**Areas of the park needing illumination per 25 CCR 1108
(Lighting Inspection; 09-27-12)**

No lighting violations were found.



Code Enforcement Division
201 North Broadway, Escondido, CA 92025
Phone: 760-839-4650 Fax: 760-432-6819

October 8, 2012

Bart Thomsen Properties
Attn: Kattie Morris
301 E. 17th Street, #208
Costa Mesa, CA 92627

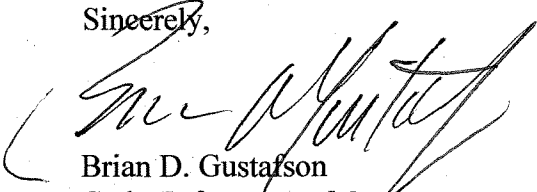
Jim Younce
Greencrest Mobilehome Park
1415 S. Pine St.
Escondido, CA 92025

Dear Kattie and Jim,

This notice is to formally advise you that the violations noted in the rent control inspection report dated September 27, 2012 have been inspected and signed off.

We appreciate having the parks cooperation during this process. Our mutual efforts are important in maintaining safe and healthy parks in our city. Please feel free to call me if you have any questions.

Sincerely,



Brian D. Gustafson
Code Enforcement Manager

CC: City Council/Rent Review Board
Karen Youel, Rent Control Administrator

RESOLUTION NO. RRB 2012-11

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

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

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

WHEREAS, a Short-form Rent Increase Application ("Application") pursuant to Section 12 of the Rent Review Board Guidelines was filed on September 12, 2012, by Bart Thomsen, the Owner of Greencrest Mobilehome Park ("Park"), located at 541 W. 15th Avenue in Escondido. The Application applies to 67 of the 129 spaces; and

WHEREAS, this is the eleventh rent increase application filed by the Park since the Ordinance became effective in 1988. The last rent increase was granted by the Board in November 2011. The previous increase affected 69 spaces; the average increase was \$10.10 per space, per month; and

WHEREAS, at the time of the current Application, the average monthly space rent was \$414.62 for the 67 spaces subject to rent control. The owner requested a rent increase in the amount of 75% of the change in the Consumer Price Index (CPI) for the period June 30, 2011, through June 30, 2012, in accordance with the Rent Review Board short-form policy guidelines. The Application estimated this amount to be an

average of \$5.16, (1.244%) per space, per month; and

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

WHEREAS, on September 26, 2012, a Mobilehome Park Rent Review Code Enforcement Inspection Report ("Inspection Report") was completed in the Park; and

WHEREAS, on October 17, 2012, the Board held its public hearing and after an initial staff presentation, the Board invited testimony from Park ownership, residents of the Park, and other residents of the community at large; and

WHEREAS, after all present had been given an opportunity to speak, the hearing was closed. Following an opportunity for discussion among the Board members and clarifying questions to the parties and Staff, the Board voted to grant an increase of 1.244%, an average of \$5.16 per space, per month, for the 67 spaces which are subject to rent control.

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

1. That the above recitations are true.
2. That the Board has heard and considered all of the reports and testimony presented, and has considered the facts as outlined in the Short-Form Guidelines ("Guidelines").
3. That following the Guidelines, an increase based on 75% of the change in the CPI for San Diego County from June 30, 2011, through June 30, 2012, would amount to 1.244%, which averages \$5.16 per space, per month, for the 67 spaces that

are subject to rent control.

4. That the Board concluded that an increase of \$5.16 per space, per month, is consistent with the Guidelines, and is fair, just, and a reasonable increase in light of the information presented by all parties.

5. That the short-form rent increase ("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 Report.

6. 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.

FUTURE CITY COUNCIL AGENDA ITEMS
October 11, 2012

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

OCTOBER 24, 2012
No Meeting

OCTOBER 31, 2012
No Meeting (5th Wednesday)