

Council Meeting Agenda

November 14, 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

**November 14, 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 LEGAL COUNSEL- EXISTING LITIGATION (Government Code §54956.9(a))**
 - a. Case Name: Agustin v. Jerry Douglas Conway; City of Escondido
Case No: 37-2012-00052770-CU-PA-NC

- II. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION (Government Code §54956.9(a))**
 - a. Case Name: Demetrio Gomez, et al. v. City of Escondido, et al.
Case No: 37-2011-00060480-CU-CR-NC

ADJOURNMENT



Council Meeting Agenda

**November, 14 2012
4:30 p.m. Meeting**

Escondido City Council

CALL TO ORDER

MOMENT OF REFLECTION:

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

FLAG SALUTE

ROLL CALL: Diaz, Gallo, 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: Regular Meeting of October 3, 2012
Regular Meeting of October 17, 2012**

4. **EAST VALLEY COMMUNITY CENTER: COMPUTER LAB AND TECHNOLOGY CENTER AND BUDGET ADJUSTMENT** – Request Council accept a Cox Communications donation in the amount of \$25,000 for construction costs at the Escondido Technology Center; and authorize a budget adjustment in the amount of \$25,000.

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

5. **PARK IMPROVEMENT PROJECTS AND BUDGET ADJUSTMENT** – Request Council approve a budget adjustment in the amount of \$415,275 to receive and expend Housing-Related Park Program grant funds and to expend Park Development Funds.

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

6. **THE ELMS HOUSING DEVELOPMENT** – Request Council authorize the Housing Division to amend previous developer agreements; authorize the Mayor and City Clerk to execute, on behalf of the City, the document amendments in a form acceptable to the City Attorney; approve the existing loan documents and escrow instructions, signed by past authorized representatives of the City/CDC, in order to grant two vacant properties located at 537 N. Elm and the adjacent vacant lot to San Diego Habitat for Humanity, to record loan documents for the use of HOME/CHDO funds; and authorize Karen Youel, Management Analyst/Housing to sign new escrow documents.

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

- a. RESOLUTION NO. 2012-181
- b. RESOLUTION NO. 2012-182

7. **AUTHORIZATION TO RE-CHASSIS ONE (1) EXISTING AMBULANCE** – Recommend Council authorize Emergency Vehicle Group (EVG) out of Anaheim, California to re-chassis one (1) existing ambulance in the current fleet instead of purchasing one (1) new ambulance.

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

CONSENT CALENDAR CONTINUED

8. **REJECT ALL BIDS FOR TWO LINE TRUCKS AND AUTHORIZE RE-ADVERTISEMENT** – Request Council approve rejecting all bids for two line trucks and authorize staff to re-advertise.

Staff Recommendation: Approval (**Finance Department: Gilbert Rojas**)

RESOLUTION NO. 2012-177

9. **ALL-WAY STOP REQUEST FOR JUNIPER STREET AT NINTH AVENUE** – Request Council amend the Traffic Schedules for stop intersections.

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

RESOLUTION NO. 2012-180

10. **FISCAL YEAR 2011-12 UNITED STATES DEPARTMENT OF JUSTICE BULLETPROOF VEST PARTNERSHIP PROGRAM AND BUDGET ADJUSTMENT** – Request Council authorize the Escondido Police Department to accept FY 2012 Bulletproof Vest Partnership Program funds in the amount of \$1,863 from the United States Department of Justice; authorize the Chief of Police to execute grant documents; and authorize staff to establish budgets to spend funds to purchase body armor for front-line law enforcement.

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

11. **FISCAL YEAR 2008 CALIFORNIA OFFICE OF TRAFFIC SAFETY "AVOID DRIVING UNDER THE INFLUENCE (DUI) CAMPAIGN" GRANT MODIFICATION AND BUDGET ADJUSTMENT** – Request Council authorize the Police Department to accept additional grant funds in the amount of \$10,000 from the San Diego Sheriff's Department for overtime expenses related to the California Office of Traffic Safety "Avoid DUI Campaign" Grant Program; and approve a budget adjustment needed to spend grant funds.

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

12. **SOLE SOURCE AUTHORIZATION FOR RADIO PURCHASES** – Request Council authorize the Police Department to purchase Project 25 ("P25") compliant portable radios and upgraded accessories from Motorola, Inc. by utilizing San Diego County's Regional Communication System ("RCS") cooperative purchasing contract.

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

RESOLUTION NO. 2012-185

13. **ADDITIONAL STANDARDS FOR TAXICAB OPERATORS** – Request Council consider amending sections of the Escondido Municipal Code to update standards required of taxicab operators and drivers in the City.

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

ORDINANCE NO. 2012-22 (Introduction and First Reading)

CONSENT CALENDAR CONTINUED

14. **AMENDMENT TO ESCONDIDO MUNICIPAL CODE SECTION 2-24 (SELECTION OF DEPUTY MAYOR)** – Request Council consider the Escondido Municipal Code (EMC) section 2-24 to allow the selection of the deputy mayor to be conducted pursuant to City Council Rules of Procedure.

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

ORDINANCE NO. 2012-23 (Introduction and First Reading)

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

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

PUBLIC HEARINGS

15. **LOCAL REGISTER DESIGNATION AND MILLS ACT CONTRACT FOR A RESIDENCE ON A HILLTOP AT 2985 SU SIEMPRE PLACE (CASE HP-12-0001)** – Request Council approve listing the structure at 2985 Su Siempre Place on the City's Local Register and approve the Historic Property Preservation Agreement (commonly referred to as the "Mills Act Contract") for the subject property.

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

RESOLUTION NO. 2012-183

CURRENT BUSINESS

16. **CALPERS CONTRACT AMENDMENT-MISCELLANEOUS EMPLOYEES** – Request Council approve the second reading of the CalPERS Contract Amendment for Miscellaneous Employees: Section 20475, Different Levels of Benefits – 2% @ 60; and Section 20037 – Three Year Final Compensation. **Approved on October 17, 2012, with a vote of 4/1/0, Morasco voting no.**

ORDINANCE NO. 2012-20 (Adoption and Second Reading)

17. **REVISE MUNICIPAL CODE CHAPTER 25 ARTICLE 4 RELATING TO TRANSIENT OCCUPANCY TAX** – Request Council approve amending the Escondido Municipal Code Chapter 25, Taxation, Article 4, Transient Occupancy Tax.

Staff Recommendation: Approval (**Finance: Gilbert Rojas**)

ORDINANCE NO. 2012-19 (Introduction and First Reading)

CURRENT BUSINESS CONTINUED

18. **UPDATE AND REQUEST FOR COUNCIL GUIDANCE CONCERNING THE WATER PURCHASE AGREEMENT FOR THE CARLSBAD DESALINATION PROJECT** – Request Council accept the report from staff concerning the proposed Water Purchase Agreement between the San Diego County Water Authority (SDCWA) and Poseidon Resources for a future Carlsbad Desalination Project; and provide guidance to the City’s SDCWA Board representative concerning the SDCWA Board of Directors’ vote on the Purchase Agreement, which may occur as early as November 29, 2012.

Staff Recommendation: Provide guidance to the City’s representative on the SDCWA Board
(Utilities Department: Christopher McKinney)

19. **APPROVE STAFFING THE SEVENTH ENGINE COMPANY, THE PURCHASE AND STAFFING OF ONE ADDITIONAL AMBULANCE AND THE COST TO HIRE NON-SAFETY PERSONNEL** – Request Council approve an increase in the Fire Department Operating Budget for FY 2012-13 in the amount of \$847,355 to hire three (3) additional safety personnel to staff the Seventh Engine Company, twenty-four (24) non-safety personnel to staff additional ambulances and the associated start-up and operational costs; and an increase to the Fire Department Operating Budget for FY 2013-14 in the amount of \$1,204,330 to maintain personnel and on-going operational costs.

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

RESOLUTION NO. 2012-179

20. **ESCONDIDO SUCCESS CENTER PROJECT** – Request Council receive the status report and provide direction to staff.

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

21. **MAPLE STREET PLAZA: OPERATIONS AND MAINTENANCE** – Request Council provide direction to staff regarding the on-going operation of the Maple Street Plaza and possible closure of the northern section to through traffic.

Staff Recommendation: Provide direction **(City Manager’s Office: Charles Grimm)**

FUTURE AGENDA

22. **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
November 21	-	-	No Meeting	-
November 28	-	-	No Meeting	-
December 5	Wednesday	7:00 p.m.	Installation Ceremony	Council Chambers
December 12	Wednesday	3:30 & 4:30 p.m.	Council Meeting	Council Chambers
December 19	Wednesday	3:30 & 4:30 p.m.	Council Meeting	Council Chambers

TO ADDRESS THE COUNCIL

The public may address the City Council on any agenda item. Please complete a Speaker's form and give it to the City Clerk. 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 OF ESCONDIDO
October 3, 2012
3:30 p.m. Meeting Minutes

THIS MEETING WAS CANCELLED

Escondido City Council

CALL TO ORDER

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

ORAL COMMUNICATIONS

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

- I. CONFERENCE WITH LABOR NEGOTIATOR (Government Code §54957.6)**
- a. Agency negotiator: Sheryl Bennett, Clay Phillips
Employee organization: Escondido City Employee Association: Administrative/Clerical/
Engineering (ACE) Bargaining Unit
 - b. Agency negotiator: Sheryl Bennett, Clay Phillips
Employee organization: Escondido City Employee Association: Supervisory (SUP)
Bargaining Unit
- II. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)**
- a. 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

CITY OF ESCONDIDO
October 3, 2012
4:30 p.m. Meeting Minutes

Escondido City Council
Mobilehome Rent Review Board

CALL TO ORDER

The Regular Meeting of the Escondido City Council and Mobilehome Rent Review Board was called to order at 4:30 p.m. on Wednesday, October 3, 2012 in the Council Chambers at City Hall with Mayor Abed presiding.

MOMENT OF REFLECTION

FLAG SALUTE

Mayor Abed led the flag salute.

ATTENDANCE

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

Also present were: Clay Phillips, City Manager; Jeffrey Epp, City Attorney; Barbara Redlitz, Community Development Director; Ed Domingue, Engineering Services Director; Diane Halverson, City Clerk; and Liane Uhl, Minutes Clerk.

PRESENTATIONS

Mayor Abed introduced Sarah Kaminske, Assistant Emergency Manager, Orange County Sheriff's Department Homeland Security, who gave a presentation on the San Onofre Nuclear Generating Station Emergency Planning Strategy.

Mayor Abed introduced Ed Nelson, Escondido High School Superintendent, and Keith Nuthall, Del Lago Academy Principal, who gave a presentation the Del Lago Academy.

PROCLAMATIONS

Mayor Abed introduced Gene Meese and Kevin Constable, Building Maintenance, who received Employee Recognition Proclamations.

ORAL COMMUNICATIONS

Orv Hale, Escondido, indicated he did not agree with the Police Chief being placed on administrative leave.

Tisha Bennett, Escondido, requested that Police Chief Maher be reinstated.

Jack Bennett, Escondido, stated he did not agree with Police Chief Maher being placed on administrative leave.

Barbara Takahara, Escondido, voiced concern with fluoridating the city's drinking water.

Patricia Borchmann, Escondido, expressed apprehension that the San Onofre Power Plant emergency plans were inadequate.

Ace Hoffman, Solana Beach, stated he was concerned with the San Onofre Power Plant restarting.

Torgan Johnson, Solana Beach, indicated the San Onofre Nuclear plant safety plans were inadequate.

Kevin Higgins, Temecula, stated there was no evacuation plan for Temecula in case of nuclear fallout.

Dennis Galt, Escondido, indicated he did not agree with placing the Police Chief on administrative leave.

COUNCIL MEMBERS' REPORTS/BRIEFING

Councilmember Waldron attended the Special Districts Annual Award Luncheon where the water rate structure was discussed.

Councilmember Gallo stated he learned at the Borders Committee that the day after Thanksgiving was known as Native American You're Welcome Day; the Tijuana Technology Hub was being held on October 11-21, 2012 and that SANDAG was conducting a public project participation workshop on October 19, 2012.

Mayor abed indicated he attended a SANDAG meeting to ensure that North County gets their share of transportation funds.

Councilmember Morasco stated that Councilmember Gallo recently celebrated his birthday; he attended the 40-year Charros celebration; work continued on a volunteer garden on Juniper and Grand Avenue; and he attended a Thai Buddhist Temple event.

CONSENT CALENDAR

Mayor Abed removed item 4, Councilmember Gallo removed item 7, Councilmember Morasco removed item 6, Councilmember Waldron removed item 9 from the Consent Calendar for discussion and Councilmember Diaz abstained from item 5.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Waldron that the following Consent Calendar items be approved with the exception of items 4, 6, 7 and 9.

- 1. AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/CDC/RRB)**
- 2. APPROVAL OF WARRANT REGISTER (Council/CDC)**
- 3. APPROVAL OF MINUTES: Regular Meeting of September 12, 2012**

4. **COUNTY OF SAN DIEGO VECTOR HABITAT REMEDIATION PROGRAM FUNDING GRANT – MISSION POOLS & SAND LAKE PROJECTS AND BUDGET ADJUSTMENT –** Request Council authorize the acceptance of Vector Remediation Program Grant funds (\$226,000 for Mission Pools and \$224,500 for Sand Lake in Kit Carson Park) from the County of San Diego Department of Environmental Health; and approve budget adjustments needed for these projects. (File No. 0480-70)

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

Mayor Abed commented that he did not agree with this project.

MOTION: Moved by Mayor Abed and seconded by Councilmember Diaz to authorize the acceptance of Vector Remediation Program Grant funds (\$226,000 for Mission Pools and \$224,500 for Sand Lake in Kit Carson Park) from the County of San Diego Department of Environmental Health; and approve budget adjustments needed for these projects. Motion carried unanimously.

5. **SECOND AMENDMENT TO LEASE AGREEMENT WITH INTERFAITH COMMUNITY SERVICES AT 401 N. SPRUCE STREET –** Request Council authorize the Real Property Manager and City Clerk to execute a Second Amendment to Lease Agreement with Interfaith Community Services at 401 N. Spruce Street. (File No. 0600-10 [A-2494])

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

RESOLUTION NO. 2012-159

Councilmember Diaz abstained from item 5.

6. **FIRST AMENDMENT TO LEASE AGREEMENT WITH KATHLEEN CARR: 1045 W. MISSION AVENUE (CITY RECORDS CENTER) –** Request Council authorize the Real Property Manager and City Clerk to execute a First Amendment to Lease Agreement with Kathleen Carr at 1045 W. Mission Avenue. (File No. 0600-10 [A-2390])

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

RESOLUTION NO. 2012-160

Councilmember Morasco asked for clarification of the terms of the lease.

Debra Lundy, Real Property Manager, gave the square footage of the lot and structure, and indicated the price per square foot was within the market rate.

MOTION: Moved by Councilmember Waldron and seconded by Councilmember Morasco to authorize the Real Property Manager and City Clerk to execute a First Amendment to Lease Agreement with Kathleen Carr at 1045 W. Mission Avenue and adopt Resolution No. 2012-160. Motion carried unanimously.

7. **THIRD AMENDMENT TO CONSULTING AGREEMENT WITH SCS ENGINEERS – ORANGE GLEN MARKET REMEDIATION PROJECT –** Request Council authorize the Mayor and City Clerk to execute a third amendment to the consulting agreement with SCS Engineers in the amount of \$15,655. (File No. 0600-10 [A-2737])

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

RESOLUTION NO. 2012-156

Councilmember Gallo asked why this project was ongoing.

Ed Domingue, Engineering Services Director, indicated there was still a plume under the pavement and the mobile home park. This posed a potential health risk.

MOTION: Moved by Councilmember Waldron and seconded by Councilmember Gallo to authorize the Mayor and City Clerk to execute a third amendment to the consulting agreement with SCS Engineers in the amount of \$15,655 and adopt Resolution No. 2012-156. Motion carried unanimously.

8. **CALIFORNIA LIBRARY LITERACY SERVICES (CLLS) LITERACY AWARD** – Request Council approve a \$34,901 literacy grant award from the California State Library. (File No. 0480-70)

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

9. **BUDGET ADJUSTMENT REQUEST AND CONTRACT CHANGE ORDER FOR RGP 87 – SEWER OUTFALL MITIGATION WORK** – Request Council authorize the Deputy Director of Utilities to execute a change order with Southland Paving for additional work related to RGP87 – Sewer Outfall Mitigation Project on a time and materials basis in an amount not to exceed \$500,000; and approve a budget adjustment in the amount \$500,000. (File No. 0600-10 [A-3057])

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

RESOLUTION NO. 2012-170

Councilmember Waldron asked if the city had been dumping in this area.

Christopher McKinney, Utilities Director, answered the city was aware of silt but not construction debris.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Waldron to authorize the Deputy Director of Utilities to execute a change order with Southland Paving for additional work related to RGP87 – Sewer Outfall Mitigation Project on a time and materials basis in an amount not to exceed \$500,000; and approve a budget adjustment in the amount \$500,000 and adopt Resolution No 2012-170. Motion carried unanimously.

10. **FISCAL YEAR 2012-13 SAN DIEGO COUNTY LAW ENFORCEMENT FOUNDATION LIFE SAVING EQUIPMENT GRANT AND BUDGET ADJUSTMENT** – Request Council authorize the Escondido Police Department to accept a FY 2012-13 San Diego County Law Enforcement Foundation Grant in the amount of \$2,144; authorize the Chief of Police to submit grant documents on behalf of the City; and authorize staff to establish a budget adjustment to spend grant funds. (File No. 0480-70)

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

11. **ESCONDIDO CITY EMPLOYEES' ASSOCIATION – ADMINISTRATIVE, CLERICAL AND ENGINEERING UNIT MEMORANDUM OF UNDERSTANDING** – Request Council amend the Escondido Employee's Association – Administrative, Clerical and Engineering Bargaining Unit Memorandum of Understanding. (File No. 0740-30)

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

RESOLUTION NO. 2012-168

12. **ESCONDIDO CITY EMPLOYEES' ASSOCIATION – SUPERVISORY UNIT MEMORANDUM OF UNDERSTANDING** – Request Council amend the Escondido Employee's Association – Supervisory Bargaining Unit Memorandum of Understanding. (File No. 0740-30)

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

RESOLUTION NO. 2012-169

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.)

13. **PARKING CODE AMENDMENT, CASE NO. AZ 12-0004 – APPROVED WITH A VOTE OF 5/0 ON SEPTEMBER 12, 2012.** (File No. 0810-20)

ORDINANCE NO. 2012-17 (Second Reading and Adoption)

PUBLIC HEARINGS

14. **SHORT-FORM RENT INCREASE APPLICATION FOR LAKE BERNARDO MOBILE ESTATES**
- Request Council consider the short-form rent increase application submitted by Lake Bernardo Estates, and if approved, grant an increase of seventy-five percent (75%) of the change in the Consumer Price Index or 2.802%, (an average of \$14.92), for the period of June 30, 2009 to December 31, 2011. (File No. 0697-20-9857)

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

RESOLUTION RRB NO. 2012-10

Karen Youel, Housing Department, gave the staff report and presented a series of slides.

Mayor Abed opened the public hearing and asked if anyone would like to speak on this issue in any way.

Priscilla Cervantes, Owner's Representative, listed the maintenance improvements to the park and asked Council to approve the short-form rent increase.

Debbie Jauregui, Escondido, stated she opposed the rent increase due to a water rate increase.

Mayor Abed asked if anyone else wanted to speak on this issue in any way. No one asked to be heard. Therefore, he closed the public hearing.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Waldron to approve the short-form application, directed staff to resolve the water rate overbilling issues before a rent increase could be implemented, and adopt Resolution RRB No. 2012-10. Motion carried unanimously.

15. **ORDINANCE AMENDING CHAPTER 12 OF THE ESCONDIDO MUNICIPAL CODE REGARDING MOBILE FOOD FACILITIES (CASE NO. AZ 12-0005)** - Request Council introduce and subsequently approve amending Chapter 12 of the Escondido Municipal Code to allow grading of Mobile Food Facilities that prepare food. (File No. 0680-10)

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

ORDINANCE NO. 2012-18 (Introduction and First Reading)

Barbara Redlitz, Community Development Director, gave the staff report.

Mayor Abed opened the public hearing and asked if anyone would like to speak on this issue in any way. No one asked to be heard. Therefore, he closed the public hearing.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Morasco to amend Chapter 12 of the Escondido Municipal Code to allow grading of Mobile Food Facilities that prepare food and introduce Ordinance No. 2012-18. Motion carried unanimously.

CURRENT BUSINESS

16. **PARK IMPROVEMENT PROJECTS** - Request Council consider and select park improvement projects funded by Park Development Funds and a grant from the State of California Department of Housing in the amount of \$251,275. (File No. 0910-10)

Staff Recommendation: Provide direction to staff (**Community Services: Jerry Van Leeuwen**)

Jerry Van Leeuwen, Community Services Director, gave the staff report and presented a series of slides.

Doug Clark, Escondido, indicated he supported a skate plaza in the city.

Merrilyn Carpenter, Escondido, urged Council to fund a master plan for El Caballo Park.

Rick Paul, Escondido, asked Council to designate funds for El Caballo Park.

Wendy Barker, Escondido History Center Director, requested Council fund playground equipment for Grape Day Park.

MOTION: Moved by Councilmember Diaz and seconded by Councilmember Morasco to approve \$131,000 for the Jim Stone Pool, \$80,000 for Grape Day Park playground equipment and \$10,000 for Washington Park tennis court renovation from the Housing and Community Development Grant. Motion carried unanimously.

MOTION: Moved by Councilmember Morasco and seconded by Councilmember Gallo to approve \$50,000 for the El Caballo Park Master Plan and \$114,000 for Jesmond Dene ball field lights from the Park Development Fund. Motion carried unanimously.

17. **FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2012** - Request Council receive and file the financial status report for Fiscal Year 2011-12. (File No. 0430-30)

Staff Recommendation: Receive and File (**Finance Department: Gilbert Rojas**)

Gil Rojas, Finance Director, gave the staff report and presented a series of slides.

MOTION: Moved by Councilmember Waldron and seconded by Councilmember Morasco to receive and file the financial status report for Fiscal Year 2011-12. Motion carried unanimously.

FUTURE AGENDA

- 18. 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**)

Councilmember Waldron asked for a discussion on utilizing the Harmony Grove property.

ORAL COMMUNICATIONS

Robroy Fawcett, Escondido, voiced concern with the City's sign restrictions and district voting.

ADJOURNMENT

Mayor Abed adjourned the meeting at 7:53 p.m.

MAYOR

CITY CLERK

MINUTES CLERK

CITY OF ESCONDIDO
October 17, 2012
3:30 p.m. Meeting Minutes

Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 3:30 p.m. on Wednesday, October 17, 2012 in the Council Chambers at City Hall with Mayor Abed presiding.

ATTENDANCE

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

ORAL COMMUNICATIONS

Roy Garrett, Escondido, stated that funds for Item I on the Closed Session agenda was originally set aside for the library and asked Council to reserve those funds from the lease payments.

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

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

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

Added two items:

Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9(b): 1 case

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION (Government Code §54956.9(a))

CITY OF NATIONAL CITY. ET AL. V. ANA MATOSANTOS, ET AL
CASE NO. 34-2012-80001198

ADJOURNMENT

Mayor Abed adjourned the meeting at 4:28 p.m.

MAYOR

CITY CLERK

MINUTES CLERK

CITY OF ESCONDIDO
October 17, 2012
4:30 p.m. Meeting Minutes

Escondido City Council
Mobilehome Rent Review Board

CALL TO ORDER

The Regular Meeting of the Escondido City Council and Mobilehome Rent Review Board was called to order at 4:30 p.m. on Wednesday, October 17, 2012 in the Council Chambers at City Hall with Mayor Abed presiding.

MOMENT OF REFLECTION

FLAG SALUTE

Mayor Abed led the flag salute.

ATTENDANCE

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

Also present were: Clay Phillips, City Manager; Jennifer McCain, Assistant City Attorney; Barbara Redlitz, Community Development Director; Ed Domingue, Engineering Services Director; Diane Halverson, City Clerk; and Liane Uhl, Minutes Clerk.

ORAL COMMUNICATIONS

Sandra Jaffe, Escondido, voiced concern that apartment residents were smoking in a non-smoking building.

COUNCIL MEMBERS' REPORTS/BRIEFING

City Manager Clay Phillips indicated he would provide information to Council regarding the process of administrative leave.

Councilmember Diaz Olga stated she would be attending a San Dieguito River Park meeting and the Explorer Post had been recognized for their achievements.

Councilmember Waldron indicated she attended a Regional Solid Waste Association meeting where public informational handouts from the City of Encinitas on general recycling information were given out.

Councilmember Gallo stated the NCTD was providing free transportation for all active and retired military from November 9-12, 2012. Families of military personnel receive a 50% discount on those dates. He also attended transportation Ride Fact meeting at the Park Place Community Center. They will assist with anyone trying to locate NCTD transportation. They can be reached at 888-924-3228, Monday – Friday, 8:00 a.m. – 5:00 p.m.

Councilmember Morasco stated the new Target had opened at the Westfield Mall and had escalators for the shopping carts; he met with citizen to discuss utilization of the space vacated by Escondido Education Compact for use as a browsing library. He also indicated the Escondido Foundation had met, the ECCDC sponsored a trucks for tots program, Tip a Cop fund raiser for Special Olympics was held at the Red Robin Restaurant and the Dia de los Muertos function was scheduled for November 1, 2012 at the CCAE.

Mayor Abed stated he attended a SANDAG meeting where there was a discussion regarding regional housing, zoning, and economic development. He also read a letter from a visitor to Escondido.

CONSENT CALENDAR

Mayor Abed removed item 11, Councilmember Diaz removed item 7 and Councilmember Gallo removed item 4 from the Consent Calendar for discussion.

MOTION: Moved by Councilmember Morasco and seconded by Councilmember Gallo that the following Consent Calendar items be approved with the exception of items 4, 7, and 11. Motion carried unanimously.

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. (File No. 0430-80)

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

Councilmember Gallo indicated the motorcycle officers didn't have Opticon on their cycles and could not enter a gated community.

Officer Chris Winn answered this was being researched to allow the cycles to enter gated communities and for stop light control.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Waldron to 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. Motion carried unanimously.

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. (File No. 0640-30)

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. (File No. 0640-30)

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. (File No. 0640-30)

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

RESOLUTION NO. 2012-176

Councilmember Diaz asked for clarification of the request.

Jennifer McCain, Assistant City Attorney, answered that if any tickets were distributed through the City, the City would claim the amount, not the individual agency official.

MOTION: Moved by Councilmember Diaz and seconded by Councilmember Morasco to adopt a ticket distribution policy pursuant to the Political Reform Act and adopt Resolution No. 2012-176. Motion carried unanimously.

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. (File No. 0600-10 [A-3069])

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. (File No. 0600-10 [A-3063])

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. (File No. 0800-40 ENV-10-0004)

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. (File No. 0600-10 [A-3070])

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

RESOLUTION NO. 2012-166

Roy Garrett, Escondido, asked Council to redirect income from this lease and hold it for possible use for an East Valley branch library.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Waldron to authorize the Real Property Manager and City Clerk to execute a Lease Agreement with La Paz Funeral Home Inc. at 240 South Broadway; request Council approve an increase to the General Fund Revenue for the Fiscal Year 2012/2013 in the amount of \$7,000, increase the Engineering Professional Services Budget to pay for broker's fees in the amount of \$1,320 and adopt Resolution No. 2012-166. Motion carried unanimously.

- 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. (File No. 0600-10 [A-3072])

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. (File No. 0600-10 [A-3071])

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. (File No. 0600-10 [A-3018])

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. (File No. 0680-10)

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. (File No. 0720-40)

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

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

Sheryl Bennett, Human Resources Director, gave the staff report and presented a series of slides.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Waldron to 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, adopt Resolution No. 2012-175 and introduce Ordinance 2012-20. Ayes: Abed, Diaz, Gallo and Waldron. Noes: Morasco. Absent: None. Motion carried.

16A. EDUCATIONAL AND INFORMATIONAL PUBLICATIONS ON UPCOMING CITY BALLOT MEASURES - Request Council give direction to staff to prepare and distribute informational materials about Proposition P (general plan) and Proposition N (charter city) ballot measures prior to the November 6, 2012 General Municipal Election and authorize expenditure of up to \$20,000. (File No. 0650-10)

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

RESOLUTION NO. 2012-178

Clay Phillips, City Manager, gave the staff report.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Waldron to prepare and distribute informational materials about Proposition P (general plan) and Proposition N (charter city) ballot measures prior to the November 6, 2012 General Municipal Election, authorize expenditure of up to \$20,000 and adopt Resolution No. 2012-178. Motion carried unanimously.

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. (File No. 0800-70)

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

RESOLUTION NO. 2012-161R

Jay Petrek, Planning Department, gave the staff report and presented a series of slides.

Mayor Abed opened the public hearing and asked if anyone would like to speak on this issue in any way. No one asked to be heard. Therefore, he closed the public hearing.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Waldron to 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 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 and adopt Resolution No. 2012-161R. Motion carried unanimously.

- 18. BICYCLE FACILITIES MASTER PLAN (PHG 12-0018)** – Request Council approve the Bicycle Facilities Master Plan. (File No. 0800-40 PHG 12-0018)

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

RESOLUTION NO. 2012-162

Jay Paul, Planning Department, gave the staff report and presented a series of slides.

Mayor Abed opened the public hearing and asked if anyone would like to speak on this issue in any way. No one asked to be heard. Therefore, he closed the public hearing.

MOTION: Moved by Councilmember Diaz and seconded by Councilmember Morasco to approve the Bicycle Facilities Master Plan and adopt Resolution No. 2012-162. Motion carried unanimously.

- 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. (File No. 0697-20-9887)

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

RESOLUTION RRB NO. 2012-11

Karen Youel, Housing Department, gave the staff report and presented a series of slides.

Mayor Abed opened the public hearing and asked if anyone would like to speak on this issue in any way.

Jim Younce, Owners Representative, indicated he was available to answer questions.

Mayor Abed asked if anyone else wanted to speak on this issue in any way. No one asked to be heard. Therefore, he closed the public hearing.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Waldron to approve the short-form rent increase application and adopt Resolution RRB No. 2012-11. Motion carried unanimously.

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

Don Shelter, Escondido, requested information on acquiring permits to perform live music on the streets.

ADJOURNMENT

Mayor Abed adjourned the meeting at 6:40 p.m.

MAYOR

CITY CLERK

MINUTES CLERK

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 4
Date: **November 14, 2012**

TO: Honorable Mayor and Members of the City Council
FROM: Jerry H. Van Leeuwen, Director of Community Services
SUBJECT: East Valley Community Center: Computer Lab and Technology Center

RECOMMENDATION:

It is requested that the City Council accept Cox Communications donation of \$25,000 for construction costs at the Escondido Technology Center and authorize a budget adjustment in that amount transferring funds from Trust Account 2100-718-00 to Capital Improvement Project Account No. 229-109201.

FISCAL ANALYSIS:

This donation will assist in the construction of the Escondido Technology Center.

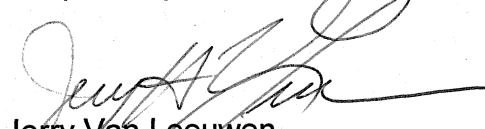
PREVIOUS ACTION:

Council authorized \$75,000.00 from the Recreation Reserve fund in June 2011 for this project.

BACKGROUND:

Cox Communications donated \$25,000 for this project in December 2011 which was placed in a trust account held by the City of Escondido. It is necessary for the City Council to formally accept the donation and authorize a budget adjustment transferring the funds to a Capital Improvement Program account before they can be used for construction expenses.

Respectfully submitted,


Jerry Van Leeuwen
Director of Community Services



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: 11/14/2012
Department: Community Services
Division:
Project/Budget Manager: Jerry Van Leeuwen x4871
Name Extension
Council Date (if applicable): 11/14/2012
(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. Rows include Deposits, Contributions, EVCC Computer Lab, Transfer Out, and Transfer In.

Explanation of Request:

To use Cox Communications donation for construction costs at the Escondido Technology Center.

APPROVALS

Handwritten signatures and dates for Department Head and Finance.

City Manager and City Clerk signature lines with Date labels.

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: November 14, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Jerry H. Van Leeuwen, Director of Community Services
SUBJECT: Park Improvement Projects Budget Adjustments

RECOMMENDATION:

Approve budget adjustments totaling \$415,275 to receive and expend Housing-Related Park Program grant funds and to expend Park Development Funds.

FISCAL ANALYSIS:

\$251,275 is available through a grant from the State of California Department of Housing and Community Development ("HCD") and approximately \$500,000 is available in the Park Development Fund.

PREVIOUS ACTION:

Council approved submittal and receipt of the HCD grant on April 25, 2012. Council directed staff to bring ideas on how to spend both HCD funds and Park Development Funds for Council consideration.

BACKGROUND:

The City of Escondido received a Housing Related Parks Program grant of \$251,275 from the State of California HCD. The grant is provided to California cities that have completed low-income housing projects during a certain time period. The funds to provide the grants were approved through an initiative process, Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006, Health and Safety Code Section 53545, subdivision (d). The grant must be used in low-income areas that are park deficient based on density of population. The funds may be used for new facilities or to renovate existing facilities.

The Park Development Fund receives funds from fees paid by new development. These funds may be used anywhere within the City, but must be used to expand or enhance park land or facilities. The funds cannot be used for maintenance of facilities.

On October 3, 2012, City Council approved various projects. Using the HCD funds, Council approved \$131,000 for improvements to Jim Stone Pool, \$80,000 for new playground equipment at Grape Day Park, and \$10,000 for rehabilitation of the tennis court at Washington Park. The remaining funds,

Park Improvement Projects Budget Adjustments
November 14, 2012
Page 2

\$30,275, will be used for a project at Grape Day Park at the recommendation of the Grape Day Park Task Force. Using Park Development funds, Council approved \$50,000 for the El Caballo Master Plan and \$114,000 for new ball field lights at Jesmond Dene Park.

Respectfully submitted,


Jerry Van Leeuwen



**CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST**


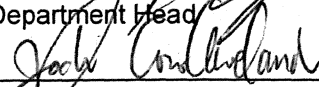
Date of Request: 11/1/2012
 Department: Community Services
 Division: Recreation
 Project/Budget Manager: Karen Youel 4518
 Name Extension
 Council Date (if applicable): 11/14/2012
 (attach copy of staff report)

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
HCD - Jim Stone Pool	401-0000-NEW	\$131,000	
HCD - Playground Equipment	401-0000-NEW	\$80,000	
HCD - Tennis Courts	401-0000-NEW	10,000	
HCD - Grape Day Park Improvements	401-0000-NEW	\$30,275	
HCD grant funds	401-4127-NEW	251,275	

Explanation of Request:

Budget adjustment to fund several Park Improvement projects. Grant funds awarded by State of California Department of Housing and Community Development, Housing Related Parks Program.

	<u>11/1/12</u>	_____ City Manager	_____ Date
Department Head	Date		
	<u>11/5/12</u>	_____ City Clerk	_____ Date
Finance	Date		

APPROVALS

Distribution (after approval): Original: Finance



CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 6
Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Jerry Van Leeuwen, Director of Community Services
SUBJECT: The Elms Housing Development

RECOMMENDATION:

It is requested that Council:

1. Adopt City Council Resolution No. 2012-182 to allow Housing Division to amend previous developer agreements and to authorize the Mayor and City Clerk to execute, on behalf of the City, the document amendments in a form acceptable to the City Attorney; and
2. Adopt City Council Resolution No. 2012-181 to ratify the existing loan documents and escrow instructions, signed by past authorized representatives of the City/CDC, in order to grant two vacant properties located at 537 N. Elm (APN 230-103-1700) and the adjacent vacant lot (APN 230-103-2200) to San Diego Habitat for Humanity, to record loan documents for the use of HOME/CHDO funds, and to authorize Karen Youel, Management Analyst/Housing to sign new escrow documents.

FISCAL ANALYSIS:

There will be no impact on the General Fund. HOME/CHDO funds have been committed to the project; and no additional Affordable Housing funds are requested.

PREVIOUS ACTION:

On April 28, 2010, the Housing Division released a Request for Proposal (RFP) inviting for-profit, non-profit and Community Housing Development Organizations (CHDOs) to submit requests for funding for the provision of long-term affordable rental housing or first-time homebuyer opportunities through redevelopment of vacant properties or parcels of land owned by the City/CDC. The RFP included a total of \$441,643 in development and administration funds reserved for CHDOs, as well as the disposition of specific properties purchased with Neighborhood Stabilization Program (NSP) and Housing Set-Aside funds. Properties made available in the RFP included a vacant lot at 537 N. Elm Street (APN 230-103-1700; purchased with NSP funds), and a second vacant lot on N. Elm Street contiguous to 537 N. Elm (APN 230-103-220; purchased with affordable Housing Set-Aside funds).

San Diego Habitat for Humanity (SDHFH) proposed building fifteen (15) single-family townhomes on the two vacant properties on North Elm Street (the SDHFH Project). The SDHFH Project proposed construction of five 4-bedroom and ten 3-bedroom townhomes (50 bedrooms in total) with a total project development costs projected to reach \$3.5 million. Homes would be sold to households earning less than 80% AMI. The development will be regulated by requirements set forth in the City's loan documents restricting affordability. Affordability regulations will also be imposed and monitored by Habitat as the first mortgage holder. Habitat will be required to maintain a Family Selection Committee throughout the 45-year affordability period of the loans, to ensure subsequent homeowners meet income eligibility requirements and to enforce an Equity Share Agreement if homes are sold during the affordability term to non-eligible households. Additionally, a Home Owners Association (HOA) will be required as part of the planning approval process.

On June 9, 2010, City Council and CDC approved staff recommendations for the allocation of HOME/CHDO funds to SDHFH in the amount of \$396,300 to SDHFH for the development of 15 affordable ownership housing units and the grant of two vacant properties located at 537 N. Elm and the adjacent vacant lot. This allocation of funds provided a HOME subsidy of approximately \$7,900 per bedroom (or \$26,400 per unit to the project), a NSP subsidy of approximately \$4,000 per bedroom (or \$13,300 per unit), and a Set-Aside subsidy of approximately \$2,500 per bedroom (or \$8,300 per unit). City Council and CDC adopted City Council Resolution No. 2010-98 and Community Development Commission Resolution No. CDC 2010-02 in support of the above actions. Loan documents were originally signed and dated August 23, 2010.

BACKGROUND:

On August 23, 2011, SDHFH informed staff that they would be unable to meet the occupancy deadlines imposed by the state NSP funds and requested that the NSP funds be removed from the project. SDHFH was able to use HOME/CHDO funds previously committed to the SDHFH Project to remove the NSP funds. No additional funds were added to the project.

SDHFH has requested that the City amend the 2010 HOME agreements. Design and predevelopment work has continued. Staff is confident that the non-profit developer is prepared to perform under an amended scope of work. Amendments to the original agreements are necessary due to the period of time that has lapsed. These amendments include a reduction of the number of units to be built, from fifteen (15) units to eleven (11) three-bedroom units, and a modified timeline and budget (see Exhibit A). These changes will result in a lower-scale development along the Escondido Creek Trail. Total subsidy will be approximately \$15,800 per bedroom (or \$47,400 per unit).

Loan documents and developer agreements were written and signed in 2010. Due to an issue with escrow, the documents had to be resigned in May, 2011. Due to unanticipated delays, escrow was not closed. In order to grant the two parcels and record the loan documents, Chicago Title has

requested City Council reauthorize and ratify the use of the loan documents and escrow instructions signed in 2011.

CONCLUSION AND RECOMMENDATION:

It is requested that Council:

1. Adopt City Council Resolution No. 2012-182 to allow Housing Division to amend previous developer agreements and to authorize the Mayor and City Clerk to execute, on behalf of the City, the document amendments in a form acceptable to the City Attorney; and
2. Adopt City Council Resolution No. 2012-181 to ratify the existing loan documents and escrow instructions signed by past authorized representatives of the City/CDC in order to grant two vacant properties located at 537 N. Elm (APN 230-103-1700) and the adjacent vacant lot (APN 230-103-2200) to SDHFH, to record loan documents for the use of HOME/CHDO funds, and to authorize Karen Youel, Management Analyst/Housing to sign new escrow documents.

Respectfully submitted,


Jerry Van Leeuwen
Director of Community Services

EXHIBIT A

SAN DIEGO HABITAT FOR HUMANITY

11-UNIT DEVELOPMENT ON N. ELM STREET

STATEMENT OF WORK

Section 1: Work Description

- A. SDHFH will perform the Work as described in the Regulatory Agreement of even date, which is on file at the City of Escondido, Housing Division, 201 North Broadway, Escondido, California. All written materials or alterations submitted as addenda to the original Regulatory Agreement and which are approved in writing by the CITY are hereby incorporated as part of this Agreement.

- B. The Work shall consist of:
 - 1. The development of a minimum of eleven (11) units of homeownership housing located at 537 N. Elm Street, Escondido, California. HOME funds in the amount of \$396,300 will be used for a portion of the total estimated development cost of \$2,767,956. HOME Program regulations will apply to each of the Assisted Units.
 - 2. Subsequent sale of the Assisted Units to Eligible Households, as described in the City Loan Documents.

- C. In accordance with Paragraph 4 of this Agreement, SDHFH shall request written approval from the CITY for any revision to the Work or when a waiver of a provision of SDHFH's program guidelines is proposed.

**SAN DIEGO HABITAT FOR HUMANITY
11-UNIT DEVELOPMENT ON N. ELM STREET**

PROJECT TIMELINE

Completion Dates

- A. All development work shall be substantially completed by September 26, 2015, in accordance with the Project Timeline as follows:

Key Activity/Milestone	Date
PHASE-I	
Acquisition of Property (Close Escrow)	
Property Entitlements/Tentative Map	Mar 2013
Grading Permits	July 2013
Begin Public Improvements	July 2013
Final Map/Building Permits	June 2013
Begin Construction of Phase-I Units (4)	July 2013
Complete Construction of Phase-I Units (4)	Aug 2014
Sale of Phase-I Units (4)	Sept 2014
PHASE-II	
Building Permits	May 2014
Begin Construction of Units (3)	June 2014
Complete Construction of Phase-II Units (3)	Jan 2015
Sale of Phase-II Units (3)	Feb 2015
PHASE-III	
Building Permits	Nov 2014
Begin Construction of Units (4)	Dec 2014
Complete Construction of Phase-III Units (4)	Aug 2015
Sale of Phase-III Units (4)	Sept 2015

- B. Submission of the Project Completion Report shall occur no later than ninety (90) days from the issuance of the Certificate of Occupancy for the project.
- C. This Agreement shall expire forty-five (45) years following the issuance of the last Certificate of Occupancy for the Project.

**SOURCES AND USES ANALYSIS
ELM STREET TOWNHOMES DEVELOPMENT**

Number of Units: 11

	Average Per Unit	Total
CONSTRUCTION PERIOD SOURCES		
Developer Equity/Fundraising	\$185,273	\$2,038,000
CalHome	\$0	\$0
City of Escondido - HOME loan	\$36,027	\$396,300
City of Escondido - Grant of land	\$11,364	\$125,000
City of Escondido - Elm Street Improvements	\$19,000	\$209,000
TOTAL SOURCES	\$251,664	\$2,768,300

USES OF FUNDS

PERMANENT SOURCES

SOURCES OF FUNDS

	# Units	@ Per Unit Amount of:			
First Mortgages and Downpayments (1)					
Three Bedroom Units	11	\$165,000		\$2,037,656	
Four Bedroom Units	0	\$180,000		\$0	
City of Escondido - HOME funds		\$36,027		\$396,300	
City of Escondido - Set Aside funds		\$11,364		\$125,000	
City of Escondido - CDBG funds		\$19,000		\$209,000	
CalHome Funds		\$0		\$0	
TOTAL SOURCES		\$251,632		\$2,767,956	

USES OF FUNDS

Land Acquisition	\$29,545	\$325,000
Construction Contract	\$159,518	\$1,754,697
Local Development Impact Fees	\$33,169	\$364,859
Soft Costs	\$27,273	\$300,000
Developer Fee	\$2,127	\$23,400
TOTAL USES	\$251,632	\$2,767,956

(1) Estimated. Actual mortgage amounts, downpayments and affordable sales prices will be determined based on actual costs of construction, requirements of City funding sources, number of bedrooms in the homes, downpayment requirements, incomes of qualified buyers and current appraisals of the homes.

RESOLUTION NO. 2012-181

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AND THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA ACTING AS THE SUCCESSOR HOUSING AGENCY OF THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF ESCONDIDO RATIFYING EXISTING LOAN DOCUMENTS AND ESCROW INSTRUCTIONS IN CONJUNCTION WITH A LOAN OF HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM FUNDING IN THE TOTAL AMOUNT OF \$396,300 AND THE GRANTING OF TWO PARCELS OF VACANT LAND AT 537 N. ELM STREET AND THE ADJACENT LOT FOR DEVELOPMENT OF AFFORDABLE HOUSING; AND AUTHORIZING KAREN YOUEL, MANAGEMENT ANALYST/HOUSING TO SIGN NEW ESCROW DOCUMENTS

WHEREAS, on December 24, 2009, the City of Escondido acquired property located at 537 N. Elm Street (APN 230-103-1700) in Escondido; and

WHEREAS, on April 28, 2010, the Community Development Commission of the City of Escondido ("CDC") acquired vacant property located at North Elm Street in Escondido (APN 230-103-2200); and

WHEREAS, on April 28, 2010, Council authorized the release of a Request for Proposals ("RFP") for the provision of long-term affordable housing, utilizing available HOME/CHDO funds reserved for development and administrative activities as well as properties acquired using Neighborhood Stabilization Program ("NSP") and other funds; and

WHEREAS, on June 9, 2010, at a Public Hearing, Council approved an allocation of \$396,300 in HOME/CHDO funds reserved for development, along with the

grant of a vacant parcel of land located at 537 North Elm Street in Escondido, to San Diego Habitat for Humanity ("SDHFH"), for affordable housing purposes; and

WHEREAS, on June 9, 2010, at a Public Hearing, CDC approved the disposition of the vacant parcel located at North Elm Street in Escondido (APN 230-103-2200), to SDHFH, for affordable housing purposes; and

WHEREAS, on June 9, 2010, at a Public Hearing, Council and CDC approved the allocations and grant of land located at 537 N. Elm Street and adjacent vacant lot in Escondido, to defer payment of the City's development fees to the end of the construction of the project, and authorized the execution of all agreements, loan documents and grant deeds necessary to provide such funds and property for the provision of affordable housing; and

WHEREAS, affordable housing agreements, consisting of a Promissory Note, HOME Funding Agreement, Deed of Trust, Regulatory Agreement, Service Agreement, Hazardous Materials Indemnity Agreement, Notice of Affordability and Grant Deeds, were dated August 23, 2010, and signed in August 2010 and May 2011 and escrow instructions were signed in May 2011 by Roni Keiser, Housing Manager; and

WHEREAS, Assembly Bill 1X 26 ("AB 1X 26") was passed by the State Legislature on June 15, 2011, and signed by the Governor on June 29, 2011, providing for the dissolution of redevelopment agencies; and

WHEREAS, on January 25, 2012, the City of Escondido elected to serve as the Successor Housing Agency of the Escondido Redevelopment Agency, known as the

Community Development Commission of the City of Escondido, thus taking on the rights and responsibilities of the CDC housing agency; and

WHEREAS, the City desires at this time, and deems it to be in the best public interest, to close escrow on the loan documents and grant land to SDHFH for the provision of affordable housing.

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

1. That the above recitations are true.
2. That the City Council and the City of Escondido acting as the Housing Successor Agency to the Community Development Commission of the City of Escondido, ratifies the allocation of \$396,300 in HOME/CHDO funds, as well as a grant of vacant property located at 537 North Elm Street and adjacent parcel in Escondido, to San Diego Habitat for Humanity for the provision of affordable housing units and all documents executed in the furtherance of this project.
3. That Karen Youel, Management Analyst/Housing, is hereby authorized to execute on behalf of the City, the necessary escrow documents for the furtherance of this project.

RESOLUTION NO. 2012-182

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING EXISTING LOAN DOCUMENTS WITH SAN DIEGO HABITAT FOR HUMANITY AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, THE DOCUMENT AMENDMENTS IN A FORM ACCEPTABLE TO THE CITY ATTORNEY

WHEREAS, on December 24, 2009, the City of Escondido acquired property located at 537 N. Elm Street (APN 230-103-1700) in Escondido using Neighborhood Stabilization Program ("NSP") funds; and

WHEREAS, on April 28, 2010, the Community Development Commission of the City of Escondido ("CDC") acquired vacant property located at North Elm Street in Escondido (APN 230-103-2200); and

WHEREAS, on April 28, 2010, Council authorized the release of a Request for Proposals for the provision of long-term affordable housing, utilizing available HOME/CHDO funds reserved for development and administrative activities as well as properties acquired using NSP and other funds; and

WHEREAS, on June 9, 2010, at a Public Hearing, Council approved an allocation of \$396,300 in HOME/CHDO funds reserved for development, along with the grant of a vacant parcel of land located at 537 North Elm Street in Escondido, to San Diego Habitat for Humanity ("SDHFH"), for affordable housing purposes; and

WHEREAS, on June 9, 2010, at a Public Hearing, CDC approved the disposition of the vacant parcel located at North Elm Street in Escondido (APN 230-103-2200), to SDHFH, for affordable housing purposes; and

WHEREAS, on June 9, 2010, at a Public Hearing, Council and CDC approved the allocations and grant of land located at 537 N. Elm Street and adjacent vacant lot in Escondido, to defer payment of the City's development fees to the end of the construction of the project, and authorized the execution of all agreements, loan documents and grant deeds necessary to provide such funds and property for the provision of affordable housing; and

WHEREAS, affordable housing agreements, consisting of a Promissory Note, HOME Funding Agreement, Deed of Trust, Regulatory Agreement, Service Agreement, Hazardous Materials Indemnity Agreement, Notice of Affordability and Grant Deeds, were dated August 23, 2010, and signed in August 2010 and May 2011, and escrow instructions were signed in May 2011 by Roni Keiser, Housing Manager; and

WHEREAS, Assembly Bill 1X 26 ("AB 1X 26") was passed by the State Legislature on June 15, 2011, and signed by the Governor on June 29, 2011, providing for the dissolution of redevelopment agencies; and

WHEREAS, on January 25, 2012, the City of Escondido elected to serve as the Successor Housing Agency of the Escondido Redevelopment Agency, known as the Community Development Commission of the City of Escondido, thus taking on the rights and responsibilities of the CDC housing agency; and

WHEREAS, the City desires at this time, and deems it to be in the best public interest to approve the amendment of the scope, timeline, and budget of the SDHFH development, and to authorize the execution of all amendments necessary for the provision of affordable housing.

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

1. That the above recitations are true.
2. That the City Council and the City of Escondido acting as the Housing Successor Agency to the Community Development Commission of the City of Escondido, approves an amendment to the affordable housing agreements with San Diego Habitat for Humanity for the provision of affordable housing units.
3. That the Mayor and City Clerk are hereby authorized to execute, on behalf of the City, in a form approved by the City Attorney, any amendments to agreements, loan documents, and grant deeds necessary to provide such funds and property for the development of affordable housing.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 7

Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Michael Lowry, Fire Chief
SUBJECT: Authorization to Re-chassis One (1) Existing Ambulance

RECOMMENDATION:

Staff recommends Council approve the Escondido Fire Department's request to have Emergency Vehicle Group (EVG) out of Anaheim, California, re-chassis one (1) existing ambulance in the current fleet instead of purchasing one (1) new ambulance.

FISCAL ANALYSIS:

Sufficient funds have already been approved in Fiscal Year 2012/2013 budget to pay for the ambulance to be re-chassis as provided for in the vehicle replacement account number 5208-653-715. The cost of re-chassis an existing ambulance is approximately \$42,000 less than purchasing a new ambulance. This change in procedure has already saved the City of Escondido approximately \$126,000 last fiscal year to re-chassis three (3) ambulances compared to purchasing three (3) new ambulances. The ambulance will cost \$126,506.02 including tax.

PREVIOUS ACTION:

City Council approved three (3) ambulances to be re-chassis from EVG on November 9, 2011.

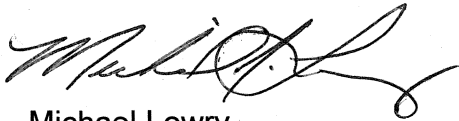
BACKGROUND:

Escondido Fire Department ambulances are on a seven-year replacement plan. Currently, we have one (1) ambulance in the fleet that is due to be replaced. Because of the economic climate the Fire Department suggested last fiscal year to re-chassis existing ambulances in lieu of purchasing new ambulances.

The process to re-chassis an ambulance is to take the existing Lifeline brand patient compartment off the Ford Diesel powered chassis and have it refurbished. The new refurbished patient compartment is then set on a brand new Ford gasoline powered chassis. The switch to a gasoline powered chassis also contributes to lowering the overall cost of replacing the vehicle.

Ambulance Re-chassis
November 14, 2012
Page 2

Emergency Vehicle Group (EVG) out of Anaheim California is the sole source vendor for Lifeline products which makes the patient compartment. EVG honored last years pricing on the Ford chassis at a lower cost than two other competitive quotes at the time.

A handwritten signature in black ink, appearing to read "Michael Lowry", with a stylized flourish at the end.

Michael Lowry
Fire Chief

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 8
Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Gilbert Rojas, Director of Finance
SUBJECT: Reject All Bids for Two Line Trucks and Authorize Re-Advertisement

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-177 rejecting all bids for two line trucks and approve staff to re-advertise.

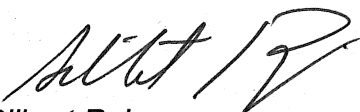
FISCAL ANALYSIS:

Sufficient funds are budgeted in the Fleet Services Vehicle Replacement Fund.

BACKGROUND:

Request for bids were mailed to six vendors on September 18, 2012 and three bids were received and opened on October 18, 2012. The Fleet Services Department reviewed all bids and determined that the bids were noncompliant based on the City's bid specifications; therefore, as per Municipal Code Section 10-102(e), Council may reject all and re-advertised.

Respectfully submitted,


Gilbert Rojas,
Director of Finance

RESOLUTION NO. 2012-177

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZE CITY COUNCIL TO REJECT
ALL BIDS RECEIVED FOR TWO LINE
TRUCKS

WHEREAS, a notice inviting bids was duly published; and

WHEREAS, on September 18, 2012, request for bids for two 2013 line trucks
were mailed to vendors; and

WHEREAS, on October 18, 2012, three bids were received and opened; and

WHEREAS, per Municipal Code Section 10-102(e), City Council may reject all
bids and re-advertise; and

WHEREAS, the Director of Finance and Fleet Superintendent recommend the
rejection of all bids.

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 City Council accepts the recommendation of the Director of Finance
and Fleet Superintended to reject all bids and approve staff to re-advertise.
3. That the City Council adopts this resolution, rejects all bids received and
opened, and approves city staff to re-advertise for bids.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 9
Date: **November 14, 2012**

TO: Honorable Mayor and Members of the City Council
FROM: Edward N. Domingue, Director of Engineering Services
Ali M. Shahzad, Associate Engineer
SUBJECT: All-Way Stop Request for Juniper Street at Ninth Avenue

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-180, amending the Traffic Schedules for stop intersections.

FISCAL ANALYSIS:

Funds are available to install the traffic controls.

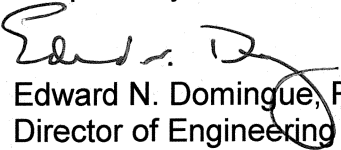
PREVIOUS ACTION:

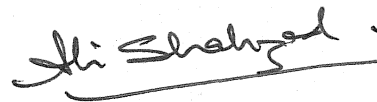
The Transportation and Community Safety Commission considered this item at their October 11, 2012 meeting and voted to support the request.

BACKGROUND:

At the request of the Old Escondido Neighborhood Group, Traffic Engineering staff developed a traffic calming plan for Juniper Street between 5th and 11th Avenue. Traffic calming plan included an interim all-way stop at the intersection of Juniper Street and 9th Avenue. On October 11, 2012, Transportation and Community Safety Commission ("Commission") approved the traffic calming plan with inclusion of an interim all-way stop at Juniper Street and 9th Avenue. The Commission directed the staff to forward their approval recommendation for an interim stop sign at Juniper Street and 9th Avenue to Council for final approval. The Commission also directed the staff to evaluate the effectiveness of traffic calming plan for Juniper Street within a few months after implementation and report back to Commission.

Respectfully submitted,


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


Ali M. Shahzad, P.E.
Associate Engineer

AREA MAP – All-Way Stop at Juniper St. and 9th Ave.



RESOLUTION NO. 2012-180

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING THE TRAFFIC SCHEDULE FOR
STOP INTERSECTIONS

JUNIPER STREET AT 9TH AVENUE

WHEREAS, Section 28-5 of the Escondido Municipal Code, City of Escondido, provides that the City Council shall establish a traffic schedule for stop intersections; and

WHEREAS, this City Council desires at this time, and deems it to be in the best public interest, to amend said traffic schedules;

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 traffic schedule for stop intersections is hereby amended to reflect the addition of Juniper Street at 9th Avenue.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 10
Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Cory Moles, Acting Chief of Police
SUBJECT: FY 2011-12 US Department of Justice Bulletproof Vest Partnership Program

RECOMMENDATION:

It is requested that Council authorize the Escondido Police Department to accept FY 2012 Bulletproof Vest Partnership Program funds in the amount of \$1,863.91 from the United States Department of Justice. Council action is requested to authorize the Chief of Police to execute grant documents and authorize staff to establish budgets to spend funds to purchase body armor for front-line law enforcement.

FISCAL ANALYSIS:

The grant will provide funding in the amount of \$1,863.91 to purchase bulletproof vests. This will have no impact on the General Fund Budget.

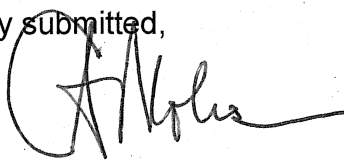
PREVIOUS ACTION:

None

BACKGROUND:

The US Department of Justice has awarded the Escondido Police Department a grant in the amount of \$1,863.91 to purchase bulletproof vests. The Bulletproof Vest Partnership Program provides funds for agencies to receive subsidies for the purchase of life saving body armor. The funds can be used to subsidize up to 50% of the cost of the body armor. The Escondido Police Department proposes to use these funds for vest purchases for front-line law enforcement personnel.

Respectfully submitted,



Cory Moles
Acting Chief of Police



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: November 14, 2012
Department: Police
Division: Administration
Project/Budget Manager: Susan Cervenka 4402
Name Extension
Council Date (if applicable): November 14, 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. Contains entries for Revenue - Federal Grant and Police Grant, both with a \$1,863.91 increase.

Explanation of Request:

A budget adjustment is needed to spend funds to purchase bulletproof vests for front-line law enforcement personnel.

APPROVALS

Department Head [Signature] 11/6/12
Finance [Signature] 11/6/12
City Manager
City Clerk

Distribution (after approval): Original: Finance

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 11
Date: **November 14, 2012**

TO: Honorable Mayor and Members of the City Council

FROM: Cory Moles, Acting Chief of Police

SUBJECT: FY 2008 California Office of Traffic Safety Avoid Driving Under the Influence (DUI)
Campaign Grant Modification

RECOMMENDATION:

It is requested that Council authorize the Escondido Police Department to accept additional grant funds in the amount of \$10,000 from the San Diego Sheriff's Department for overtime expenses related to the California Office of Traffic Safety "Avoid DUI Campaign" Grant Program, and approve budget adjustments to spend grant funds.

PREVIOUS ACTION:

City Council accepted a \$31,525 California Office of Traffic Safety "Avoid the 14" Grant from the San Diego Sheriff's Department on October 22, 2008. Additional funds were accepted in the amount of \$15,844 on June 13, 2012.

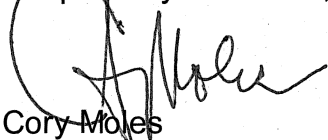
BACKGROUND:

The San Diego County Sheriff's Department received additional funds for the FY 2008 California Office of Traffic Safety "Avoid DUI Campaign" Grant. As a result, they have allocated \$10,000 to the Escondido Police Department under the current grant.

San Diego County "Avoid DUI Campaign" is a partnership of local law enforcement agencies participating in grant activities countywide. Activities include DUI/DL checkpoints, multi-agency DUI task force operations, court sting operations, saturation patrols, and warrant service sweeps targeting multiple DUI offenders who violate probation terms or fail to appear in court.

Your action today to accept additional grant funds and authorize staff to submit grant documents, will allow the Police Department to receive overtime reimbursement for continued participation in countywide DUI enforcement operations with allied agencies.

Respectfully submitted,



Cory Moles
Acting Chief of Police



CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 12
Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Cory Moles, Acting Chief of Police

SUBJECT: Sole Source Authorization for Radio Purchases

RECOMMENDATION:

It is requested that City Council adopt Resolution No. 2012-185 authorizing the Police Department to purchase Project 25 ("P25") compliant portable radios and upgraded accessories from Motorola, Inc. by utilizing San Diego County's Regional Communication System ("RCS") cooperative purchasing contract.

FISCAL ANALYSIS

These purchases will not affect the General Fund Budget. Radios and encryption are budgeted in the following project accounts:

<u>Funding Source</u>	<u>Amount</u>
FY 2010 Operation Stonegarden Grant	\$21,729
FY 2011 State Homeland Security Grant	\$82,898
FY 2012 State Homeland Security Grant	\$38,244
FY 2013 Capital Improvement Project	<u>\$70,314</u>
Total	\$213,185

PREVIOUS ACTION:

On January 26, 2011, City Council authorized approval of the FY 2010 Operation Stonegard Grant. On March 9, 2011, City Council authorized the approval of the FY 2010 State Homeland Security Grant Program. On May 23, 2012, City Council authorized approval of the FY 2011 State Homeland Security Grant Program. A project account has been established in the FY 2013 Captial Improvement Budget to begin the police radio upgrade project.

BACKGROUND:

The Escondido Police Department operates within San Diego County's Regional Communication System ("RCS"); this system ensures interoperable radio communication with other agencies. RCS

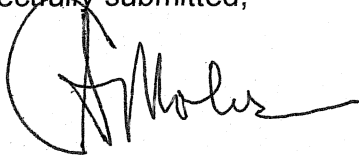
contracts directly with Motorola, Inc. and must adhere to specific standards for digital radio communications for use by federal, state and local public safety agencies in North America.

Recently, RCS upgraded its standards for portable and mobile radio devices to operate on an open-standard base network. To maintain interoperable communication, the Escondido Police Department must also upgrade its portable and mobile radio devices. Currently the Department uses only Motorola radios. The RCS Board of Directors recommends that agencies do not mix radio manufacturers in their fleet due to significant differences between manufacturers and how the radios are operated.

The upgraded radios are specialized equipment and will be purchased directly from Motorola, Inc., utilizing a RCS cooperative purchasing contract with the County of San Diego. According to Escondido Municipal Code Section 10-103(d), the City may dispense with regularly required public bidding procedures when a specialized piece of equipment is required to meet quality and performance criteria.

Your action is required today to approve sole source purchasing procedures for 43 portable Motorola radios.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cory Moles", written over a circular stamp or mark.

Cory Moles
Acting Chief of Police

RESOLUTION NO. 2012-185

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE POLICE DEPARTMENT TO PURCHASE PROJECT 25 ("P25") COMPLIANT RADIOS AND UPGRADED ACCESSORIES FROM MOTOROLA, INC., UTILIZING SAN DIEGO COUNTY'S REGIONAL COMMUNICATION SYSTEM COOPERATIVE PURCHASING AGREEMENT

WHEREAS, the Escondido Police Department participates in the San Diego County's Regional Communication System ("RCS") which ensures interoperable radio communication with other agencies; and

WHEREAS, RCS has changed its criteria to operate on an open-standard based network ("P25") used by federal, state/province and local public agencies in North America; and

WHEREAS, the City of Escondido must upgrade portable and mobile radio devices to P25 standards to maintain interoperable communication with allied agencies; and

WHEREAS, grant and Capital Improvement funds are available to begin equipment upgrades in the amount of \$213,185; and

WHEREAS, Motorola, Inc. can provide radio equipment that meets specialized PC25 standards established by the RCS Board of Directors; and

WHEREAS, this equipment meets sole source criteria and may be acquired utilizing a cooperative purchasing contract between the County of San Diego and Motorola, 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 City Council authorizes the Police Department to purchase P25 compliant radios and upgraded accessories from Motorola, Inc., utilizing San Diego County's Regional Communication System Cooperative Purchasing Agreement in the amount of \$213,185.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 13

Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey R. Epp, City Attorney

SUBJECT: Additional Standards for Taxicab Operators

RECOMMENDATION:

Consider introduction of Ordinance No. 2012-22 amending sections of the Escondido Municipal Code to update standards required of taxicab operators and drivers in the City of Escondido.

PREVIOUS ACTION:

On July 10, 1996, the City Council passed Ordinance 96-25 which dissolved the Franchise Commission which previously regulated taxicabs. On November 20, 1996 the City Council adopted Ordinance No. 96-36 which revised Chapter 26 of the Escondido Municipal Code to reflect revised licensing requirements for taxicab operators and provide for the effect of the dissolution of the Franchise Commission.

On November 19, 2008, the City Council adopted Ordinance 2008-31 which amended Chapter 26, Section 26-45 of the Escondido Municipal Code to specify the insurance coverage required to operate a taxicab within the City.

BACKGROUND:

Councilmember Ed Gallo and Councilmember Marie Waldron have requested that staff prepare an ordinance to add standards and requirements for operating a taxicab in the City of Escondido. An ordinance and a redline ordinance illustrating the proposed changes are attached to this staff report. The additional standards requested were that a taxicab operator maintain at least ten (10) operating vehicles, that one (1) vehicle be compliant with the Americans Disabilities Act (ADA) and available at all times, that a taxicab driver not smoke while transporting a passenger, and that a taxicab driver not use a cellphone while transporting a passenger.

The regulation of taxicabs is traditionally a subject of a city's police power. *Cotta v. City and County of San Francisco*, 157 Cal.App.4th 1550 (2007). The City may adopt rules and regulations by ordinance or resolution regarding the licensing and regulation of the operation of vehicles for hire and drivers of passenger vehicles for hire. Cal. Veh. Code § 21100(b).

Additional Standards for Taxicabs

November 14, 2012

Page 2

Currently, Escondido Municipal Code Chapter 26 regulates the operation and licensing of a taxicab operator and/or driver. Chapter 26 requires potential taxicab operators to obtain a license from the City according to the standards and requirements as determined by the City. One of the requirements is to maintain insurance coverage for the taxicab in the amounts set out in the municipal code. Escondido also requires potential taxicab drivers and operators to obtain the appropriate license from the San Diego County Sheriff in addition to regulations imposed by the City. The Sheriff's licensing requirement is consistent with the requirement of other local municipalities. Some jurisdictions impose more detailed restrictions and regulations on operators which also require more oversight and administration by the jurisdiction.

The proposed ordinance would add two requirements for taxicab operators. Ordinance No. 2012-22 would require that an operator of a taxicab apply for, and maintain, at least ten (10) vehicles available to be dispatched at all times. The proposal would also require that an operator of a taxicab have at least one wheelchair accessible vehicle available to be dispatched at all times.

The proposed ordinance would add two requirements for both taxicab operators and drivers. Ordinance No. 2012-22 would make it unlawful for a taxicab driver to smoke while transporting a passenger. The proposal would also make it unlawful for a taxicab driver to use a cell phone, regardless of whether it is used in conjunction with a "hands free" device, while transporting a passenger unless it is for work-related or emergency purposes. Using a cell phone would include placing or receiving a phone call, sending or receiving a text message, sending or receiving an email, or other text based communication.

The State of California regulates the use of cell phones while operating a motor vehicle. Generally, it is unlawful to place or receive a phone call while driving unless the driver is done using a "hands free" device. Cal. Veh. Code § 23123. Similarly, it is unlawful to write, send, or read a text-based communication while driving. Cal. Veh. Code § 23123.5. While the State has regulated the use of cell phones generally by persons operating a motor vehicle, the ordinance before you today contains rules and regulations governing the licensing and operation of a taxicab operator or taxicab driver. The proposed ordinance would prohibit the use of cell phones by taxicab drivers while transporting passengers, regardless of whether they use a "hands free" device. The exception to the prohibition would be for emergency and work related purposes. This would allow better communication between the passenger and the taxicab driver and would ensure the reliable provision of transportation to residents. While it is noted that the enforcement of such a prohibition may be difficult, the mere prohibition itself may serve as a deterrent.

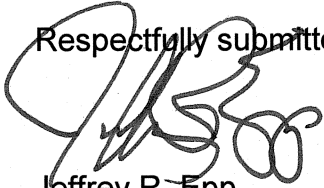
CONCLUSION:

The additional standards proposed by Councilmember Gallo and Councilmember Waldron through Ordinance No. 2012-22 would require that a taxicab operator maintain at least ten (10) operating vehicles, that one (1) vehicle be compliant with the Americans Disabilities Act (ADA) and available at

Additional Standards for Taxicabs
November 14, 2012
Page 3

all times, that a taxicab driver not smoke while transporting a passenger, and that a taxicab driver not use a cellphone while transporting a passenger.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JEFFREY R. EPP', written in a cursive style.

Jeffrey R. Epp
City Attorney

ORDINANCE NO. 2012-22

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING THE ESCONDIDO MUNICIPAL
CODE TO ADD REQUIREMENTS FOR THE
LICENSING AND OPERATION OF A
TAXICAB IN THE CITY

WHEREAS, the City Council of the City Escondido desires to amend Chapter 26 of the Escondido Municipal Code to provide protection for the public health, safety, and welfare by adopting additional requirement for taxicabs to operate within the City; and

WHEREAS, the City Council finds it necessary for the public welfare to require taxicab operators have a minimum of ten taxicabs; and

WHEREAS, the City Council finds it necessary for the public welfare to require taxicab operators have a minimum of one vehicle which would be accessible to persons in wheelchairs in conformance with the American Disabilities Act; and

WHEREAS, the City Council finds it necessary for the public welfare to prohibit taxicab drivers from smoking or using a cell phone while transporting passengers.

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

SECTION 1. RECITALS. The City Council hereby finds and determines that the foregoing recitals, which are incorporated herein by reference, are true and correct.

SECTION 2. Article 1 of Chapter 26 of the Escondido Municipal Code Section 26-1 is hereby amended to read as follows:

Sec. 26-1. Definitions.

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section.

- (a) **Operating a Wireless Communication Device.** To operate a wireless communications device shall mean placing or receiving a phone call using the device, talking or listening to another person by use of the device, using the device to manually communicate with any person using a text-based communication, including, but not limited to, communications referred to as a text message, instant message, or electronic mail.
- (b) **Smoke or Smoking.** Smoke or Smoking means the lighting or carrying of a pipe, cigar, cigarette, or other instrument used to burn tobacco of any kind.
- (c) **Wait Time.** Waiting time shall include all time when a taxicab occupied or engaged by a passenger is not in motion or traveling at a speed which is slow enough for the time rate to exceed the mileage rate, and the time consumed while standing at the direction of the passenger or person who has engaged such taxicab.

SECTION 3. That Sections 26-9 & 26-10 are hereby amended as follows:

Sec. 26-9 Use of Wireless Communications Device Prohibited.

- (a) A taxicab driver shall not operate a wireless communications device while transporting a passenger, regardless of whether the device can be operated hands-free.
- (b) This section does not apply to a taxicab driver using a wireless telephone or electronic communications device for work-related purposes, or for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency service agency or entity.

Sec. 26-10 Smoking in Taxicab Prohibited.

It shall be unlawful for a taxicab driver to smoke while a passenger is in the taxicab.

SECTION 4. That Article 2 of Chapter 26 of the Escondido Municipal Code Sections 26-41 & 26-42 are hereby amended as follows:

Sec. 26-41 Authority to Refuse Issuance of License

- (a) The City may refuse to issue a license required by this article to any applicant whose responsibilities, qualifications, or methods of operating its business does not comply with the standards or requirements as determined by the city council by resolution. Any of the following reasons shall be sufficient for refusal of a license:
- (1) The application is for less than ten (10) vehicles;
 - (2) The application does not provide for at least one (1) vehicle which is wheelchair accessible in compliance with the standards set forth in the Americans Disabilities Act (ADA);
 - (3) That the color schemed, name, monogram, or insignia to be used upon such automobiles is in conflict or imitates any color scheme, name, monogram, or insignia used by any person in such a manner as to be misleading or tend to deceive or defraud the public; or
 - (4) For the violation of any standard or requirement established pursuant to Section 26-41(a).

Sec. 26-42 Revocation, Suspension or Modification of License

- (a) The City may modify, suspend, or revoke any certificate when any licensee fails to comply with any standard or requirement established pursuant to Section 26-41. Any of the following reasons shall be sufficient for the modification, suspension, or revocation of a license:
- (1) Failure to maintain at least ten (10) vehicles that are fully compliant with the provisions of this Chapter available to be dispatched at all times;
 - (2) Failure to have at least one wheelchair accessible vehicle pursuant to Section 26-41 available to be dispatched at all times;
 - (3) Failure to maintain any standard or requirement established pursuant to Section 26-41.
 - (4) Failure to comply with any of the provisions of this Chapter.

SECTION 5. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct

and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 6. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 14
Date: **November 14, 2012**

TO: Honorable Mayor and Members of the City Council
FROM: Jennifer K. McCain, Assistant City Attorney
SUBJECT: Amendment to Escondido Municipal Code Section 2-24 (Selection of Deputy Mayor)

RECOMMENDATION:

Consider introduction of Ordinance No. 2012-23 amending Escondido Municipal Code (EMC) section 2-24 to allow the selection of the deputy mayor to be conducted pursuant to City Council Rules of Procedure.

PREVIOUS ACTION:

On January 12, 2011, the City Council adopted EMC section 2-24 to provide for a procedure to appoint a deputy mayor from among the councilmembers after each general municipal election.

BACKGROUND:

EMC section 2-24 sets forth a specific procedure for selecting the deputy mayor from among the councilmembers following each general municipal election. It also sets forth a rigid timeline for such appointment. Because this process is set forth in the Code, a different process or selection procedure requires a code amendment, with introduction and adoption of an ordinance. This formalized procedure is not required by state law, and more flexibility in the appointment process may be desired. Flexibility in the appointment of the deputy mayor becomes even more important under circumstances as those presently being faced by the Council in which an appointment to fill a Council vacancy may also be needed.

Therefore, it is recommended that the appointment of the deputy mayor be conducted pursuant to City Council Rules of Procedure. The Council's Rules of Procedure are adopted by Resolution that can be amended by a majority of the City Council at a single meeting. The amendments to Escondido Municipal section 2-24 allow for this change, by moving from a codified procedure that can only be changed by ordinance to a procedure that can be changed by resolution. If this change is approved, the City Council Rules of Procedures will be on your agenda for December 12, 2012 and contain the procedure for selecting a deputy mayor.

Respectfully submitted,



Jennifer K. McCain
Assistant City Attorney

ORDINANCE NO. 2012-23

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING SECTION 2-24 OF THE
ESCONDIDO MUNICIPAL CODE
PERTAINING TO THE SELECTION OF A
DEPUTY MAYOR

WHEREAS, California Government Code Section 36813 authorizes a City Council to adopt rules of procedure to govern its meetings; and

WHEREAS, California Government Code Section 36801 also provides authority for the City Council to select one of its members to serve as a Deputy Mayor; and

WHEREAS, Section 2-24 of the Escondido Municipal Code provides for the regular meeting times and the selection of a Deputy Mayor.

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

SECTION 1. That Section 2-24 of the Escondido Municipal Code is amended to read as follows:

Sec. 2-24. Selection of Deputy Mayor.

- (a) The City Council shall select a Deputy Mayor by appointment from among the Council members pursuant to the procedure set forth in the City Council Rules of Procedure.

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

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

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



CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 15
Date: November 14, 2012

TO: Honorable Mayor and City Council

FROM: Barbara J. Redlitz, Director of Community Development

SUBJECT: Local Register Designation and Mills Act Contract for a Residence on a Hilltop at 2985 Su Siempre Place (Case HP-12-0001).

APPLICANTS: Thomas M. and Laurel C. Scieszka

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-183 to approve listing the structure at 2985 Su Siempre Place on the City's Local Register and to approve the Historic Property Preservation Agreement (commonly referred to as the "Mills Act Contract") for the subject property.

ENVIRONMENTAL STATUS:

In compliance with CEQA Section 15331, "Historical Resource Restoration/Rehabilitation," a Notice of Exemption was prepared on October 24, 2012.

FISCAL ANALYSIS:

Approval of the Mills Act Contract would reduce the property tax to the homeowner, and proportionately reduce the City's share of property taxes. The annual tax revenue loss to the City on this property is estimated to be less than \$1,000. The City has currently entered into 78 Mills Act contracts, which have cumulatively reduced the City share of property taxes by approximately \$16,200. Studies recently completed in the County show that Mills Act approved properties increase in value an average of 16%, neighboring properties within 250 feet increase in value an average of 3.7%, and properties within 500 feet increase in value an average of 1.6%.

GENERAL PLAN ANALYSIS:

The property is located within the Estate II (E2) land use designation of the General Plan. Cultural Resources Policy 5.5 encourages the preservation of buildings and areas with special and recognized historic and architectural value.

PREVIOUS ACTION:

The Historic Preservation Commission (HPC) voted unanimously to recommend approval of adding the structure to the Local Register Listing and entering into a Mills Act Contract on October 2, 2012.

BACKGROUND:

The subject property, addressed as 2985 Su Siempre Place (APN 239-231-4200), is 1.36 acres located on a hilltop east of the intersection of South Centre City Pkwy and the I-15 freeway. The property includes a 3,500 SF ranch house built in 1951 by Forrest Holly using L.R. Green adobe bricks. The house was built for James &

Helen Bannister of Escondido's Banister Iron Works. Forrest and Jean Holly, who were both blind, raised a family of four children and built a life for themselves in Escondido. Their inspiring story became a biographical novel in 1988 and in 1996 CBS aired it as a movie entitled "What Love Sees."

ANALYSIS:

Escondido Historical/Cultural Resources Survey:

The applicant has conducted the required historic research and data collection, and has provided the information on the required State Department of Parks and Recreation forms (see attached). The information provided by the applicant includes historical background and descriptive analysis of the architectural style and is adequate for the purpose of determining the appropriateness of adding the structure to the Local Register.

Local Register Listing: Requests for listing resources on the Local Register require that both the Historic Preservation Commission and the City Council conduct a public hearing to consider the request and receive property owner consent. Historic resources are evaluated against seven criteria and must meet at least two of the seven. Staff recommends listing the property on the Local Register of Historic Places since it meets five of the seven criteria based on the following:

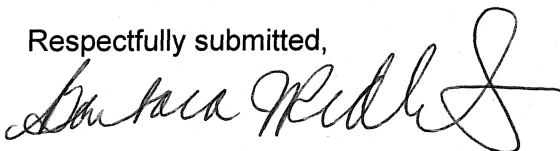
- *The house is strongly identified with the Bannister, L.R. Green and Holly families who contributed significantly to the history of the City of Escondido and the region.*
- *The Adobe Ranch House embodies distinguishing characteristics of an architectural type or specimen and its original design is substantially unaltered.*
- *The residence is older than 50 years, having been constructed in 1951 and is 61 years old.*
- *The structure sits atop a prominent hill, having a commanding view of its Adobe Heights neighborhood and much of Escondido valley.*
- *This is one of very few prominent large-scale adobe residences remaining in the city.*

Mills Act Contract: The Mills Act is a provision in state law that enables owners of designated historic properties to voluntarily enter into a preservation contract with the City and receive a reduction in their property taxes. The contract runs for ten years and it is automatically renewed each year unless a notice of non-renewal is filed. The terms of the contract require that the owner make a commitment to maintain the property and complete other improvements (see Attachment 'B' of the contract). As indicated, significant improvements at this property have been completed. Under the terms of the Mills Act, owners can list appropriate improvement projects they have already completed and can also include additional projects in the future with prior HPC or Planning Division approval. All improvements must be performed to the Secretary of the Interior Standards. In addition, the applicant has been informed that all exterior modifications require staff review.

CONCLUSION:

By designating the structure on the Local Register, the Council will be furthering the preservation of historic resources associated with the history of Escondido. By approving the Mills Act Contract, the City would be incurring a relatively small loss per year of property tax revenue. This will provide the property owner a tax savings that will be earmarked for preserving the property.

Respectfully submitted,



Barbara J. Redlitz
Director of Community Development



Paul K. Bingham
Assistant Planner II

**HISTORIC PRESERVATION
COMMISSION**

**Agenda Item No.: F.1
Date: October 2, 2012**

TO: Historic Preservation Commission

FROM: Paul Bingham, Assistant Planner II

REQUESTS: Residence addressed as 2985 Su Siempre Place (case number HP12-0001)

1. Listing structure on the Local Register of Historic Places; and
2. Mills Act contract request

RECOMMENDATION: Forward recommendation of approval to the City Council

BACKGROUND:

City of Escondido Historical/Cultural Resources Survey

A City of Escondido Historical/Cultural Resources Survey was completed in 1990 (Agis, May 1990). Close to 1,000 resources were inventoried in the survey for their significance. The Survey of 1990 was conducted in compliance with procedures established by the U.S. Department of the Interior, National Park Service and the State Office of Historic Preservation. A Historical/Cultural Resources Survey is a collection of information that identifies documents and describes the historical resources in the community. The survey also associates the resources with historical events and/or people. Among other preservation programs, the survey serves as the basis for historic preservation plans. The survey also fulfills a higher level of historic nomination requirements (Local, State and National), it allows for the applicability of Historic Building Code in regard to rehabilitation/renovation of structures, and justifies local, state and federal funding assistance.

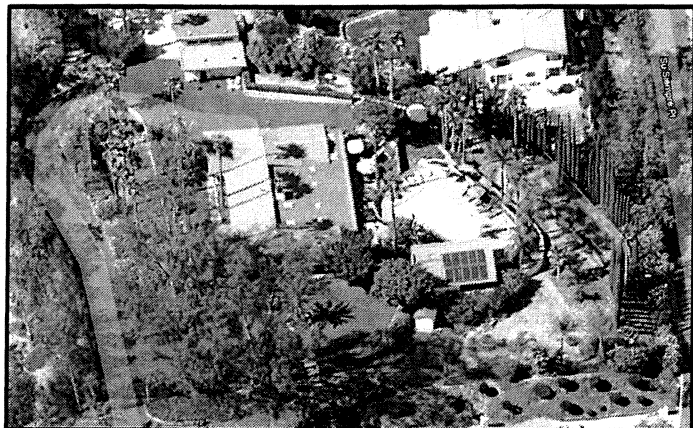
Local Register of Historic Places Listing

The Historic Preservation Ordinance No. 2000-23, Section 33-794-5 identifies a process and criteria for listing historic structures on the City's Local Register. Requests for listing on the Local Register require that both the Historic Preservation Commission and the City Council conduct a public hearing to consider the request. The historic resource is evaluated against seven criteria and must meet at least two of the seven.

Mills Act Contract and Property Applying

The Mills Act is a state law that enables owners of designated historic properties to enter into a preservation contract with their local legislative body and receive a substantial reduction in the property taxes. One of the incentives for the preservation of historic and/or cultural resources, approved in 1989, allows property owners of designated historic resources to enter into a Mills Act contract with the City. The revised Historic Ordinance 92-409, adopted by Council on October 28, 1992, clarified that a property owner may apply for a Mills Act contract if the resource has been listed as a Local Register property. The owner is requesting the property to be listed on the City's Local Register at the next available City Council hearing and is currently requesting to enter into a Mills Act contract.

The hilltop property at 2985 Su Siempre Place (APN 239-231-4200) consists of 1.36 acres with a main single-story 3500 SF ranch house built in 1951, other associated structures, many mature plantings and a swimming pool. The main house was built of adobe for Helen G. Bannister by Weir Construction. The vacant property prior to



building had been owned earlier by L.R. Green. The gable roof is Spanish clay tile and the windows are steel casement with brick sills and wooden headers. The Scieszkas have owned the house since 1999.

ANALYSIS

Escondido Historical/Cultural Resources Survey

The applicant has conducted the required historic research and data collection, and has provided the information on the required format, State Department of Parks and Recreation forms (see attached). The information provided by the applicant, includes historical background and descriptive analysis of the architectural style, is adequate for the purpose of determining the appropriateness of adding the structure to the survey.

Local Register of Historic Places Listing

This request by the current owners, Thomas M. & Laurel C. Scieszka, is to consider placing this resource on the Local Register.

The structure meets the following five of the seven criteria:

1. Escondido historical resources that are strongly identified with a person or persons who significantly contributed to the culture, history, prehistory, or development of the City of Escondido, region, state or nation;

The house was built by Weir Construction, famous Escondido builders on property previously owned by L.R. Green, another of Escondido's prominent residents.

2. Escondido building or buildings that embody distinguishing characteristics of an architectural type, specimen, or are representative of a recognized architect's work and are not substantially altered.

The structure is built of native adobe bricks, unique to the area.

5. Escondido historical resources that are fifty (50) years old or have achieved historical significance within the past 50 years.

The structure was built in 1951 and is now 61 years old.

6. Escondido historical resources that are an important key focal point in the visual quality or character of a neighborhood, street, area or district.

The structure sits at the top of this prominent hill with a commanding view of their Adobe Heights neighborhood and of much of the Escondido valley.

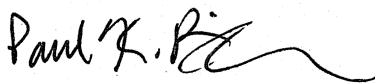
7. Escondido historical building that is one of the few remaining examples in the city possessing distinguishing characteristics of an architectural type.

This is one of very few prominent large-scale adobe residences remaining in the city.

Mills Act Contract

The Mills Act contract is for a minimum of ten years, automatically renewed each year unless a notice of non-renewal is filed. The terms of the contract require that the property owner make a commitment to maintain the structure and surrounding property, per a maintenance schedule that has been included with this report (see attached). All improvements must be performed to the Secretary of the Interior Standards. In addition, the applicant has been informed that all exterior modifications require staff review. Staff feels that the proposed Mills Act Contract is appropriate since the property meets the established criteria for a historic resource, and adequate improvements have been listed.

Respectfully Submitted,



Paul K. Bingham
Assistant Planner II

Mills Act Application List of Improvements

Property Address: 2985 Su Siempre Place
Property Owners: Thomas M. & Laurel C. Scieszka

1. Replace tile roof and individual bird stops on main house and outbuildings (completed).
2. Replace original cyclone fence and gates at entrance (complete).
3. Re-surface original asphalt driveway (completed).
4. Repaint main house and outbuildings (completed).
5. Reglaze and repaint frames of existing main house windows (completed).
6. Upgrade house plumbing (completed).
7. Replace both existing water heaters (completed).
8. Replace old air conditioning unit and wiring (completed).
9. Upgrade old wiring in playroom (completed).
10. Replace weather stripping on all casement windows (planned).

State of California -- The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
PRIMARY RECORD

Primary # _____
HRI # _____
Trinomial _____
NRHP Status Code _____

Other Listings _____
Review Code _____ Reviewer _____ Date _____

Page 1 of 3 *Resource Name or #: (Assigned by recorder) _____

P1. Other Identifier: _____

*P2. Location: Not for Publication Unrestricted

*a. County San Diego and (P2c, P2e, and P2b or P2d. Attach a Location Map as necessary.)

*b. USGS 7.5' Quad _____ Date _____ T _____; R _____; _____ 1/4 of _____ 1/4 of Sec _____; _____ B.M.

c. Address 2985 Su Siempre Place City Escondido Zip 92025

d. UTM: (Give more than one for large and/or linear resources) Zone _____, _____ mE/ _____ mN

e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate) 239-3/Parcel 231/Map 11617/RT 514

*P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)
See Attached.

*P3b. Resource Attributes: (List attributes and codes) _____

*P4. Resources Present: Building Structure Object Site District Element of District Other (Isolates, etc.)

P5a. Photograph or Drawing (Photograph required for buildings, structures, and objects.)

See attached photos

P5b. Description of Photo:
(view, date, accession #) _____

*P6. Date Constructed/Age and Source:
 Historic Prehistoric Both

*P7. Owner and Address: Scieszka
Living Trust, 2985 Su Simpre Place
Escondido, CA 92025

*P8. Recorded by:
(Name, affiliation, and address) _____

*P9. Date Recorded: _____

*P10. Survey Type: (Describe) Escondido Historical Survey Update 1940-1955 memo from Jay Petrek, Senoir Planner for
Escondido, dated 2/15/12 attached.

*P11. Report Citation: (Cite survey report and other sources, or enter "none.") _____

*Attachments: NONE Location Map Continuation Sheet Building, Structure, and Object Record
 Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record
 Artifact Record Photograph Record Other (List): Chain of Ownership, Description, Maps 239-23,25-296,11617

Primary # _____

HRI # _____

*NRHP Status Code _____

Page 2 of 3 *Resource Name or #: (Assigned by recorder) _____

B1. Historic Name: Rancho Siempre

B2. Common Name: 2985 Su Siempre Place

B3. Original Use: Residential

B4. Present Use: Residential

*B5. Architectural Style: Adobe Ranch

*B6. Construction History: (Construction date, alterations, and date of alterations)

Construction began in 1949 by Forest Holly Construction and completed in 1951. Patio to the East of the main structure was added in 1958 by Weir Construction Company.

*B7. Moved? No Yes Unknown Date: _____ Original Location: Yes

*B8. Related Features:

Cabana House, foremans house, retaining walls.

B9a. Architect: Forest Holly and Helen Bannister b. Builder: Forest Holly Construction

*B10. Significance: Theme Adobe Area: Adobe District

Period of Significance: 1950's Property Type: Residential Applicable Criteria: _____

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity.)

L.R. Green was well known for his adobe block company of which the ranch house is constructed. The builder, Forest Holly, pre-dates the more well known of adobes Weir Construction. The original owner/builder was the daughter of L.R. Green, named Helen. I am sure L.R. Green spent time here and more than likely had some say in the construction. The architectural style is unique in its own right, and the area.

B11. Additional Resource Attributes: (List attributes and codes) _____

*B12. References:

B13. Remarks:

*B14. Evaluator:

Sketch Map with north arrow required.

See attached map

*Date of Evaluation: _____

(This space reserved for official comments)

State of California -- The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
CONTINUATION SHEET

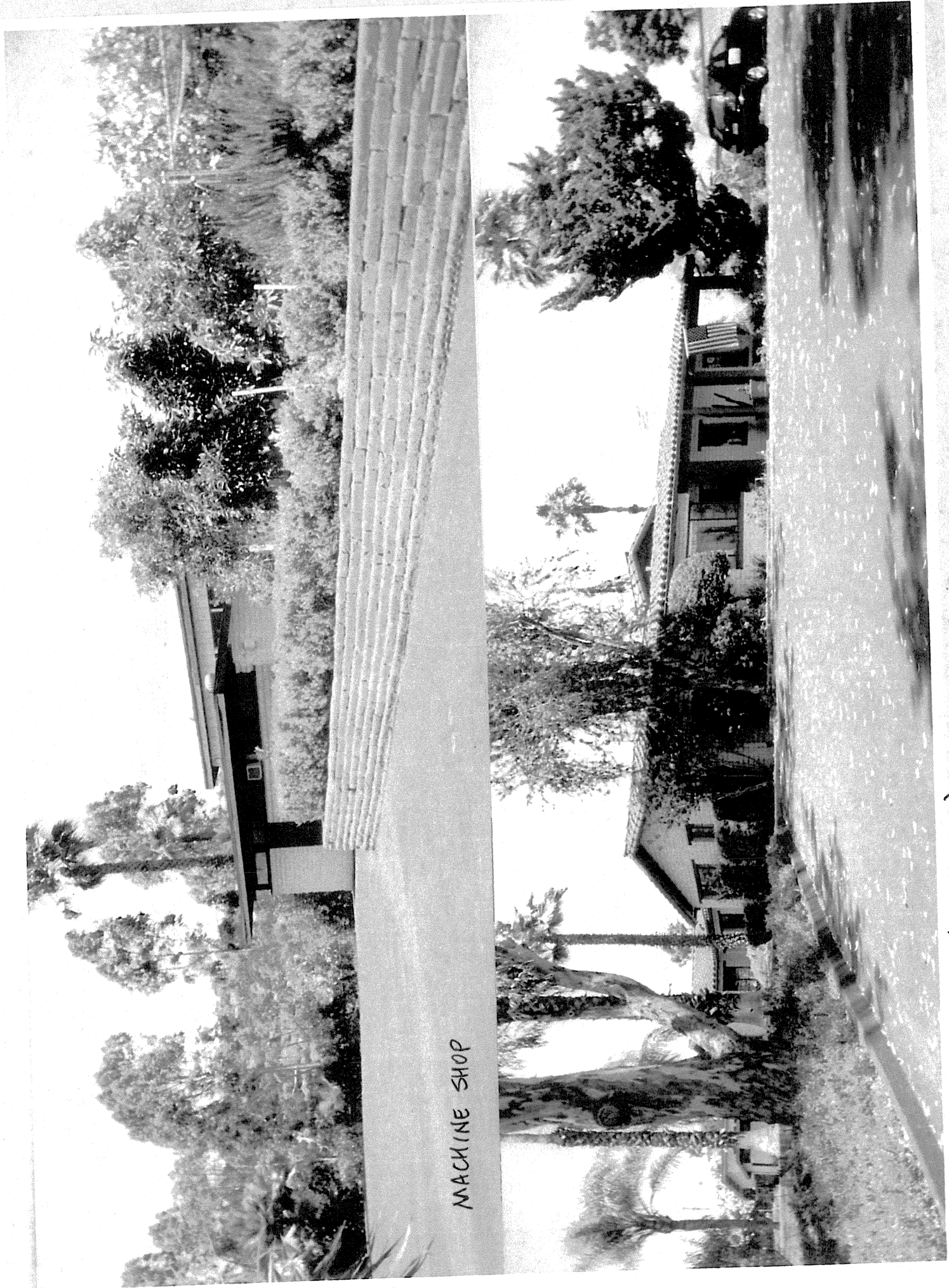
Primary # _____
HRI # _____
Trinomial _____

Page 3 of 3 *Resource Name or #: (Assigned by recorder) _____

Recorded by: _____ Date: _____

Continuation Update

See attached description and chain of ownership.



MACHINE SHOP

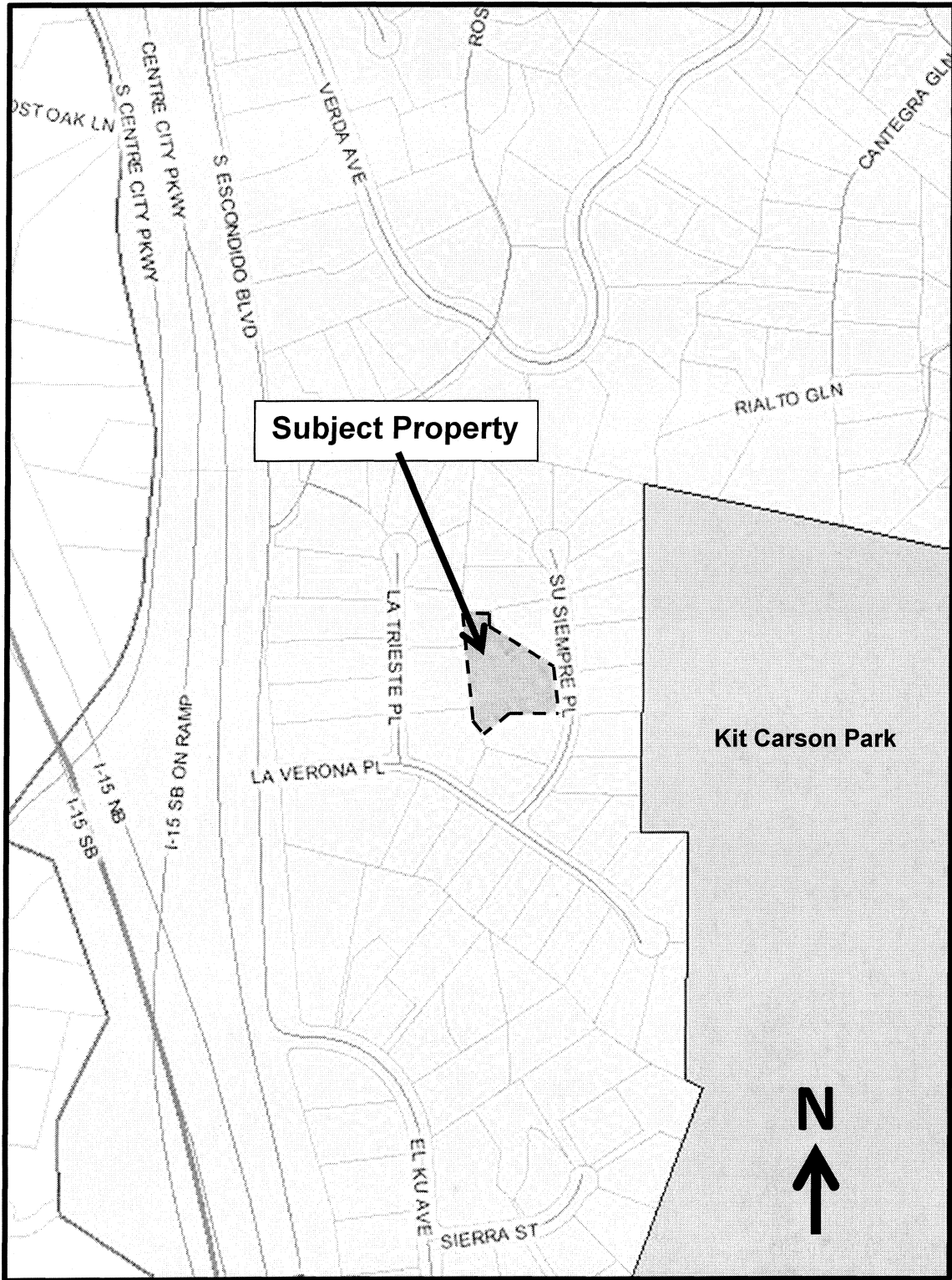
FRONT (SOUTH SIDE)



↑ NORTH SIDE

WEST SIDE ↓





2985 Su Siempre Place

DRB523A/P3A Description 2985 Su Siempre Place, Escondido, CA, 92025

Builder- Forrest Holly

Single story ranch, 5 bedrooms, 4 ½ bath, 2 fireplaces, separate laundry room, den, dining, living and bonus playroom. Newly updated kitchen, double oven, oversized 6 burner gas stove top, large fridge, granite countertops, recessed and hanging lights, walk in cedar closet. Two water heaters, updated AC units. Exterior and interior walls are constructed from L.R. Greens adobe bricks, 12 inches wide, 16 inches long and 4 inches thick having 1 inch mortar joints. Interior ceilings have exposed beams with wood panels, dark stain. Built in stained or painted cabinets in the den and all the bedrooms. Gable roof with individual Spanish clay tiles including single mortared bird stops. Slab on grade residence. Original windows are metal casement style with brick sills and exposed wood headers.

Separate out building used as foreman's office, now used as guest room with bath, and workshop also constructed in the same style as the main house. Wired for 220 volt, air compressor with multiple outlets, steel beam in rafters for heavy duty lifting and car lift.

The property is approximately 1.38 acres with 100% irrigation from an onsite well with holding tank. Numerous fruit trees, avocados, four different types of palm trees, mature eucalyptus, Italian cypress, xeroscape area and multiple ground covers. There are over 11,000 red bricks throughout the property used around the pool area, back patios and walkways. The property is situated atop a hill formed from decomposed granite with breathtaking views of the San Pasqual Valley, Rancho Bernardo and the surrounding mountains. There are multiple retaining walls supporting various levels of the grounds.

The fifty foot by twenty five foot pool is surrounded by red bricks, multiple planting areas with flagstone walls, and a pool house at the south end. The pool house contains an oak bar with fridge and a sink, dance floor, his and her changing rooms, bathroom, separate shower room and pump room.

2985 SU SIEMPRE CHAIN OF OWNERSHIP

9/23/2012

- 1999 Scieszka Living Trust
Thomas M. Scieszka 10/28/56 Laurel C. Scieszka 8/31/56
Born in- Flint, MI Flint, MI
Sons- Mark L. 8/18/86 David P. 2/22/89
Born in- Ft. Collins, CO. Born in- Ft. Collins, CO.
Father- Louis J. Scieszka Raymond M. Catsman
Born in-Lansing, MI Flint, MI
Mother- Shirley M. Scieszka (Marchand) Shirley Z. Catsman (Zimmer)
Detroit, MI Detroit, MI
- 1980 Parcel Sub divided by Johnson Living Trust
Named "Prestige Estates", I am in possession of original sign.
- 1978 Jonhnsen Living Trust / Adobe Heights Partnership
Vance and Lucille Johnson, 3 children, 2 boys and 1 girl.
Vance- Real Estate Underwriter, boys are lawyer and engineer,
girl is a lawyer. All still in the area.
- 1967 Max E. and Jayne Freeman
No records found at the Escondido Historical Society.
- 1958 Patio area is added, East side, construction is done by Weir Construction.
- 1951 James M. and Helen G. Bannister (L.R. Greens daughter), move in.
Hwy 395 Route 3 Box 1317 (Ross Lane).
Helen was born 4/5/1920 and passed 9/17/2000 in San Luis Obispo.
Dennis Bannister, son, started Bannister Iron Works, 1975, 540 Enterprise, Escondido. Retired, son
is running the business. Dennis is currently residing in Valley Center.
- 1949 Construction begins, Ross Lane, per Dennis Bannister.
Builder is Forest Holly, known to be blind, uses L.R. Greens adobe bricks.
- 1912 Hildreth Von Klein Smid (Green) L.R. Greens daughter &
Lawrence R. Green and Georgia M. Green
- 1910 Oak's Tract/Rancho San Bernardo
Oliver and Ida L. Oaks , recorded book 550, pg 154 of deeds.



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: Vanessa Esquivel
P.O. Box 121750
San Diego, CA 92112-1750

From: City of Escondido
201 North Broadway
Escondido, CA 92025

Project Title/Case No.: HP-12-0001

Project Locations - specific: Addressed as 2985 Su Siempre Place (APN 239-231-4200), located on a hilltop east of the intersection of South Centre City Pkwy and the I-15 freeway.

Project Location - City: Escondido, Project Location - County: San Diego

Description of Project:

To approve listing the 1.36-acre subject property on the City's Local Register of Historic Places and entering into a Mills Act Contract in the RE-20 (Single-Family Residential, 20,000 SF minimum lot size) zone, located in the E2 (estate II) land use designation of the General Plan.

Name of Public Agency Approving Project: City of Escondido

Name(s) of Person or Agency Carrying Out Project

Names: Thomas M. and Laurel C. Scieszka
Address: 2985 Su Siempre Place, Escondido, CA 92025

Telephone: (760) 738-4641

Private entity School district Local public agency State agency Other special district

Exempt Status:

Categorical Exemption: Section 15331, Class 31. "Historic Resource Restoration/Rehabilitation

Reasons why project is exempt:

- 1. The project is within the RE-20 zone, E2 General Plan land use designation and no variances are required.
2. The project will be consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties with guidelines for preserving, rehabilitating, restoring and reconstructing historic buildings.
3. The project will not be limited by the factors in section 15300.2 and will not adversely change the significance of a historical resource.

Lead Agency Contact Person: Paul K. Bingham

Area Code/Telephone/Extension (760) 839-4306

Signature: Paul K. Bingham
Assistant Planner

10/24/12
Date

Signed by Lead Agency

Date received for filing at OPR:

Signed by Applicant

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City Clerk
City of Escondido
201 N. Broadway
Escondido, CA 92025

Case: HP12-0001

THIS SPACE FOR RECORDER'S USE ONLY

HISTORIC PROPERTY PRESERVATION AGREEMENT

This Agreement is made and entered into by and between the CITY OF ESCONDIDO, a municipal corporation (hereinafter referred to as "the CITY") and Thomas M. and Laurel C. Scieszka (hereinafter referred to as "the OWNERS").

Recitals

1. WHEREAS, the OWNERS possess and own real property located within the City of Escondido, which property is more fully described in Attachment "A" to this Agreement (hereinafter "the PROPERTY"); and

2. WHEREAS, the PROPERTY is a qualified historical property in that it is privately owned, it is not exempt from property taxation, and it is listed in the Local Register of Historic Places; and

3. WHEREAS, both the CITY and the OWNERS desire to carry out the purposes of Article 12 (commencing with section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code; and

4. WHEREAS, both the CITY and the OWNERS desire to limit the use of the PROPERTY and to preserve the PROPERTY so as to retain its characteristics as a property of cultural, architectural, and historical significance.

Agreement

NOW THEREFORE, both the CITY and the OWNERS, in consideration of the mutual promises, covenants, and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. Applicability of Government Code and Revenue and Taxation Code. This Agreement is made pursuant to Article 12 (commencing with section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of these statutes.

2. Preservation/Rehabilitation and Maintenance of Property. During the term of this Agreement, the PROPERTY shall be subject to the following conditions, requirements, and restrictions:

a. The OWNERS agree to preserve/rehabilitate and maintain the cultural, historical, and architectural characteristics of the PROPERTY during the term of this Agreement as set forth in the attached schedule of improvements identified as Attachment B.

b. The OWNERS shall maintain all buildings, structures, yards, and other improvements in a manner which does not detract from the appearance of the immediate neighborhood. Prohibited property conditions include, but are not limited to:

- i. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, and windows;
- ii. Scrap lumber, junk, trash, or debris;
- iii. Abandoned, discarded, or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items;
- iv. Stagnant water or excavations, including swimming pools or spas; and
- v. Any device, decoration, design, or structure, or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

c. All improvements and work performed on the PROPERTY shall meet, at a minimum, the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation, the State Historical Building Code, and the applicable development codes of the City of Escondido.

d. Upon the CITY'S request, the OWNERS shall submit within thirty (30) days documentation of expenditures incurred within the last 24 months to accomplish items from the list of scheduled improvements for the PROPERTY as set forth in Attachment B of the Historic Property Preservation (Mills Act) Agreement. The OWNERS shall be in substantial compliance with the scheduled improvements set forth in Attachment B when the expenditures incurred to accomplish the improvements are equal to or greater than the

OWNERS' annual property tax savings for the last 24 months, as determined by the CITY, based upon the County Tax Assessor's valuation of the PROPERTY using the process set forth in Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

e. OWNERS shall, within thirty (30) days after written notice from the CITY, furnish the CITY with any information the CITY shall require to enable the CITY to determine (i) the PROPERTY'S present state; (ii) the PROPERTY'S continued eligibility as a qualified historic property; and (iii) whether the OWNERS are in compliance with this Agreement.

_____ **OWNER'S INITIALS**

3. Inspections. The OWNERS agree to permit periodic examinations/inspections of the interior and exterior of the PROPERTY by the CITY, the County Assessor, the Department of Parks and Recreation, and the State Board of Equalization as may be necessary to determine the OWNERS' compliance with this Agreement.

_____ **OWNER'S INITIALS**

4. Term of Agreement. This Agreement shall be effective and shall commence on January 1st of the year following the successful recordation of this document by the County Recorder's Office and shall remain in effect for a period of ten (10) years thereafter.

5. Automatic Renewal. On the tenth (10th) anniversary of this Agreement and on each successive anniversary date (hereinafter referred to as "the RENEWAL DATE"), one (1) year shall automatically be added to the initial term of this Agreement unless notice of nonrenewal is given as provided in Paragraph 6 below.

6. Notice of Nonrenewal. If, in any year, either the CITY or the OWNERS desire not to renew this Agreement, that party shall serve a written notice of nonrenewal on the other party. If the OWNERS elect to serve a notice of nonrenewal, the notice must be served on the CITY at least ninety (90) days prior to the RENEWAL DATE, otherwise one (1) additional year shall automatically be added to the term of this Agreement. Conversely, if the CITY elects to serve a notice of nonrenewal, the notice must be served on the OWNERS at least sixty (60) days prior to the RENEWAL DATE, otherwise one (1) additional year shall automatically be added to the term of this Agreement. The CITY may issue a notice of nonrenewal if the CITY determines improvements, maintenance, rehabilitation, renovation, and/or restoration of the PROPERTY is required for the PROPERTY'S continued eligibility as a qualified historic property. Upon receipt by the OWNERS of a notice of nonrenewal from the

CITY, the OWNERS may make a written protest of the nonrenewal. The CITY may, at any time prior to the RENEWAL DATE, withdraw its notice of nonrenewal.

7. Effect of Notice of Nonrenewal. If, in any year, either party serves a notice of nonrenewal as provided in Paragraph 6 above, this Agreement shall remain in effect for: (1) the balance of the period remaining under the initial term of this Agreement; or (2) the balance of the period remaining since the last automatic renewal, whichever the case may be.

8. Cancellation. The CITY may cancel this Agreement if the CITY determines the OWNERS: (a) have breached any of the conditions or covenants of this Agreement; (b) have allowed the PROPERTY to deteriorate to the point that it no longer meets the standards of a qualified historical property as defined in California Government Code section 50280.1; or (c) if the OWNERS have failed to restore or rehabilitate the PROPERTY in the manner specified in Paragraph 2 of this Agreement.

_____ **OWNER'S INITIALS**

9. Notice of Cancellation. Notwithstanding the above, this Agreement cannot be cancelled until after the CITY has given notice and has held a public hearing as required by California Government Code section 50285.

10. Cancellation Fee. If the CITY cancels this Agreement in accordance with Paragraph 8, the OWNERS shall pay those cancellation fees set forth in California Government Code sections 50280 et seq., described herein. Upon cancellation, OWNERS shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the PROPERTY, which is to be determined by the County Assessor as though the PROPERTY were free and clear of any of the restrictions pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at the time and in the manner that the County Auditor shall prescribe and shall be allocated by the County Auditor to each jurisdiction in the tax rate area in which the PROPERTY is located in the same manner as the County Auditor allocates the annual tax increment in that tax area that fiscal year.

_____ **OWNER'S INITIALS**

11. No Compensation. The OWNERS shall not receive any payment from the CITY in consideration for the obligations imposed under this Agreement. The parties recognize and agree that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to the OWNERS as a result of

assessed value of the PROPERTY because of the restrictions this Agreement imposes on the use and preservation of the PROPERTY.

12. Enforcement of Agreement. As an alternative to cancellation of the Agreement for breach of any condition as provided in Paragraph 8, the CITY may, in its sole discretion, specifically enforce, or enjoin the breach of the terms of this Agreement. In the event of a default, under the provisions of this Agreement by the OWNERS, the City shall give written notice to OWNERS by registered or certified mail. If such violation is not corrected to the reasonable satisfaction of CITY within thirty (30) calendar days after the date of notice of violation, or within such reasonable time as may be required to cure the violation (provided the acts to cure the violation are commenced within thirty (30) calendar days and thereafter diligently pursued to completion), the CITY may, without further notice, declare OWNERS to be in breach under the terms of this Agreement, and may bring any action necessary to specifically enforce the obligations of the OWNERS growing out of the terms of this Agreement or apply for such other relief as may be appropriate under local, state, or federal law.

13. Indemnification. OWNERS shall indemnify, defend (with counsel reasonably acceptable to CITY) and hold harmless the City of Escondido, and all of its boards, commissions, departments, agencies, agents, officers, and employees from and against any and all actions, causes of actions, liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses (collectively the "Claims") incurred in connection with or arising in whole or in part from this Agreement, including without limitations:

- a. any accident, injury to or death of a person, loss of or damage to property incurring in or about the PROPERTY;
- b. the use or occupancy of the PROPERTY by OWNERS, their agents or invitees;
- c. the condition of the PROPERTY;
- d. any construction or other work undertaken by OWNERS of the PROPERTY.

This indemnification shall include, without limitation, reasonable fees for attorneys, consultants, experts and the CITY'S cost for investigating any Claims. OWNERS shall defend the CITY and all of its boards, commissions, departments, agencies, agents, officers, and employees from any and all Claims even if such Claim is groundless, fraudulent, or false. The OWNERS' obligations under this Paragraph shall survive termination of this Agreement.

_____ **OWNER'S INITIALS**

14. Remedy If Agreement Not An Enforceable Restriction. In the event it is finally determined by a court of competent jurisdiction that this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, for any tax year during the life of this Agreement, then this Agreement shall be null and void and without further effect and the PROPERTY shall from that time forward be free from any restriction whatsoever under this Agreement without any payment or further act by the parties.

15. Condemnation Proceedings. If condemnation proceedings are filed against the PROPERTY, or if the PROPERTY is acquired by a public agency in lieu of condemnation proceedings, this Agreement shall be null and void. If the condemnation proceedings are subsequently abandoned or the acquisition rescinded, this Agreement shall be reactivated retroactively and shall be in full force and effect without the need for any further act by the parties.

16. Entire Agreement. This instrument and its attachments constitute the entire agreement between the parties. The parties shall not be bound by any terms, conditions, statements, or representations, oral or written, not contained in this Agreement. Each party hereby acknowledges that in executing this Agreement, the party has not been induced, persuaded, or motivated by any promise or representation made by the other parties, unless expressly set forth in this Agreement. All previous negotiations, statements, and preliminary instruments by the parties or their representatives are merged in this instrument and are of no force and effect.

17. Attorney's Fees. In the event legal proceedings are brought by any party or parties hereto, to enforce or restrain a violation of any of the covenants, reservations, or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover its reasonable attorney's fees in addition to court costs and other relief ordered by the court.

18. Modification. No modification of this Agreement shall be valid or binding unless the modification is in writing, signed by all parties, and recorded with the County Recorder for the County of San Diego.

19. Binding Effect. This Agreement shall be binding on and inure to the benefit of all parties herein, their heirs, successors-in-interest, legal representatives, assigns and all persons acquiring any part or portion of the PROPERTY, whether by operation of law or otherwise, and that any such person(s) shall have the same rights and obligations under this Agreement.

20. Choice of Law and Forum. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California. Any action or proceeding to enforce any provision of this Agreement shall be brought in the San Diego Superior Court, North County Division.

21. Sale. If the PROPERTY is sold, the OWNERS shall notify the CITY of the sale and present to the CITY a signed statement from the new owners indicating that a copy of this agreement was provided to them.

22. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

23. Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

24. 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.

25. Notices. Any notice, delivery or other communication pursuant to this Agreement shall be in writing and shall be given to:

CITY: City Clerk
City of Escondido
201 N. Broadway
Escondido, CA 92025

OWNERS: Thomas M. and Laurel C. Scieska
2985 Su Siempre Place
Escondido, CA 92025

Any party may change his/her/its address by giving written notice to the other parties in the manner provided in this paragraph. Any notice, delivery, or other communication shall be effective and shall be deemed to be received by the other parties within five (5) business days after the notice has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above.

26. Notice to Office of Historic Preservation. The OWNERS or an agent of the OWNERS shall provide written notice of this Agreement to the Office of Historic Preservation within six months of entering into this Agreement. A copy of this notice shall also be provided to the CITY.

(Remainder of page left intentionally blank.)

27. Counterparts. This Agreement may be executed in any number of counterparts or by facsimile transmission, each of which will be deemed an original with the same effect as if all signatures were on the same instrument.

IN WITNESS WHEREOF, the CITY and the OWNERS have executed this Agreement as of the date set forth below.

CITY OF ESCONDIDO

Dated: _____

By: _____
Sam Abed, Mayor

Dated: _____

By: _____
Diane Halverson, City Clerk

OWNERS

Dated: _____

By: _____
Thomas M. Scieska
(This signature must be notarized.)

Dated: _____

By: _____
Laurel C. Scieska
(This signature must be notarized.)

APPROVED AS TO FORM:

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

By: _____

ATTACHMENT "A"

LEGAL DESCRIPTION

PARCEL 1:

THAT PORTION OF THE OAKS TRACT, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1415, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 8, 1912, DESCRIBED AS FOLLOWS:

BEGINNING AT SAID SOUTHWESTERLY CORNER OF OLIVER OAKS TRACT; THENCE ALONG THE SOUTHERLY LINE THEREOF SOUTH 78° 09' 52" EAST 191.27 FEET; THENCE SOUTH 5° 18' 30" WEST 434.63 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 84° 38' 07" EAST 85.00 FEET; THENCE SOUTH 8° 41' 40" EAST 46.82 FEET; THENCE SOUTH 64° 12' 12" EAST 206.45 FEET; THENCE SOUTH 6° 00' EAST 81.94 FEET TO A TANGENT 330 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH AN ANGLE OF 6° 18' 01" A DISTANCE OF 36.29 FEET; THENCE SOUTH 81° 45' 27" WEST, 130.97 FEET; THENCE SOUTH 58° 26' 49" WEST 119.59 FEET; THENCE NORTH 34° 23' 18" WEST 52.72 FEET; THENCE NORTH 5° 21' 53" WEST 285 FEET TO THE TRUE POINT OF BEGINNING.

SAID LAND BEING SHOWN AS "NOT A PART" ON MAP NO. 11617 OF ESCONDIDO TRACT NO. 514 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

PARCEL 2:

AN EASEMENT FOR ROAD AND UTILITY PURPOSES, OVER AND ACROSS ALL THAT PORTION OF LOTS 34, 36, 37 AND 38 OF ESCONDIDO TRACT NO. 514, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 11617 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 35 IN SAID ESCONDIDO TRACT NO. 514; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 35, NORTH 70° 37' 02" WEST, 174.56 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT; THENCE ALONG THE WESTERLY LINE OF SAID LOT, SOUTH 25° 05' 05" WEST, 3.00 FEET; THENCE NORTH 70° 37' 02" WEST, 25.60 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 65.00 FEET; THENCE WESTERLY AND NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65° 15' 09" AN ARC DISTANCE OF 74.03 FEET; THENCE TANGENT TO SAID CURVE NORTH 05° 21' 53" WEST, 106.50 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 110.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75° 00' 00" AN ARC DISTANCE OF 28.80 FEET; THENCE TANGENT TO SAID CURVE NORTH 20° 21' 53" WEST, 49.00 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 45.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37° 30' 08" AN ARC DISTANCE OF 29.45 FEET; THENCE TANGENT TO SAID CURVE NORTH 17° 08' 15" EAST, 90.24 FEET TO THE SOUTHWESTERLY CORNER OF LOT 32 IN SAID ESCONDIDO TRACT NO. 514; THENCE ALONG THE EASTERLY LINE OF LOTS 38, 37 AND 36 IN SAID ESCONDIDO TRACT 514, SOUTH 05° 21' 53" EAST 285.00 FEET TO A CORNER IN SAID LOT 36; THENCE ALONG THE EASTERLY LINE OF SAID LOT, SOUTH 34° 23' 18" EAST, 53.08 FEET; THENCE SOUTH 70° 37' 02" EAST, 205.33 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 330.00 FEET, SAID POINT ALSO BEING ON THE EASTERLY LINE OF SAID LOT 34; THENCE SOUTHERLY ALONG SAID CURVE AND THE EASTERLY LINE OF SAID LOT 34, THROUGH A CENTRAL ANGLE OF 3° 00' 30" AN ARC DISTANCE OF 20.30 FEET MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY FOR THE PURPOSE OF PLANTING, IRRIGATING AND

DESCRIPTION

MAINTAINING FLORA, PLANTS, SHRUBBERY AND TREES, OVER, UNDER, ALONG AND ACROSS ALL THOSE PORTIONS OF LOTS 32, 33, 34, 35, 36, 37 AND 38 OF ESCONDIDO TRACT NO. 514, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 11617, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 12, 1986, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTHERLY 5.00 FEET OF THE WESTERLY 93.00 FEET OF SAID LOT 32.

THE WESTERLY 8.00 FEET AND THE SOUTHWESTERLY 8.00 FEET OF SAID LOT 33.

ALL OF SAID LOT 34 LYING BETWEEN THE NORTHERLY AND SOUTHERLY BOUNDARY OF SAID LOT 34 AND THE FOOT DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 34, WHICH IS A POINT IN THE ARC OF A 330 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE AT SAID POINT BEARING NORTH 89° 41' 59" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID 330 FOOT RADIUS CURVE, THROUGH A CENTRAL ANGLE OF 0° 52' 44" AN ARC LENGTH OF 5.06 FEET; THENCE SOUTH 81° 45' 27" WEST 129.15 FEET; THENCE SOUTH 58° 26' 53" WEST, 59.31 FEET; THENCE SOUTH 50° 48' 48" WEST 45.16 FEET; THENCE SOUTH 70° 37' 32" EAST 189.27 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY LINE OF SAID LOT 34.

THE NORTHERLY 5.00 FEET OF SAID LOT 35.

ALL THAT PORTION OF SAID LOT 36 LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST EASTERLY CORNER OF SAID LOT 36; THENCE SOUTH 25° 05' 05" WEST 8.02 FEET ALONG THE SOUTHEASTERLY LINE OF SAID LOT 36 OF THE TRUE POINT OF BEGINNING; THENCE NORTH 70° 37' 02" WEST 25.10 FEET TO THE BEGINNING OF A TANGENT 70 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE WESTERLY AND NORTHERLY ALONG THE ARC OF SAID 70 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 65° 15' 09" AN ARC LENGTH OF 79.72 FEET; THENCE NORTH 5° 21' 53" WEST 36.97 FEET, MORE OR LESS, TO THE NORTHERLY LINE OF SAID LOT 36.

ALL THAT PORTION OF SAID LOT 37 LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT A POINT IN THE SOUTHERLY LINE OF SAID LOT 37 DISTANT THEREON 25.07 FEET WESTERLY OF THE SOUTHEAST CORNER OF SAID LOT 37; THENCE NORTH 5° 21' 53" WEST 69.53 FEET TO THE BEGINNING OF A TANGENT 105 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG THE ARC OF SAID 105 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 15° 00' 00" AN ARC LENGTH OF 27.49 FEET; THENCE NORTH 20° 21' 53" WEST 49.00 FEET TO THE BEGINNING OF A TANGENT 50 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE NORTHERLY ALONG THE ARC OF SAID 50 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 28° 31' 09" AN ARC LENGTH OF 24.89 FEET, MORE OR LESS TO THE NORTHERLY LINE OF SAID LOT 37.

ALL THAT PORTION OF SAID LOT 38 LYING SOUTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT A POINT IN THE SOUTHEASTERLY LINE OF SAID LOT 38 DISTANT THEREON 41.69 FEET WESTERLY FROM THE SOUTHEAST CORNER OF SAID LOT 38, WHICH IS A POINT IN THE ARC OF A 50 FOOT RADIUS CURVE, CONCAVE EASTERLY, A RADIAL LINE THROUGH SAID POINT BEARING SOUTH 81° 50' 44" EAST; THENCE NORTHERLY ALONG THE ARC OF SAID 50 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 8° 58' 59" AN ARC LENGTH OF 7.84 FEET; THENCE NORTH 17° 08' 15" EAST 93.58

DESCRIPTION

FEET; THENCE NORTH $84^{\circ} 37' 58''$ EAST 4.28 FEET, MORE OR LESS, TO THE EASTERLY LINE OF SAID LOT 38.

EXCEPTING THEREFROM THOSE PORTIONS OF LOTS 34, 36, 37 AND 38 INCLUDED IN THAT PRIVATE ROAD AND UTILITY EASEMENT RECORDED AUGUST 13, 1986 AS FILE/PAGE NO. 86-346688 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY FOR DRAINAGE PURPOSES OVER, UNDER, ALONG AND ACROSS ALL THOSE PORTIONS OF LOTS 33 AND 34 OF ESCONDIDO TRACT NO. 514, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 11617, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 12, 1986, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WESTERLY 8.00 FEET AND THE SOUTHWESTERLY 8.00 FEET OF SAID LOT 33.

THAT PORTION OF SAID LOT 34 LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 3, WHICH IS A POINT IN THE ARC OF A 330 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE OF SAID POINT BEARING NORTH $89^{\circ} 41' 59''$ WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID 330 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF $0^{\circ} 52' 44''$ AN ARC LENGTH OF 5.06 FEET TO THE TRUE POINT OF BEGINNING OF THE LINE TO BE DESCRIBED; THENCE SOUTH $81^{\circ} 45' 27''$ WEST 129.15 FEET; THENCE SOUTH $58^{\circ} 26' 53''$ WEST 59.31 FEET; THENCE SOUTH $50^{\circ} 48' 48''$ WEST 45.16 FEET TO A POINT WHICH BEARS SOUTH $70^{\circ} 37' 32''$ EAST FROM THE MOST WESTERLY CORNER OF SAID LOT 34 AND THE END OF SAID LINE.

PARCEL 5:

AN EXCLUSIVE EASEMENT AND RIGHT OF WAY FOR PURPOSE OF ERECTING AND MAINTAINING A FENCE OVER, ALONG AND ACROSS THE FOLLOWING DESCRIBED LAND:

ALL THAT PORTION OF LOT 34 OF ESCONDIDO TRACT NO. 514, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 11617, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 12, 1986, LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 34, WHICH IS A POINT IN THE ARC OF A 330 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE AT SAID POINT BEARING NORTH $89^{\circ} 41' 59''$ WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 330 FOOT RADIUS CURVE, CONCAVE THROUGH A CENTRAL ANGLE OF $0^{\circ} 52' 44''$ AN ARC LENGTH OF 5.06 FEET; THENCE SOUTH $81^{\circ} 45' 27''$ WEST 129.15 FEET TO THE TRUE POINT OF BEGINNING OF THE LINE TO BE DESCRIBED; THENCE SOUTH $58^{\circ} 26' 53''$ WEST 59.31 FEET; THENCE SOUTH $50^{\circ} 48' 48''$ WEST 45.16 FEET AND THE END OF SAID LINE.

ATTACHMENT "B"

Mills Act Application List of Improvements

Case file: HP 12-0001

Property Address: 2985 Su Siempre Place

Property Owners: Thomas M. and Laurel C. Scieszka

1. Replace tile roof and individual bird stops on main house and outbuildings (completed).
2. Replace original cyclone fence and gates at entrance (complete).
3. Re-surface original asphalt driveway (completed).
4. Repaint main house and outbuildings (completed).
5. Reglaze and repaint frames of existing main house windows (completed).
6. Upgrade house plumbing (completed).
7. Replace both existing water heaters (completed).
8. Replace old air conditioning unit and wiring (completed).
9. Upgrade old wiring in playroom (completed).
10. Replace weather stripping on all casement windows (planned).

RESOLUTION NO. 2012-183

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, LISTING THE RESIDENTIAL STRUCTURE ON THE PROPERTY ADDRESSED AS 2985 SU SIEMPRE PLACE ON THE CITY'S LOCAL REGISTER OF HISTORIC PLACES AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A MILLS ACT CONTRACT, AKA AN HISTORIC PROPERTY PRESERVATION AGREEMENT, WITH THOMAS M. AND LAUREL C. SCIESZKA FOR THE PROPERTY LOCATED AT 2985 SU SIEMPRE PLACE

(CASE No. HP-12-0001)

WHEREAS, the City's Historic Resources Ordinance identifies seven criteria for properties to be listed on the City's Local Register of Historic Places; and

WHEREAS, properties eligible for listing on the Local Register must meet at least two of the seven criteria identified in the Ordinance; and

WHEREAS, the property located at 2985 Su Siempre Place has been evaluated against the criteria and has been found to be eligible for listing on the Local Register; and

WHEREAS, the Mills Act is a state law enabling owners of designated historic properties to enter into an historic property preservation contract with their local legislative body and receive a property tax reduction; and

WHEREAS, Thomas M. and Laurel C. Scieszka have submitted a request to enter into a Historic Property Preservation Agreement ("Agreement") with the City for property located at 2985 Su Siempre Place (APN 239-231-4200); and

WHEREAS, this property qualifies for a Mills Act Contract since it was recommended by the Historic Preservation Commission to be listed in the Local Register of Historic Resources on October 2, 2012; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to list the historic property located at 2985 Su Siempre Place on the City's Local Register of Historic Places and approve the Agreement for the property, as recommended by the Historic Preservation Commission on October 2, 2012.

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

1. That the above recitations are true.
2. That the Mayor and City Clerk are hereby authorized to list the property on the City's Local Register of Historic Places and to execute, on behalf of the City, an Agreement with Thomas M. and Laurel C. Scieszka for the property located at 2985 Su Siempre Place. A copy of the Agreement is attached as Exhibit "A" and is incorporated by this reference.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Escondido
201 N. Broadway
Escondido, CA 92025

Resolution No. 2012-183
Exhibit A
Page 1 of 12

Case: HP12-0001

THIS SPACE FOR RECORDER'S USE ONLY

HISTORIC PROPERTY PRESERVATION AGREEMENT

This Agreement is made and entered into by and between the CITY OF ESCONDIDO, a municipal corporation (hereinafter referred to as "the CITY") and Thomas M. and Laurel C. Scieszka (hereinafter referred to as "the OWNERS").

Recitals

1. WHEREAS, the OWNERS possess and own real property located within the City of Escondido, which property is more fully described in Attachment "A" to this Agreement (hereinafter "the PROPERTY"); and
2. WHEREAS, the PROPERTY is a qualified historical property in that it is privately owned, it is not exempt from property taxation, and it is listed in the Local Register of Historic Places; and
3. WHEREAS, both the CITY and the OWNERS desire to carry out the purposes of Article 12 (commencing with section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code; and
4. WHEREAS, both the CITY and the OWNERS desire to limit the use of the PROPERTY and to preserve the PROPERTY so as to retain its characteristics as a property of cultural, architectural, and historical significance.

Agreement

NOW THEREFORE, both the CITY and the OWNERS, in consideration of the mutual promises, covenants, and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. Applicability of Government Code and Revenue and Taxation Code. This Agreement is made pursuant to Article 12 (commencing with section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of these statutes.

2. Preservation/Rehabilitation and Maintenance of Property. During the term of this Agreement, the PROPERTY shall be subject to the following conditions, requirements, and restrictions:

a. The OWNERS agree to preserve/rehabilitate and maintain the cultural, historical, and architectural characteristics of the PROPERTY during the term of this Agreement as set forth in the attached schedule of improvements identified as Attachment B.

b. The OWNERS shall maintain all buildings, structures, yards, and other improvements in a manner which does not detract from the appearance of the immediate neighborhood. Prohibited property conditions include, but are not limited to:

- i. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, and windows;
- ii. Scrap lumber, junk, trash, or debris;
- iii. Abandoned, discarded, or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items;
- iv. Stagnant water or excavations, including swimming pools or spas; and
- v. Any device, decoration, design, or structure, or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

c. All improvements and work performed on the PROPERTY shall meet, at a minimum, the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation, the State Historical Building Code, and the applicable development codes of the City of Escondido.

d. Upon the CITY'S request, the OWNERS shall submit within thirty (30) days documentation of expenditures incurred within the last 24 months to accomplish items from the list of scheduled improvements for the PROPERTY as set forth in Attachment B of the Historic Property Preservation (Mills Act) Agreement. The OWNERS shall be in substantial compliance with the scheduled improvements set forth in Attachment B when the expenditures incurred to accomplish the improvements are equal to or greater than the

OWNERS' annual property tax savings for the last 24 months, as determined by the CITY, based upon the County Tax Assessor's valuation of the PROPERTY using the process set forth in Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

e. OWNERS shall, within thirty (30) days after written notice from the CITY, furnish the CITY with any information the CITY shall require to enable the CITY to determine (i) the PROPERTY'S present state; (ii) the PROPERTY'S continued eligibility as a qualified historic property; and (iii) whether the OWNERS are in compliance with this Agreement.

_____ **OWNER'S INITIALS**

3. Inspections. The OWNERS agree to permit periodic examinations/inspections of the interior and exterior of the PROPERTY by the CITY, the County Assessor, the Department of Parks and Recreation, and the State Board of Equalization as may be necessary to determine the OWNERS' compliance with this Agreement.

_____ **OWNER'S INITIALS**

4. Term of Agreement. This Agreement shall be effective and shall commence on January 1st of the year following the successful recordation of this document by the County Recorder's Office and shall remain in effect for a period of ten (10) years thereafter.

5. Automatic Renewal. On the tenth (10th) anniversary of this Agreement and on each successive anniversary date (hereinafter referred to as "the RENEWAL DATE"), one (1) year shall automatically be added to the initial term of this Agreement unless notice of nonrenewal is given as provided in Paragraph 6 below.

6. Notice of Nonrenewal. If, in any year, either the CITY or the OWNERS desire not to renew this Agreement, that party shall serve a written notice of nonrenewal on the other party. If the OWNERS elect to serve a notice of nonrenewal, the notice must be served on the CITY at least ninety (90) days prior to the RENEWAL DATE, otherwise one (1) additional year shall automatically be added to the term of this Agreement. Conversely, if the CITY elects to serve a notice of nonrenewal, the notice must be served on the OWNERS at least sixty (60) days prior to the RENEWAL DATE, otherwise one (1) additional year shall automatically be added to the term of this Agreement. The CITY may issue a notice of nonrenewal if the CITY determines improvements, maintenance, rehabilitation, renovation, and/or restoration of the PROPERTY is required for the PROPERTY'S continued eligibility as a qualified historic property. Upon receipt by the OWNERS of a notice of nonrenewal from the

CITY, the OWNERS may make a written protest of the nonrenewal. The CITY may, at any time prior to the RENEWAL DATE, withdraw its notice of nonrenewal.

7. Effect of Notice of Nonrenewal. If, in any year, either party serves a notice of nonrenewal as provided in Paragraph 6 above, this Agreement shall remain in effect for: (1) the balance of the period remaining under the initial term of this Agreement; or (2) the balance of the period remaining since the last automatic renewal, whichever the case may be.

8. Cancellation. The CITY may cancel this Agreement if the CITY determines the OWNERS: (a) have breached any of the conditions or covenants of this Agreement; (b) have allowed the PROPERTY to deteriorate to the point that it no longer meets the standards of a qualified historical property as defined in California Government Code section 50280.1; or (c) if the OWNERS have failed to restore or rehabilitate the PROPERTY in the manner specified in Paragraph 2 of this Agreement.

_____ **OWNER'S INITIALS**

9. Notice of Cancellation. Notwithstanding the above, this Agreement cannot be cancelled until after the CITY has given notice and has held a public hearing as required by California Government Code section 50285.

10. Cancellation Fee. If the CITY cancels this Agreement in accordance with Paragraph 8, the OWNERS shall pay those cancellation fees set forth in California Government Code sections 50280 et seq., described herein. Upon cancellation, OWNERS shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the PROPERTY, which is to be determined by the County Assessor as though the PROPERTY were free and clear of any of the restrictions pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at the time and in the manner that the County Auditor shall prescribe and shall be allocated by the County Auditor to each jurisdiction in the tax rate area in which the PROPERTY is located in the same manner as the County Auditor allocates the annual tax increment in that tax area that fiscal year.

_____ **OWNER'S INITIALS**

11. No Compensation. The OWNERS shall not receive any payment from the CITY in consideration for the obligations imposed under this Agreement. The parties recognize and agree that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to the OWNERS as a result of

assessed value of the PROPERTY because of the restrictions this Agreement imposes on the use and preservation of the PROPERTY.

12. Enforcement of Agreement. As an alternative to cancellation of the Agreement for breach of any condition as provided in Paragraph 8, the CITY may, in its sole discretion, specifically enforce, or enjoin the breach of the terms of this Agreement. In the event of a default, under the provisions of this Agreement by the OWNERS, the City shall give written notice to OWNERS by registered or certified mail. If such violation is not corrected to the reasonable satisfaction of CITY within thirty (30) calendar days after the date of notice of violation, or within such reasonable time as may be required to cure the violation (provided the acts to cure the violation are commenced within thirty (30) calendar days and thereafter diligently pursued to completion), the CITY may, without further notice, declare OWNERS to be in breach under the terms of this Agreement, and may bring any action necessary to specifically enforce the obligations of the OWNERS growing out of the terms of this Agreement or apply for such other relief as may be appropriate under local, state, or federal law.

13. Indemnification. OWNERS shall indemnify, defend (with counsel reasonably acceptable to CITY) and hold harmless the City of Escondido, and all of its boards, commissions, departments, agencies, agents, officers, and employees from and against any and all actions, causes of actions, liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses (collectively the "Claims") incurred in connection with or arising in whole or in part from this Agreement, including without limitations:

- a. any accident, injury to or death of a person, loss of or damage to property incurring in or about the PROPERTY;
- b. the use or occupancy of the PROPERTY by OWNERS, their agents or invitees;
- c. the condition of the PROPERTY;
- d. any construction or other work undertaken by OWNERS of the PROPERTY.

This indemnification shall include, without limitation, reasonable fees for attorneys, consultants, experts and the CITY'S cost for investigating any Claims. OWNERS shall defend the CITY and all of its boards, commissions, departments, agencies, agents, officers, and employees from any and all Claims even if such Claim is groundless, fraudulent, or false. The OWNERS' obligations under this Paragraph shall survive termination of this Agreement.

_____ **OWNER'S INITIALS**

14. Remedy If Agreement Not An Enforceable Restriction. In the event it is finally determined by a court of competent jurisdiction that this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, for any tax year during the life of this Agreement, then this Agreement shall be null and void and without further effect and the PROPERTY shall from that time forward be free from any restriction whatsoever under this Agreement without any payment or further act by the parties.

15. Condemnation Proceedings. If condemnation proceedings are filed against the PROPERTY, or if the PROPERTY is acquired by a public agency in lieu of condemnation proceedings, this Agreement shall be null and void. If the condemnation proceedings are subsequently abandoned or the acquisition rescinded, this Agreement shall be reactivated retroactively and shall be in full force and effect without the need for any further act by the parties.

16. Entire Agreement. This instrument and its attachments constitute the entire agreement between the parties. The parties shall not be bound by any terms, conditions, statements, or representations, oral or written, not contained in this Agreement. Each party hereby acknowledges that in executing this Agreement, the party has not been induced, persuaded, or motivated by any promise or representation made by the other parties, unless expressly set forth in this Agreement. All previous negotiations, statements, and preliminary instruments by the parties or their representatives are merged in this instrument and are of no force and effect.

17. Attorney's Fees. In the event legal proceedings are brought by any party or parties hereto, to enforce or restrain a violation of any of the covenants, reservations, or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover its reasonable attorney's fees in addition to court costs and other relief ordered by the court.

18. Modification. No modification of this Agreement shall be valid or binding unless the modification is in writing, signed by all parties, and recorded with the County Recorder for the County of San Diego.

19. Binding Effect. This Agreement shall be binding on and inure to the benefit of all parties herein, their heirs, successors-in-interest, legal representatives, assigns and all persons acquiring any part or portion of the PROPERTY, whether by operation of law or otherwise, and that any such person(s) shall have the same rights and obligations under this Agreement.

20. Choice of Law and Forum. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California. Any action or proceeding to enforce any provision of this Agreement shall be brought in the San Diego Superior Court, North County Division.

21. Sale. If the PROPERTY is sold, the OWNERS shall notify the CITY of the sale and present to the CITY a signed statement from the new owners indicating that a copy of this agreement was provided to them.

22. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

23. Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

24. 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.

25. Notices. Any notice, delivery or other communication pursuant to this Agreement shall be in writing and shall be given to:

CITY: City Clerk
City of Escondido
201 N. Broadway
Escondido, CA 92025

OWNERS: Thomas M. and Laurel C. Scieszka
2985 Su Siempre Place
Escondido, CA 92025

Any party may change his/her/its address by giving written notice to the other parties in the manner provided in this paragraph. Any notice, delivery, or other communication shall be effective and shall be deemed to be received by the other parties within five (5) business days after the notice has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above.

26. Notice to Office of Historic Preservation. The OWNERS or an agent of the OWNERS shall provide written notice of this Agreement to the Office of Historic Preservation within six months of entering into this Agreement. A copy of this notice shall also be provided to the CITY.

(Remainder of page left intentionally blank.)

27. Counterparts. This Agreement may be executed in any number of counterparts or by facsimile transmission, each of which will be deemed an original with the same effect as if all signatures were on the same instrument.

IN WITNESS WHEREOF, the CITY and the OWNERS have executed this Agreement as of the date set forth below.

CITY OF ESCONDIDO

Dated: _____

By: _____
Sam Abed, Mayor

Dated: _____

By: _____
Diane Halverson, City Clerk

OWNERS

Dated: _____

By: _____
Thomas M. Scieszka
(This signature must be notarized.)

Dated: _____

By: _____
Laurel C. Scieszka
(This signature must be notarized.)

APPROVED AS TO FORM:

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

By: _____

ATTACHMENT "A"

LEGAL DESCRIPTION

PARCEL 1:

THAT PORTION OF THE OAKS TRACT, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1415, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 8, 1912, DESCRIBED AS FOLLOWS:

BEGINNING AT SAID SOUTHWESTERLY CORNER OF OLIVER OAKS TRACT; THENCE ALONG THE SOUTHERLY LINE THEREOF SOUTH 78° 09' 52" EAST 191.27 FEET; THENCE SOUTH 5° 18' 30" WEST 434.63 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 84° 38' 07" EAST 85.00 FEET; THENCE SOUTH 8° 41' 40" EAST 46.82 FEET; THENCE SOUTH 64° 12' 12" EAST 206.45 FEET; THENCE SOUTH 6° 00' EAST 81.94 FEET TO A TANGENT 330 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE SOUTHERLY ALONG SAID CURVE THROUGH AN ANGLE OF 6° 18' 01" A DISTANCE OF 36.29 FEET; THENCE SOUTH 81° 45' 27" WEST, 130.97 FEET; THENCE SOUTH 58° 26' 49" WEST 119.59 FEET; THENCE NORTH 34° 23' 18" WEST 52.72 FEET; THENCE NORTH 5° 21' 53" WEST 285 FEET TO THE TRUE POINT OF BEGINNING.

SAID LAND BEING SHOWN AS "NOT A PART" ON MAP NO. 11617 OF ESCONDIDO TRACT NO. 514 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

PARCEL 2:

AN EASEMENT FOR ROAD AND UTILITY PURPOSES, OVER AND ACROSS ALL THAT PORTION OF LOTS 34, 36, 37 AND 38 OF ESCONDIDO TRACT NO. 514, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 11617 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 35 IN SAID ESCONDIDO TRACT NO. 514; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 35, NORTH 70° 37' 02" WEST, 174.56 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT; THENCE ALONG THE WESTERLY LINE OF SAID LOT, SOUTH 25° 05' 05" WEST, 3.00 FEET; THENCE NORTH 70° 37' 02" WEST, 25.60 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 65.00 FEET; THENCE WESTERLY AND NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65° 15' 09" AN ARC DISTANCE OF 74.03 FEET; THENCE TANGENT TO SAID CURVE NORTH 05° 21' 53" WEST, 106.50 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 110.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75° 00' 00" AN ARC DISTANCE OF 28.80 FEET; THENCE TANGENT TO SAID CURVE NORTH 20° 21' 53" WEST, 49.00 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 45.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 37° 30' 08" AN ARC DISTANCE OF 29.45 FEET; THENCE TANGENT TO SAID CURVE NORTH 17° 08' 15" EAST, 90.24 FEET TO THE SOUTHWESTERLY CORNER OF LOT 32 IN SAID ESCONDIDO TRACT NO. 514; THENCE ALONG THE EASTERLY LINE OF LOTS 38, 37 AND 36 IN SAID ESCONDIDO TRACT 514, SOUTH 05° 21' 53" EAST 285.00 FEET TO A CORNER IN SAID LOT 36; THENCE ALONG THE EASTERLY LINE OF SAID LOT, SOUTH 34° 23' 18" EAST, 53.08 FEET; THENCE SOUTH 70° 37' 02" EAST, 205.33 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 330.00 FEET, SAID POINT ALSO BEING ON THE EASTERLY LINE OF SAID LOT 34; THENCE SOUTHERLY ALONG SAID CURVE AND THE EASTERLY LINE OF SAID LOT 34, THROUGH A CENTRAL ANGLE OF 3° 00' 30" AN ARC DISTANCE OF 20.30 FEET MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY FOR THE PURPOSE OF PLANTING, IRRIGATING AND

DESCRIPTION

MAINTAINING FLORA, PLANTS, SHRUBBERY AND TREES, OVER, UNDER, ALONG AND ACROSS ALL THOSE PORTIONS OF LOTS 32, 33, 34, 35, 36, 37 AND 38 OF ESCONDIDO TRACT NO. 514, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 11617, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 12, 1986, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTHERLY 5.00 FEET OF THE WESTERLY 93.00 FEET OF SAID LOT 32.

THE WESTERLY 8.00 FEET AND THE SOUTHWESTERLY 8.00 FEET OF SAID LOT 33.

ALL OF SAID LOT 34 LYING BETWEEN THE NORTHERLY AND SOUTHERLY BOUNDARY OF SAID LOT 34 AND THE FOOT DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 34, WHICH IS A POINT IN THE ARC OF A 330 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE AT SAID POINT BEARING NORTH 89° 41' 59" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID 330 FOOT RADIUS CURVE, THROUGH A CENTRAL ANGLE OF 0° 52' 44" AN ARC LENGTH OF 5.06 FEET; THENCE SOUTH 81° 45' 27" WEST 129.15 FEET; THENCE SOUTH 58° 26' 53" WEST, 59.31 FEET; THENCE SOUTH 50° 48' 48" WEST 45.16 FEET; THENCE SOUTH 70° 37' 32" EAST 189.27 FEET, MORE OR LESS, TO A POINT ON THE EASTERLY LINE OF SAID LOT 34.

THE NORTHERLY 5.00 FEET OF SAID LOT 35.

ALL THAT PORTION OF SAID LOT 36 LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST EASTERLY CORNER OF SAID LOT 36; THENCE SOUTH 25° 05' 05" WEST 8.02 FEET ALONG THE SOUTHEASTERLY LINE OF SAID LOT 36 OF THE TRUE POINT OF BEGINNING; THENCE NORTH 70° 37' 02" WEST 25.10 FEET TO THE BEGINNING OF A TANGENT 70 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE WESTERLY AND NORTHERLY ALONG THE ARC OF SAID 70 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 65° 15' 09" AN ARC LENGTH OF 79.72 FEET; THENCE NORTH 5° 21' 53" WEST 36.97 FEET, MORE OR LESS, TO THE NORTHERLY LINE OF SAID LOT 36.

ALL THAT PORTION OF SAID LOT 37 LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT A POINT IN THE SOUTHERLY LINE OF SAID LOT 37 DISTANT THEREON 25.07 FEET WESTERLY OF THE SOUTHEAST CORNER OF SAID LOT 37; THENCE NORTH 5° 21' 53" WEST 69.53 FEET TO THE BEGINNING OF A TANGENT 105 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG THE ARC OF SAID 105 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 15° 00' 00" AN ARC LENGTH OF 27.49 FEET; THENCE NORTH 20° 21' 53" WEST 49.00 FEET TO THE BEGINNING OF A TANGENT 50 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE NORTHERLY ALONG THE ARC OF SAID 50 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 28° 31' 09" AN ARC LENGTH OF 24.89 FEET, MORE OR LESS TO THE NORTHERLY LINE OF SAID LOT 37.

ALL THAT PORTION OF SAID LOT 38 LYING SOUTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT A POINT IN THE SOUTHEASTERLY LINE OF SAID LOT 38 DISTANT THEREON 41.69 FEET WESTERLY FROM THE SOUTHEAST CORNER OF SAID LOT 38, WHICH IS A POINT IN THE ARC OF A 50 FOOT RADIUS CURVE, CONCAVE EASTERLY, A RADIAL LINE THROUGH SAID POINT BEARING SOUTH 81° 50' 44" EAST; THENCE NORTHERLY ALONG THE ARC OF SAID 50 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 8° 58' 59" AN ARC LENGTH OF 7.84 FEET; THENCE NORTH 17° 08' 15" EAST 93.58

DESCRIPTION

FEET; THENCE NORTH 84° 37' 58" EAST 4.28 FEET, MORE OR LESS, TO THE EASTERLY LINE OF SAID LOT 38.

EXCEPTING THEREFROM THOSE PORTIONS OF LOTS 34, 36, 37 AND 38 INCLUDED IN THAT PRIVATE ROAD AND UTILITY EASEMENT RECORDED AUGUST 13, 1986 AS FILE/PAGE NO. 86-346688 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY FOR DRAINAGE PURPOSES OVER, UNDER, ALONG AND ACROSS ALL THOSE PORTIONS OF LOTS 33 AND 34 OF ESCONDIDO TRACT NO. 514, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 11617, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 12, 1986, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WESTERLY 8.00 FEET AND THE SOUTHWESTERLY 8.00 FEET OF SAID LOT 33.

THAT PORTION OF SAID LOT 34 LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 3, WHICH IS A POINT IN THE ARC OF A 330 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE OF SAID POINT BEARING NORTH 89° 41' 59" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID 330 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 0° 52' 44" AN ARC LENGTH OF 5.06 FEET TO THE TRUE POINT OF BEGINNING OF THE LINE TO BE DESCRIBED; THENCE SOUTH 81° 45' 27" WEST 129.15 FEET; THENCE SOUTH 58° 26' 53" WEST 59.31 FEET; THENCE SOUTH 50° 48' 48" WEST 45.16 FEET TO A POINT WHICH BEARS SOUTH 70° 37' 32" EAST FROM THE MOST WESTERLY CORNER OF SAID LOT 34 AND THE END OF SAID LINE.

PARCEL 5:

AN EXCLUSIVE EASEMENT AND RIGHT OF WAY FOR PURPOSE OF ERECTING AND MAINTAINING A FENCE OVER, ALONG AND ACROSS THE FOLLOWING DESCRIBED LAND:

ALL THAT PORTION OF LOT 34 OF ESCONDIDO TRACT NO. 514, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 11617, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 12, 1986, LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 34, WHICH IS A POINT IN THE ARC OF A 330 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE AT SAID POINT BEARING NORTH 89° 41' 59" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 330 FOOT RADIUS CURVE, CONCAVE THROUGH A CENTRAL ANGLE OF 0° 52' 44" AN ARC LENGTH OF 5.06 FEET; THENCE SOUTH 81° 45' 27" WEST 129.15 FEET TO THE TRUE POINT OF BEGINNING OF THE LINE TO BE DESCRIBED; THENCE SOUTH 58° 26' 53" WEST 59.31 FEET; THENCE SOUTH 50° 48' 48" WEST 45.16 FEET AND THE END OF SAID LINE.

ATTACHMENT "B"

Mills Act Application List of Improvements

Case file: HP 12-0001

Property Address: 2985 Su Siempre Place

Property Owners: Thomas M. and Laurel C. Scieszka

1. Replace tile roof and individual bird stops on main house and outbuildings (completed).
2. Replace original cyclone fence and gates at entrance (complete).
3. Re-surface original asphalt driveway (completed).
4. Repaint main house and outbuildings (completed).
5. Reglaze and repaint frames of existing main house windows (completed).
6. Upgrade house plumbing (completed).
7. Replace both existing water heaters (completed).
8. Replace old air conditioning unit and wiring (completed).
9. Upgrade old wiring in playroom (completed).
10. Replace weather stripping on all casement windows (planned).

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.

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

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 17

Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Gilbert Rojas, Director of Finance
SUBJECT: Revise Municipal Code Chapter 25 Article 4 relating to Transient Occupancy Tax

RECOMMENDATION:

It is requested that Council adopt Ordinance No. 2012-19.

FISCAL ANALYSIS:

Transient Occupancy Tax (TOT) amounts to approximately \$1.1 million dollars in revenue to the City. This ordinance change will assist staff in enforcing this tax fairly to all lodging establishments.

BACKGROUND:

This is a general tax imposed on occupants for privilege of occupying rooms(s) in hotel, motel, inn, etc. The authority for the tax is the State of California Revenue and tax code 7280 and 7281. This tax is collected by the operators of hotels/motel or their agents and remitted to the City.

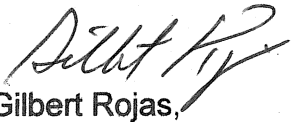
The revisions to this ordinance should:

- Aid in the timely collection of TOT and prompt enforcement when not remitted on time;
- Lowers the late charge from 25% to 10% per month;
- Emphasizes TOT is public money held in trust;
- Emphasizes record keeping requirements including long term Qualified Rental Agreements for 31 days and longer stays;
- Allows security deposits/certificate revocation when the Operator violates the code;
- Establishes procedures for business termination;
- Shortened appeal period;
- Adds cost recovery provisions for records inspection (beyond the routine)
- Updates definitions; and
- Clarifies that hotel receipts should not be comingled with personnel funds.

City Council meeting Nov. 14, 2012
Transient Occupancy Tax ordinance 2012-19
Page 2

A copy of the proposed ordinance change has been forwarded to all current TOT collectors.

Respectfully submitted,



Gilbert Rojas,
Director of Finance

ORDINANCE NO. 2012-19

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING ESCONDIDO MUNICIPAL CODE
CHAPTER 25, TAXATION, ARTICLE 4,
TRANSIENT OCCUPANCY TAX

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

WHEREAS, the Escondido City Council believes the periodic review and revision
of the Escondido Municipal Code facilitates efficient governance; and

WHEREAS, in an effort to ensure the City's means of collecting transient
occupancy tax are current, staff reviewed Escondido Municipal Code Chapter 25,
Article 4, Transient Occupancy Tax, and determined it needs to be updated; and

WHEREAS, the Escondido City Council determines the proposed amendment
properly regulates hotels subject to the transient occupancy tax and provides the City
with enhanced audit procedures and enforcement mechanisms.

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

SECTION 1. That Escondido Municipal Code Chapter 25, Article 4 is repealed
and replaced as follows:

Chapter 25

TAXATION

ARTICLE 4. Transient Occupancy Tax.

Sec. 25-75 Definitions. The following definitions are applicable to this Article:

(a) Hotel shall mean any structure, or any portion of any structure, which is occupied
or intended or designed for occupancy by Transients for dwelling, lodging or sleeping
purposes, and includes any inn, tourist home or house, motel, studio, bachelor hotel,

lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure or portion thereof. "Hotel" does not mean any hospital, convalescent home or sanitarium.

(b) Occupancy shall mean the use or possession or the right to the use or possession of any room or rooms or portion thereof in any Hotel for dwelling, lodging or sleeping purposes.

(c) Operator shall mean the person who is proprietor of the Hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. "Operator" includes a managing agent, a resident manager, a resident agent or any other individual acting in a management capacity. Where the Operator performs the function of booking or charging for a room through an agent of any type or character other than an employee, the agent shall also be deemed an Operator for the purposes of this article and shall have the same duties and liabilities as the principal.

(d) Person shall mean any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

(e) Qualifying Rental Agreement shall mean and is limited to a written contract signed by both the Operator and tenant, legally enforceable by either party, for a Rental period of not less than thirty consecutive days. "Qualifying Rental Agreement" shall expressly exclude: (1) any agreement regardless of length of the Rental term which may be terminated for any reason by either party or by mutual consent prior to the thirtieth consecutive day of the tenancy or (2) any agreement which would constitute a violation of law.

(f) Rent shall mean the consideration charged to the Transient, whether or not received, for the occupancy of space in a Hotel, valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever and any (1) un-refunded advance Rental deposits or (2) separate charges levied for items or services which are part of such occupancy including, but not limited to, furniture, fixtures, appliances, linens, towels, non-coin-operated safes, energy surcharges and maid service. Charges for parking to Hotel guests are considered to be part of the room Rent in computing the charges subject to the occupancy tax. Charges for products or services that are subject to tax under sales and use tax laws, such as food or beverages, will not be subject to the occupancy tax.

(g) Successor to Operator shall mean any person who acquires the right to operate a Hotel from a preceding Operator, by whatever means, including purchase, foreclosure, operation of lease, or by any other means. A transfer of an ownership or management interest in a Hotel, wherein the facility continues to operate as such, either

continuously or for business interruption not exceeding thirty days, shall constitute a succession for purposes of this Article.

(h) Tax Administrator shall mean the City of Escondido's Director of Finance.

(i) Transient shall mean any person who exercises Occupancy or is entitled to Occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a Hotel shall be deemed to be a Transient until thirty consecutive days have expired or until such date that a person has entered into a Qualifying Rental Agreement.

(j) Transient Occupancy Registration Certificate shall mean the form provided by the Tax Administrator authorizing an Operator to collect Transient Occupancy Tax on behalf of the City of Escondido.

Sec. 25-76. Tax administrator's regulations. The Tax Administrator may promulgate reasonable rules, interpretations and regulations to implement and enforce the provisions of this Article.

Sec. 25-77. Transient occupancy registration certificate.

(a) Before commencing business or following a change in Hotel ownership, each Operator renting to Transients shall register with the Tax Administrator and shall obtain a Transient Occupancy Registration Certificate. The certificate shall at all times be posted in a public visible place on the premises such that Transients may read the certificate during the registration process.

(b) The certificate shall, among other things, state the following:

- (1) The name of the Operator;
- (2) The Hotel address;
- (3) The date upon which the certificate was issued.

(c) A Transient Occupancy Registration Certificate signifies that the Operator understands the requirements of this Article, has registered with the Tax Administrator for the purpose of collecting Transient Occupancy Tax and acknowledges the procedures for remitting such tax to the Tax Administrator each month. The certificate is not assignable and is nontransferable and shall be surrendered immediately to the tax collector upon cessation of business at the location named or upon the sale or transfer of the business or the real property on which the business is located

(d) A Transient occupancy registration certificate does not authorize any person to conduct any unlawful business, to conduct any lawful business in an unlawful manner,

or to operate a Hotel without strictly complying with all local applicable laws.

(e) To insure compliance with transient occupancy tax payment requirements, the Tax Administrator may require a security deposit, equal to one month's estimated Transient Occupancy Tax, from a new Operator before issuing a Transient Occupancy Registration Certificate. The Tax Administrator may release the security deposit following twelve months of timely remittance of all required Transient Occupancy Tax and associated returns.

Sec. 25-78. Tax rate; collection; payment.

(a) For the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay a Transient Occupancy Tax in the amount of ten percent (10%) of the Rent charged by the Operator. The tax imposed pursuant to this article constitutes a tax owed by each Transient to the City which is extinguished only by payment to the Operator at the time the Rent is paid or to the City. If the Rent is paid in installments, a proportionate share of the tax shall be paid with each installment.

(b) A person who begins occupancy in any Hotel as a Transient and later signs a Qualifying Rental Agreement owes the Transient Occupancy Tax for each day of occupancy prior to the effective date of the Qualifying Rental Agreement.

Sec. 25-79. Operator duties.

(a) All taxes collected by an Operator shall be held in trust for the City of Escondido until submitted to the Tax Administrator. An Operator shall maintain records as required by the Tax Administrator to ensure the proper amount of tax is collected and remitted. An Operator shall not commingle any funds from personal or other business sources with financial accounts containing Hotel income.

(b) Each Operator shall collect the tax imposed by this Article at the same time as the Rent is collected from every Transient. The amount of tax shall be separately stated from the amount of the Rent charged and the Operator shall maintain records documenting every occupancy whether Transient or not. A Qualifying Rental Agreement shall document every non-Transient occupancy. Each Transient shall receive a receipt for the tax payment from the Operator and the Operator shall maintain a duplicate receipt in accordance with this Article.

(c) If the Operator collects the Rent but fails to collect the Transient Occupancy Tax for any reason, the Operator shall pay the Transient Occupancy Tax.

(d) No Operator of a Hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the Operator, or that it will not be added to the Rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

(e) An Operator who collects Transient Occupancy Taxes and fails to remit the taxes collected pursuant to this chapter may be subject to prosecution under Section 424 of the Penal Code of the State of California.

Sec. 25-80. Reporting, remitting tax.

(a) All Operators shall remit monthly the full amount of taxes collected for Transient occupancies for the preceding month along with the required Transient Occupancy Tax return on a form approved by the Tax Administrator.

(b) Taxes remitted shall include the appropriate tax return form and must be actually received by the Tax Administrator on or before the last day of the month that follows the reporting month; otherwise the taxes are delinquent and subject to the penalties authorized by section 25-82. When city hall is closed on the last day of the month, the tax submission deadline shall be extended to the next business day.

(c) Upon cessation of business or change in ownership, all tax due and the associated tax return shall be immediately remitted to the Tax Administrator.

(d) When required by the Tax Administrator to protect the funds held in trust, the Operator shall submit tax returns and payments at an increased frequency. The Tax Administrator may also order the Operator to segregate Transient Occupancy Taxes collected into a separate trust account maintained on behalf of the City of Escondido in a financial institution acceptable to the Tax Administrator.

Sec. 25-81. Violations.

(a) The purpose of this Article is to regulate the collection of taxes collected by Operators and held in trust for the City of Escondido. Violation of any provision of this Article shall be treated as a strict liability offense. Any Operator or other person violating any of the provisions of this Article shall be guilty of a misdemeanor and shall be punishable therefor as provided by Escondido Municipal Code section 1-13.

(b) It shall be unlawful to operate a Hotel without a Transient Occupancy Registration Certificate.

(c) It shall be unlawful for any Operator to fail to collect Transient Occupancy Taxes as required by this Article.

(d) It shall be unlawful to fail to remit the Transient Occupancy Taxes collected or owed on the date due to the City of Escondido.

(e) It shall be unlawful to fail to submit the required Transient Occupancy Tax return on the date due to the City of Escondido.

(f) It shall be unlawful for any Operator to make, render, sign or verify any report related to Transient Occupancy Tax collection or to make any false or fraudulent report or claim.

(g) It shall be unlawful to fail to retain records related to the Transient Occupancy Tax collection or amount due as required by this Article.

(h) It shall be unlawful to refuse to provide or allow timely access to required Transient Occupancy Tax records after a lawful demand by the Tax Administrator.

(i) It shall not be a defense to violations of this Article that the Operator had forwarded any return due or tax collected to its principal or corporate headquarters, nor that any failure to file or remit taxes was based on the direction or inaction of such principal or corporate headquarters.

Sec. 25-82. Penalties.

(a) **Delinquency.** An Operator who fails to fully remit the tax due and the associated tax return by the due date shall pay a penalty equal to ten percent (10%) of the amount of the tax. The penalty is due on the first day the tax remittance is delinquent.

(b) **Continued delinquency.** Any Operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent, shall pay an additional delinquency penalty of ten percent (10%) of the amount of the tax due for each delinquent month, or portion thereof, in addition to the amount of the tax and the ten percent (10%) penalty first imposed. Such penalty shall not accrue to more than one hundred percent (100%) of the tax.

(c) **Interest.** In addition to the penalties imposed and upon demand of the Tax Administrator, an Operator who fails to remit any tax collected or owed, including any merged penalties and prior interest, imposed by this Article shall pay interest on the amount owed from the date on which the remittance first became delinquent. The annual interest rate shall be seven percent (7%).

(d) **Merger.** Every penalty imposed, any interest accrued and any assessment made under the provisions of this Article shall immediately become a part of the tax herein required to be paid.

(e) **Fraud.** If the Tax Administrator determines that the nonpayment of any remittance due under this Article is due to fraud, an additional penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to any mandatory penalties.

(f) **Relief from Penalties.** Upon showing of good cause and when in the public interest, the Tax Administrator may waive penalties assessed pursuant to this Article.

Sec. 25- 83. Remedies cumulative. All remedies prescribed by this Article or any other provisions of law and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

Sec. 25-84. Tax assessment; hearing.

(a) If any Operator shall fail to collect or remit the required Transient Occupancy Tax or any completed report required by this Article, the Tax Administrator shall obtain facts and information upon which to base the assessment of the tax imposed by this Article and owed to the City of Escondido. The Tax Administrator shall give a notice of the amount so assessed including penalties and interest via first class mail to the address provided on the Transient Occupancy Registration Certificate. In no manner does this assessment excuse the Operator from the requirement to submit the actual amount of tax collected and the associated tax return for the assessment period.

(b) Following receipt of an assessment, the Operator may, within seven (7) days of the postmarked notice date, make application in writing to the Tax Administrator for a hearing to dispute the amount assessed. If a complete application by the Operator for a hearing is not made within the time provided; the tax, penalties and interest determined by the Tax Administrator shall become immediately due and payable.

(1) Upon completed application, the Tax Administrator shall promptly schedule a hearing and provide notice to the Operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, penalties, and interest.

(2) The Operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the hearing officer shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable immediately.

(c) Payment of all tax, penalties, interest and the submission of the associated tax returns are required conditions precedent to seeking administrative review of any liability related to the provisions of this Article and shall accompany any application for a hearing.

(d) If the Operator succeeds at an assessment hearing, the City shall promptly refund any overpayment of transient occupancy tax, penalty and interest.

Sec. 25-85 Appeal; Payment Under Protest

(a) An Operator may appeal any hearing decision to the city manager by filing a notice of appeal with the city clerk within seven (7) days of the hearing decision. Payment of all tax, interest and penalties is a required condition precedent to seeking administrative or judicial review of any liability related to the provisions of this Article.

(b) The City Manager shall appoint an appeal hearing officer and shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such

Operator at the address provided on the Transient Registration Occupancy Certificate. The findings of the appeal hearing officer shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing.

(c) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the City or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to this chapter and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability.

(d) If the Operator succeeds following an appeal hearing, the City shall promptly refund any overpayment of transient occupancy tax, penalty and interest.

Sec. 25-86. Registration certificate revocation.

(a) If an Operator is delinquent more than one time in any twelve-month period or fails to comply with any regulation authorized by this Article, the Tax Administrator may order a security deposit or may revoke the Operator's Transient Occupancy Registration Certificate.

(1) The Tax Administrator shall give the Operator written notice of the revocation of the registration certificate.

(2) The Operator may request a hearing or appeal by following the same procedures as outlined in sections 25-84 and 25-85.

(b) The Tax Administrator shall not issue a new registration certificate after a revocation until satisfied that the Operator will comply with the provisions of this chapter relating to the occupancy tax and regulations of the Tax Administrator.

(c) During any period of time during which a Transient Occupancy Registration Certificate has not been issued or revoked or otherwise not validly in effect, the Tax Administrator may require that the Hotel be closed to Transients.

Sec. 25-87. Records retention; inspection; cost recovery.

(a) Records. It shall be the duty of every Operator liable for the collection and payment to the City of any tax imposed by this Article to keep and preserve, for a period of four (4) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the City. An Operator shall create and retain financial records that account for all Hotel bank deposits and all receipts that explain any discrepancies between gross Hotel income and Rent income that is subject to the Transient Occupancy Tax. Further an Operator shall create and retain records to allow reconciliation between income reported on state or federal tax returns with Rent income reported on Transient Occupancy Tax returns. The Tax

Administrator and authorized agents shall have the right to inspect at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City.

(b) **Inspection.** It shall be the duty of every Operator responsible for the collection of Transient Occupancy Taxes to cooperate with any lawful records inspection. The Tax Administrator and authorized agents in the exercise of duties imposed by this Article shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City. Access to all Transient Occupancy Tax records, including Qualified Rental Agreements, shall be made available within one business day of a lawful demand.

(c) **Travel.** If the Tax Administrator or designate agent must travel beyond the City of Escondido City limits to conduct a records inspection or audit pursuant to this Article, the Tax Administrator shall assess the Transient Occupancy Tax Operator for any additional costs incurred as a result of performing the audit outside of the City of Escondido. Before incurring travel related costs, the Tax Administrator shall notify the Operator and allow a reasonable opportunity for the Operator to produce the records within the City.

(d) **Audit deficiency.** If, upon audit or records inspection by the City, an Operator is found to be deficient in his return or his remittance, or both, the Tax Administrator shall immediately invoice the Operator for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. Failure to pay the deficiency and penalty shall subject the amount owed to the penalty, interest, hearing and appeal procedures provided in this Article.

(e) **Cost Recovery.**

(1) In addition to the penalties and interest provided in this section, the Operator shall reimburse City for the cost an audit or records inspection if an audit or inspection identifies a five percent (5%) or greater discrepancy between the amount of annual Transient Occupancy Tax due to the City and the amount paid by the Operator. Such reimbursement shall be paid by Operator within thirty (30) days of the date City notifies Operator in writing of the amount of City's costs.

(2) If any Operator shall fail or refuse to collect the tax required by this chapter or fail to provide, within the time provided in this Article, any report and remittance of said tax, of any portion thereof, required by this Article, the Tax Administrator may order an inspection of the records of the Operator to determine the proper amount of any tax owed. The entire cost of the inspection shall be assessed against the Operator.

(3) Any discrepancy between state or federal tax records or gross hotel receipts and Rent income reported on Transient Occupancy Tax returns or the lack of adequate records to explain any discrepancy shall result in the Operator reimbursing

the City for the cost of the audit, in addition to any tax, penalties or interest that may be owed.

(f) Failure to reimburse the City for audit or inspection related expenses may result in revocation of the Operator's Transient Occupancy Registration Certificate.

Sec. 25-88. Refunds.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this Article, it may be refunded as provided in subsections (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

(b) An Operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the person from whom the tax has been collected was not a Transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the Transient or credited to Rent subsequently payable by the Transient to the Operator.

(c) A Transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the Transient directly to the Tax Administrator, or when the Transient having paid the tax to the Operator, establishes to the satisfaction of the Tax Administrator that the Transient has been unable to obtain a refund from the Operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

Sec. 25-89. Actions to collect taxes and enforcement of liens.

(a) Actions. Any tax required to be paid by any Transient under the provisions of this Article shall be deemed a debt owed by the Transient to the City. Any tax collected by an Operator which has not been paid to the City shall be deemed funds held in trust for the account of the City which are due and payable by the Operator to the City pursuant to the provisions of this Article. Any person, including an Operator, owing money to the City under the provisions of this Article shall be liable to an action brought in the name of the City for the recovery of such amount, including applicable penalties and interest.

(b) Recording of a certificate of lien. If any amount required to be paid to the City under this Article is not paid when due, the Tax Administrator may record in the office of the San Diego County Recorder a certificate which specifies the amount of tax and penalties and interest due, the name and address of the Operator liable for the same, a statement that the Tax Administrator has complied with all provisions of this Article in the determination of the amount required to be paid and a legal description of the real property owned by the Operator. From the time of the recording of the certificate, the amount required to be paid together with penalties and interest, constitutes a lien upon all the real property in the county owned by the Operator or thereafter acquired before the lien expires. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged.

(c) Warrant for collection of tax. At any time within three (3) years after the recording of a certificate of lien under subsection (b) of this section, the Tax Administrator may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of any tax and penalties required to be paid to the City under this Article. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The Tax Administrator may pay or advance to the sheriff or marshal such fees, commissions and expenses for services as are provided by law for similar services pursuant to a writ of execution.

(d) Seizure and sale. In lieu of issuing a warrant under subsection (c) of this section, at any time within the three (3) years after an assessment was issued or a certificate of lien was recorded under subsection (c) of this section, the Tax Administrator may collect the delinquent amount by seizing or causing to be seized any property, real or personal, of the Operator and sell any noncash or nonnegotiable property or a sufficient part of it at public auction to pay the amount of tax due together with any penalties and any cost incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the Operator not exempt from execution under the provisions of the Code of Civil Procedure.

(e) Notice of provisions for seizure. Prior to seizure of the Transient Occupancy Tax Renting Occupancy to Transients, the Tax Administrator shall give a notice of such proposed action, which will include the amount assessed, by serving the notice personally or by depositing it in the United States mail, postage prepaid, addressed to the Operator assessed at his last known place of address, provided such Operator is still the Operator of record of such Transient Occupancy Tax. Such Operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the Tax Administrator for a hearing on the proposed seizure. The City Manager shall appoint an independent hearing officer. If application by the Operator for a hearing is not made within the time prescribed, the Tax Administrator may seize the Transient Occupancy Tax as soon as practicable, but no earlier than the eleventh day after mailing the notice. If such application is made, the Tax Administrator shall give not less than five (5) days written notice in the manner herein to the Operator to show

cause at a time and place fixed in said notice why said seizure should not take place. At such hearing, the Operator may appear and offer evidence only as to why such seizure is not an appropriate remedy for the delinquency. After such hearing, the Tax Administrator shall make a determination concerning the seizure and shall thereafter give written notice to the Operator in the manner prescribed herein of such determination and the proposed date of seizure, if any. Such seizure shall not be earlier than five (5) days from the date of the notice of the determination of seizure. Within five (5) days from the date of the notice, an appeal may be taken as provided in section 25-85, provided that such appeal is only taken for the determination concerning the seizure and not concerning the amount of the assessment.

(f) Any person owing money to the City under the provisions of the chapter shall be liable to an action brought in the name of the City for the recovery of such amount plus attorney's fees and costs.

Sec. 25-90. Business Termination.

(a) Change of Ownership. An Operator who is transferring, selling, terminating its business or who has received any legal notice that could impact the Operator's interest in the property shall immediately notify the Tax Administrator in written form. The Operator shall, at the same time, notify the Successor to Operator of their responsibility for any unpaid collected taxes. Operator shall further certify in writing to the Tax Administrator that the Operator has provided a copy of this Article to the Successor to Operator.

(b) Cessation of Business. Upon change of ownership or cessation of business, all Transient Occupancy Taxes collected are due, though penalties shall not accrue until the first day of the following month. The Operator shall immediately file the tax return for the last reporting period. After filing the final return and remitting the balance due, the Operator shall make his records of account available for a closeout inspection by the Tax Administrator or authorized agent.

Sec. 25-91. Duty of Successor of Operator

(a) A Successor to Operator shall promptly notify the Tax Administrator of a change in ownership or Operator. For property sales, the Successor to Operator shall notify the Tax Administrator of the date of sale immediately and shall withhold a sufficient portion of the purchase price to equal the amount of such tax obligations as directed by the Tax Administrator. If the Operator does not remit all transient Occupancy Taxes collected or owed, the Successor to Operator shall deposit the withheld amount with the Tax Administrator.

(b) If the Successor of Operator fails to withhold a portion of the purchase price as required, it shall be responsible to the City for the payment of the amount required to be withheld. The Tax Administrator may withhold issuance of a Transient Occupancy

Registration Certificate to the Successor to Operator until the Operator's Transient Occupancy Tax obligations have been cleared.

(c) A Successor to Operator may request a tax clearance certificate from the Tax Administrator and the Tax Administrator may charge an administrative fee to cover the costs in issuing the certificate pursuant to the California Revenue and Tax Code section 7283.5.

Sec. 25-92. Confidentiality.

(a) Returns filed with the City pursuant to this chapter, and information regarding the amount of gross receipts, adjustments, credits, over collections, tax, penalty and interest, are confidential records.

(b) No person having an administrative duty under this chapter shall make known in any manner whatever the business affairs, operations, or information obtained by an investigation or audit of the records of any Operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, of the Operator, set forth or to knowingly permit any return or any abstract, or copy of the return to be seen or examined by any person, except this section shall not apply to any disclosures made in connection with any hearing, appeal, or any civil action or proceeding relating to the determination or recovery of the tax; any prosecution of any person for violation of any provision of this chapter; or any criminal or civil proceeding pertaining to the tax.

(c) This section shall not prohibit, nor be construed to prohibit, disclosure of statistical or cumulative information derived from tax returns, when the information disclosed does not identify or relate to any particular Operator nor be construed to prohibit, any disclosure of tax returns or information when disclosure is compelled by an order of court or other judicial process.

Sec. 25-93. Notice. Any notice required to be given pursuant to this chapter, shall be deemed given if personally served on the Operator or the Operator's representative, or if deposited in the United States mail, first class postage prepaid, and addressed to the Operator at the address shown on the Transient Occupancy Registration Certificate.

Sec. 25-94. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Article or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

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

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

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

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 18

Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Christopher W. McKinney, Director of Utilities
SUBJECT: Update and Request for Council Guidance Concerning the Water Purchase Agreement for the Carlsbad Desalination Project

REQUEST:

The Utilities Department requests that the City Council:

1. Accept the report from staff concerning the proposed Water Purchase Agreement between the San Diego County Water Authority (SDCWA) and Poseidon Resources for a future Carlsbad Desalination Project, and
2. Provide guidance to the City's SDCWA Board representative concerning the SDCWA Board of Directors' vote on the Purchase Agreement, which may occur as early as November 29, 2012.

FISCAL ANALYSIS:

If the agreement is approved and the desalination plant produces water, Escondido's payments to the SDCWA are projected to increase approximately \$2.5 million per year. These additional payments cover fixed charges such as improved standby reliability, as well as variable charges such as volumetric supply (*more details in the Background section*). Based on the Water Fund's 2012 revenue of \$38.4 million, a rate increase of approximately 6.5 percent will be required when the facility is operational as early as 2016.

BACKGROUND:

On September 27, 2012, the SDCWA released the proposed Water Purchase Agreement (WPA) negotiated with Poseidon Resources for the purchase of 48,000 acre-feet to 56,000 acre-feet of water produced annually from the Carlsbad Desalination Plant (the Project). The term of the WPA is 30 years. The required purchase volume represents 11 to 12 percent of the SDCWA's annual deliveries to member agencies in 2010, and by 2020 is projected to account for one-third of the region's local water supply.

The WPA transfers risk for the facility's design, construction and operation to Poseidon Resources. The agreement also includes other protections for the SDCWA, including monetary penalties to Poseidon for failure to meet supply obligations. The WPA is a necessary first step to allow Poseidon

to seek bond financing for the project. The SDCWA Board will decide whether to approve the agreement at a future Board meeting, perhaps as early as November 29, 2012.

The total cost of water from the Project to the SDCWA is projected to be approximately \$2,250 per acre-foot, which includes fixed and variable production costs, transportation costs, and the cost of inefficiencies introduced by the Project at the Twin Oaks Valley Water Treatment Plant (WTP). This price can increase due to changes in laws or regulations that increase production costs, but cumulative increases are capped at 30 percent over the term of the WPA. The price can also increase due to inflation. The WPA also gives the SDCWA authority to purchase the Project beginning in Year 10 of the agreement for an amount equal to outstanding bond debt and remaining contract cost. At the end of the agreement, the SDCWA will have the right to purchase the project for \$1.

The SDCWA member agencies have the option to purchase water directly from the Project at the same rate paid by the SDCWA. Member agencies must express their interest by November 26, 2012. The maximum volume made available to member agencies for direct purchase is 24,000 acre-feet annually, or one-half of the SDCWA's minimum annual purchase commitment. Thus, the SDCWA's minimum purchase commitment will be between 24,000 acre-feet and 48,000 acre-feet annually. *(Note: Utilities Staff recommends against direct purchase of Project Water by the City for reasons that will be explained in the Recommendation section).*

The Project will include construction of a desalination plant adjacent to the Encina Power Station in Carlsbad. All necessary environmental approvals have been secured. The Project will also include a new ten-mile pipeline to deliver water to the SDCWA's Second Aqueduct in San Marcos; improvements to the existing SDCWA pipelines between San Marcos and the Twin Oaks Valley WTP; and improvements at the Twin Oaks Valley WTP to allow for blending of the treated water from the Project with treated water from the WTP.

As a member of SDCWA, the City of Escondido would be responsible for its share of the costs of the Project if the WPA is approved by a majority of the Board. The total cost of the Project will be \$984 million (\$691 million for capital improvements, \$213 million for financing, and \$80 million for SDCWA facility improvements). Total Operation and Maintenance costs will be approximately \$50 million annually.

The City's cost impact is projected to be \$2.55 million dollars annually, +/- \$0.08 million *(the projection's uncertainty of +/- \$0.08 million is dependent on the choices made by the SDCWA Board concerning allocation of fixed costs of the Project)*. The actual impact could be as much as \$0.5 million less because Escondido's impact projection is based on the last ten years of water purchases. Conservation efforts have reduced the volume of water purchased by the City, so the volume of water purchased from 2006 to 2016 will be less than that purchased from 2001 to 2011. A likely breakdown of the projected \$2.55 million annual cost increase is: (1) \$0.9 million increase for fixed infrastructure access charges; (2) \$0.55 million for volumetric transportation charges; and (3) \$1.1 million for

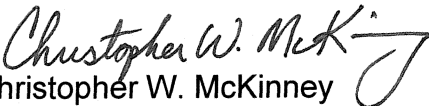
volumetric supply charges. This cost increase would be equivalent to a water rate increase of approximately 6.5 percent more than the 2012 rates. However, such an increase would not be necessary until 2016 at the earliest.

STAFF RECOMMENDATION:

Staff recommends against expressing intent to purchase Project water directly from Poseidon Resources. The City already possesses a reliable source of local water which accounts for 20 to 40 percent of its annual water consumption, depending in large part on rainfall. The cost of direct water purchase is approximately twice the cost presently paid for imported SDCWA water. Worst case projections of imported water prices, which rely primarily on the past history of increases, indicate that imported and Project water will be equivalently priced in 2022, so there would be no financial benefit to direct purchase until then. The Council recently approved design of a recycled water line to the eastern areas of the City and study of potable reuse options as part of the Utilities Department's "Conceptual Recycled Water Plan." Successful implementation of this plan will drastically reduce the City's dependence on imported water and represents a better investment of Water Fund money for the long-term financial health of the Utility. Additionally, Escondido has no direct link to the SDCWA's treated water supply because the City imports raw, i.e., untreated, water. Although we do have indirect links to the SDCWA treated water via emergency connections with neighboring agencies, the cost of using these connections for routine delivery of treated water would further increase the cost.

Staff recommends providing guidance to the City's SDCWA Board of Directors representative that the City supports approval of the WPA. As with any project of this magnitude, there are risks associated with moving forward and risks associated with the status quo. In the event that the Board approves the WPA, there is the possibility that rain will be plentiful and that a cost-effective, environmentally sound solution to California Delta issues will be implemented, thus making desalination less critical. In the event that the Board does not approve the WPA, there is the risk of drought or disruption to deliveries via the California Delta, thus leading to more severe curtailment of water allocations. Despite the added cost of desalination, it does represent a hedge against the risk of drought or other disruptions to the water supply and it makes our region more independent. Desalination would also provide a water supply bridge for the City until the Department's Conceptual Recycled Water Plan can be implemented, at which time the City's imported water dependence will be further diminished. Minimized imported water dependence will allow the City to avoid much of the future volumetric costs of desalination and water importation in general. If the Conceptual Recycled Water Plan cannot be fully implemented, the Project will continue to serve as a hedge against potential supply curtailment.

Respectfully submitted,


Christopher W. McKinney
Director of Utilities

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 19

Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Michael Lowry, Fire Chief

SUBJECT: Approve Staffing the Seventh Engine Company, the Purchase and Staffing of One Additional Ambulance and the Cost to Hire Non-Safety Personnel

RECOMMENDATIONS:

Adopt Resolution No. 2012-179 approving an increase in the Fire Department Operating Budget for FY 12/13 of \$847,355 to hire three (3) additional safety personnel to staff the Seventh Engine Company, twenty-four (24) non-safety personnel to staff additional ambulances and the associated start-up and operational costs; and to increase the Fire Department Operating Budget for FY 13/14 of \$1,204,330 to maintain personnel and on-going operational costs.

FISCAL ANALYSIS:

Understanding the current economic climate, Fire Department staff developed a staffing model which would achieve the Fire Department and City Council's goal of staffing the Seventh Engine Company. In addition, the plan provides for additional ambulance transport resources to handle the high call volume of emergency medical calls within the City of Escondido and the Rincon del Diablo Fire Protection District.

The staffing model was presented to the Escondido Firefighters Association, Senior Management and Council Members for comment and direction.

The staffing model includes the addition of a Seventh Engine Company and adds two additional ambulances during the day and one additional ambulance at night for a personnel cost of \$1,204,330 in annual personnel and operational costs.

Given fiscal constraints and the difficulty to hire personnel by the opening of Fire Station 4 on December 15, 2012, staff is recommending placing the Seventh Engine Company into service on March 16, 2013. This affords the Fire Department the ability to hire and train the new personnel to be operationally ready without placing further burden on an already stretched workforce. This however will require the Fire Department to close Fire Station 6 on December 15 and move personnel back to Fire Station 4. District 4 has been severely impacted by delayed response times due to the distance of the next due unit and the geographical features of the district. While not ideal, District 6 is much better suited to be served by next due units from Fire Stations 1, 3, and 5. Fire Station 6 would be fully staffed on March 16, 2013.

The implementation of the Seventh Engine Company and hiring non-safety personnel to staff the additional ambulances, including operational costs will be \$847,355 for FY 2012/13.

Proposed Staffing Costs FY 2012/13

\$506,800	Personnel Costs
<u>\$340,555</u>	Operational Costs
<u>\$847,355</u>	Total

It is anticipated that the Ground Emergency Medical Transport (GEMT) program, formally known as Assembly Bill 678 (AB 678), has been signed by Congress and is waiting on the final details by both the State and Federal agencies. This action would provide the City of Escondido the ability to receive supplemental federal funds retroactive to January 2010 for all Medi-Cal transports. Although the actual amount of supplemental payments is unknown, it is an anticipated source of additional revenue in the near future. It is also anticipated that additional funding would be realized by not losing transport fees to neighboring cities. These projected revenue sources will help off-set the use of General Fund Reserves.

If Council desires to implement the Seventh Engine Company earlier than March 16, the approximate cost would be an additional \$100,000 per month.

For comparison purposes, if the Escondido Fire Departments current staffing model remained status quo and increased in the same fashion (7 engines, 5 ambulances) the personnel cost to staff the Seventh Engine Company and add two additional ambulances would be approximately \$2,593,545 in annual personnel and operational costs.

PREVIOUS ACTIONS:

In February 1993 The City Council adopted the Fire Service and Facilities Master Plan. The foundation for the Fire Service Master Plan was based upon service level standards previously identified and adopted in the City's General Plan. The intent of the Fire Service Master Plan was to identify station and staffing expansion requirements necessary to achieve and maintain service levels.

In July 2000 the Fire Department completed and presented to City Council the results of the Fire Service Standards of Response Coverage Study (SORC). The International Association of Fire Chiefs (IAFC) and the International City Management Association (ICMA) developed the SORC model to assist fire departments in conducting a comprehensive review of service standards and performance levels. One area the SORC recommended change was with the Quality of Life (QOL) standard that City Council adopted in the early 1990's. The recommendation was to change the standard to reflect total response time for service delivery instead of just the travel time thereby increasing the need to construct and staff additional fire stations.

On November 2, 2004, Voters approved Proposition P, which provided funding for the acquisition, construction, repair and replacement of certain public safety facilities. Two of the public safety facilities funded by Proposition P were for the construction of additional Fire stations (6, 7). Both fire stations were completed in 2008. Engine 6, which at the time was providing service from Fire Station

1, moved to Fire Station 7. Fire Station 6 was staffed with an ambulance. At the time when voters approved Proposition P it was the intention of Council to approve additional funding to the Fire Departments Operating Budget in order to staff the Seventh Engine Company. However due to the economic downturn, the funding has not been available.

BACKGROUND:

The July 2000 Standards of Response Coverage Study covers many areas, such as how, why and where fire companies are located; what are the staffing capabilities of those companies; historical measures of emergency incident workload in our city and the use of GIS capabilities for computer mapping and time travel analysis.

Given an objective to control a fire or mitigate a medical emergency before it has reached its maximum intensity requires a "distribution" of resources and a cost effective "concentration" of resources for maximum effectiveness for the greatest risks. Distribution is the "speed" of the first due fire companies for initial intervention. Concentration is the "massing" of stations or companies close enough together that incidents can receive enough multiple company help to stabilize serious emergencies. Therefore, creating standards of response coverage goals frequently consist of the decisions made regarding "distribution" and "concentration" of resources (Fire and EMS) in relation to the potential demand placed upon them by the level of risk found in the community. For most communities, the goal is to have the fire department arrive on scene with enough resources, in a timely manner to stop the escalation of the emergency as they find it.

In February of 1991 the Sixth Engine Company and third ambulance were placed into service at Fire Station 1. The total call volume in 1991 was 6,987. Twenty-one years later in 2012, the Escondido Fire Department is on pace to break 12,500 calls, utilizing the same number of personnel and an additional 11-hour ambulance. Because of this 85% increase in call volume, the Fire Department experiences stacked or simultaneous incidents, which delays response times and the number of ambulances are not sufficient to transport all patients.

In 2009 the Fire Department laid off Emergency Medical Technicians (EMT's) and closed down one full-time ambulance due to budgetary constraints placed on the City by the economic downturn. Since that time, the Fire Department has placed a heavy reliance on the use of automatic aid requests from our neighboring communities to transport the citizens of Escondido. While the fire service utilizes automatic aid frequently for major incidents, an over reliance on automatic aid increases response times and reduces the associated revenue to the City of Escondido for these calls.

Respectfully submitted,



FOR:

Michael Lowry
Fire Chief



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: November 5, 2012
Department: Fire Department
Division: Administration
Project/Budget Manager: Michael Lowry 5400
Name Extension
Council Date (if applicable): November 14, 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. Rows include Ambulance, Paramedic Equipment, Mentorship, Uniforms, Personal Protective Equipment, Water, Electricity, Acadamy (Overtime), Computer Equipment, Minor Office Equipment, Other Telephone, Building Maintenance.

Explanation of Request:

It is requested that Council adopt Resolution No. 2012-179 approving an increase in the Fire Department Operating budget of \$506,800 to hire 3 additional safety personnel to staff the seventh engine company, 24 non-safety personnel to staff additional ambulances, \$340,555 for start-up and operational costs.

APPROVALS

Department Head Signature: [Signature] Date: 11/6/12
Finance Signature: [Signature] Date: 11/6/12

City Manager Date
City Clerk Date

Distribution (after approval): Original: Finance



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: November 5, 2012
Department: Fire Department
Division: Administration
Project/Budget Manager: Michael Lowry 5400
Name Extension
Council Date (if applicable): November 14, 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. Rows include Overtime - Staff Engine Co., Overtime - Ambulance Staffing, Regular Full-Time, Employee Overhead, and General Fund Reserve.

Explanation of Request:

It is requested that Council adopt Resolution No. 2012-179 approving an increase in the Fire Department Operating budget of \$506,800 to hire 3 additional safety personnel to staff the seventh engine company, 24 non-safety personnel to staff additional ambulances, \$340,555 for start-up and operational costs.

APPROVALS

Department Head: [Signature] 11/6/12
Finance: [Signature] 11/6/12

City Manager: _____ Date
City Clerk: _____ Date

Distribution (after approval): Original: Finance

RESOLUTION NO. 2012-179

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
MODIFYING THE CITY OF ESCONDIDO
GENERAL FUND RESERVE AND
INCREASING THE FIRE DEPARTMENT'S
OPERATING BUDGET

WHEREAS, the Governmental Accounting Standards Board ("GASB") has issued its Statement No. 54 entitled Fund Balance Reporting and Governmental Fund Type Definitions, with the intent of improving financial reporting by providing fund balance categories that will be more easily understood; and

WHEREAS, the City Council of the City of Escondido has adopted Resolution No. 2011-151, the Fund Balance Policy; and

WHEREAS, the Fund Balance Policy provides that the City Council may commit a portion of the General Fund balance for specific purposes by taking formal action and these committed amounts cannot be used for any other purpose unless the City Council removes or changes the specific use through the same formal action taken to establish the commitment; and

WHEREAS, the City Council has determined that the General Fund Reserve balance be established at \$ 22,648,330; and

WHEREAS, the City Council has determined that the specific purposes for which the General Fund Reserve can be used is to fund any capital project that assists the City in emergency response; and

WHEREAS, the Fire Department needs to increase the Fire Department Operating Budget by \$847,355 to (1) hire three additional safety personnel to staff the Seventh Engine Company; (2) hire twenty-four non-safety personnel to staff additional ambulances to meet the service demands of the community; (3) purchase an additional ambulance to provide operational resources to deliver service; and (4) fund ongoing operational costs.

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

1. That the above recitations are true.
2. That the City Council hereby establishes and approves the new balance of the General Fund Reserve at \$ 21,800,975 as of the date of this Resolution.
3. That \$847,355 will be added to the Fire Department's Operating Budget to fund the personnel, start-up and operational costs.

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 20

Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council
FROM: Jerry H. Van Leeuwen, Director of Community Services
SUBJECT: Escondido Success Center: Status Report

RECOMMENDATION:

City Council is requested to receive the status report and provide direction to staff.

FISCAL ANALYSIS:

Costs to provide tenant improvements at the East Valley Community Center for a new Escondido Success Center are unknown. It is recommended that Council direct staff to work with potential tenants to develop cost estimates for tenant improvements. In addition, staff requests conceptual approval to pay for tenant improvements with recovery of those costs to be incorporated into a four to five year lease.

PREVIOUS ACTION:

Council directed staff to close the East Valley Branch Library and seek tenants for the space.

BACKGROUND:

The branch library located at the East Valley Community Center was closed at Council direction in FY 2011-12. At that time, staff was directed to seek a tenant for the space. Several months ago, a meeting of potential tenants with similar purposes was convened to explore an idea of creating a center for workforce development in the approximately 10,000 square foot space. These potential tenants included Escondido Education COMPACT, ResCare Workforce Services, Escondido Adult School, San Diego Futures Foundation and other auxiliary partners.

The group supported the concept of creating the Escondido Success Center. The purpose of the Success Center is to create a one-stop shop for workforce development, serving both youth (ages 16-21) and adults. The Center will improve access to job development opportunities as well as more efficiently coordinating services for local employers/companies and job seekers to meet the demands of their present and future workforce. A similar facility is operating in the City of Long Beach and has been identified as a model for workforce development activities.


Preliminary planning for the building has begun with the larger tenants identifying their space requirements. A common issue for the service providers is the inability to pay for capital improvements due to the nature of their contracts, primarily Department of Labor funding issued competitively thru the San Diego Workforce Partnership. Staff is suggesting that the City, as landlord, install tenant improvements at the specification of the tenants and amortize the cost over the term of the lease. Based on Council direction, the potential tenants have been told the space will be leased at market rates. The tenant improvements amortization would be in addition to the base rent, unless Council directs otherwise at a later date. In addition, the soon to be opened Escondido Technology Center is also located in the same former branch library space. The computer lab will be very beneficial for job seekers and for skill development and can be incorporated into the operations of the Success Center.

Escondido Education COMPACT is acting as the convener of the potential tenants. If negotiations are successful, Education COMPACT will vacate the space they currently occupy adjacent to the former branch library. The vacated space can in turn be leased to other tenants or used for other community purposes. If so directed by Council, staff will explore both commercial and other potential uses for the vacated space.

Staff is supportive of the proposal. Escondido Education COMPACT, as a long-time partner of the City, has demonstrated the ability to provide quality workforce development services. They have been successful in acquiring resources to sustain and expand their activities over many years and are a respected leader, particularly with youth oriented services.

The East Valley Community Center was constructed to provide community activities. The Success Center is consistent with that purpose. The addition of the Success Center facility will provide an efficient and coordinated effort to sustain and improve high quality workforce development services to area residents. The location is consistent with the education focus of the immediate area and with the City Council's goal of raising the median income of Escondido residents. In addition, the services will provide an opportunity for local business to reach out to local residents to fill local job opportunities.

Respectfully Submitted,


Jerry Van Leeuwen

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 21

Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Charles Grimm, Assistant City Manager

SUBJECT: Maple Street Plaza: Operations and Maintenance

RECOMMENDATION:

It is requested that Council provide direction to staff regarding the on-going operation of the Maple Street Plaza and possible closure of the northern section to through traffic.

FISCAL ANALYSIS:

Several options have been identified to provide alternative access between Grand Avenue and Valley Parkway should Maple Street be partially closed. These options range in cost from approximately thirty thousand dollars (\$30K) to seventy thousand dollars (\$70K) for improvements.

BACKGROUND:

The Maple Street Plaza ("Plaza") has now been in operation for several months and to some extent has become a victim of its own success. Although actual bookings for events will not begin until after the new year, the Plaza has already seen a high level of use. Much of this use has occurred around the fountain area where many small children and their parents took advantage of the water feature during the warm summer and early fall. The high use over the last few months has allowed staff to analyze the use of the Plaza and make some recommendations regarding needed signage, hours of operation and traffic patterns.

It became clear during the first month of operations that the number of children using the fountain near through traffic created a potential liability problem. When the concept of the Plaza was first developed, Maple Street was proposed to be terminated at the alley. At the request of the proposed hotel owner, it was ultimately approved for one-way through traffic as the hotel's main entrance was to be located on Valley. Because the hotel has not materialized, the north portion of Plaza near the fountain has been closed to through traffic to address child safety around the fountain area. The bollards were installed just north of the alley, meaning that north bound traffic on Maple must exit via the alley and proceed eastward.

Staff observation has indicated that the partial closure seems to be working well with little or no problems. However, the City has received a complaint from the property owner of the bank located at the northwest corner of Grand Avenue and Maple Street. The concern indicates that the lack of

straight access to Valley Parkway has hurt business. As a result, staff has provided three possible alternatives (versions 1,2,3) that would alter Lot 1 and allow for direct access through that lot to Valley Parkway. Versions 1 and 3 show new driveways in the center and east end of Lot 1. Version 2 actually provides access to Valley Parkway directly adjacent to Maple Street, meaning that access to Valley Parkway is almost the same as it was for a through Maple Street. As shown on the exhibit, there are costs associated with each alternative. Another alternative that has been suggested is that the City install wrought iron fencing around the fountain area. Staff is not supportive of this alternative as fencing would tend to visually divide an area that is designed to be an open Plaza.

MAINTENANCE AND OPERATION:

Other aspects regarding the on-going maintenance and operation of the Plaza are also being addressed. The need for "5 MPH" speed limit signs, "No Parking" signs and directional arrows will also be added with Council approval. Any signage added will be small and keep within the existing character of the Plaza.

Plaza lighting is also being addressed. Currently, the Pedestrian (Ped) lights are activated from dusk to dawn and staff is proposing no change as they constitute the safety lighting for the whole Plaza. During Daylight Savings Time the multi-colored "up" lights were being run from dusk until 2:30 AM. Due to their low energy use staff would continue to run them the same duration during winter months. If Council concurs, following Thanksgiving the "up" lighting would be run with just red and green lights for the Holiday Season. The colored lights are currently run on a two minute cycle and that would remain the same unless Council wishes a change.

Specific events for the Plaza will be booked and coordinated by the Events Coordinator position now located in the City Manager's office. On-going maintenance and operations will be overseen by the City Appearance Committee.

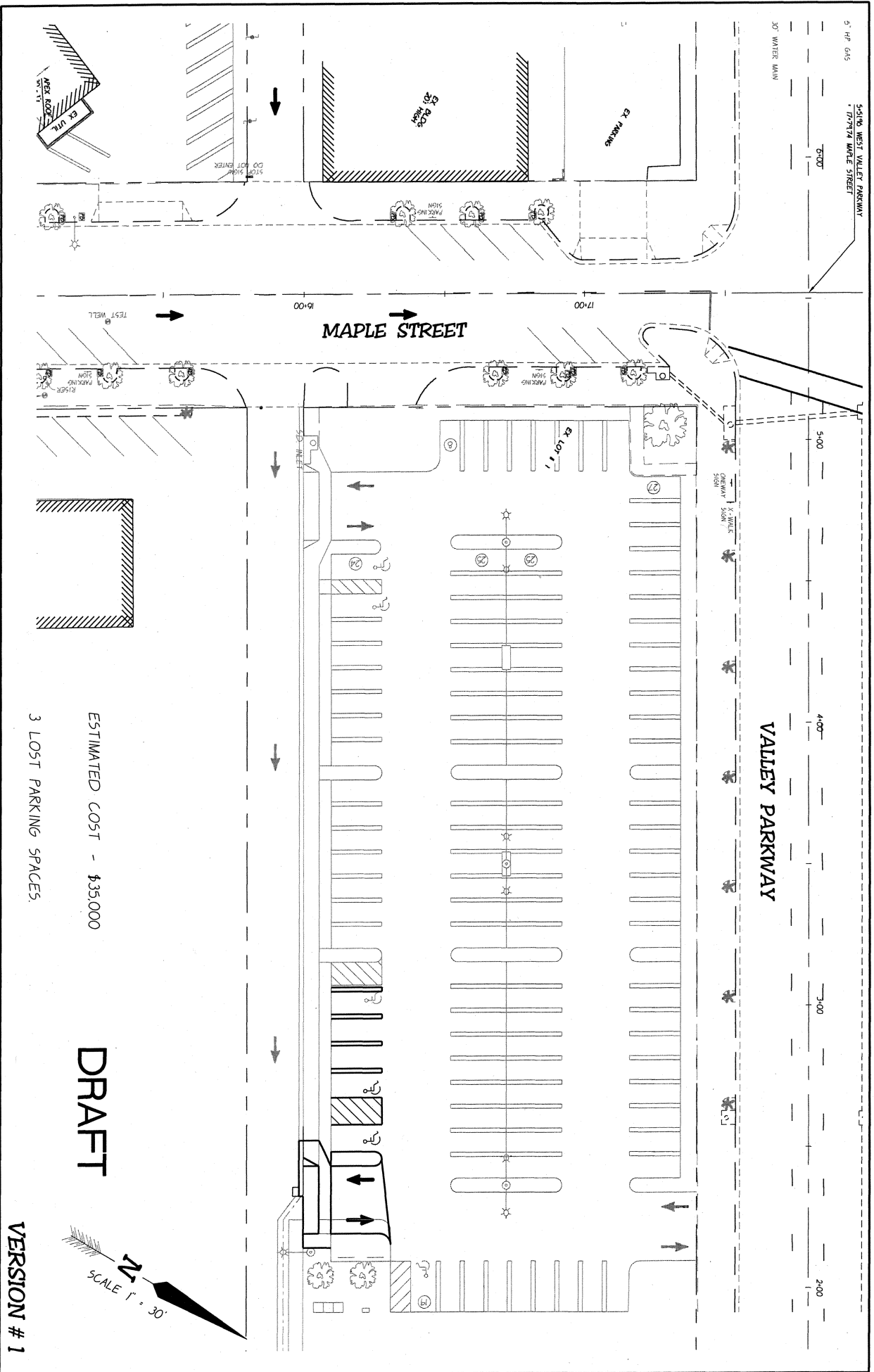
STAFF RECOMMENDATION:

In summary, City staff feels that the partial closure of Maple Street is working well without any new improvements. If Council feels a more direct access to Valley Parkway is needed staff, should be directed to implement one of the attached alternatives identified for Lot 1. In addition, staff would like direction from Council to proceed with the maintenance and operation items as stated above.

Respectfully submitted,



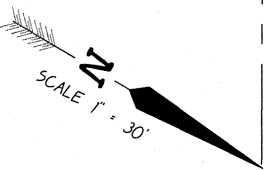
Charles Grimm
Assistant City Manager
Attachments: Lot 1, Versions 1-3

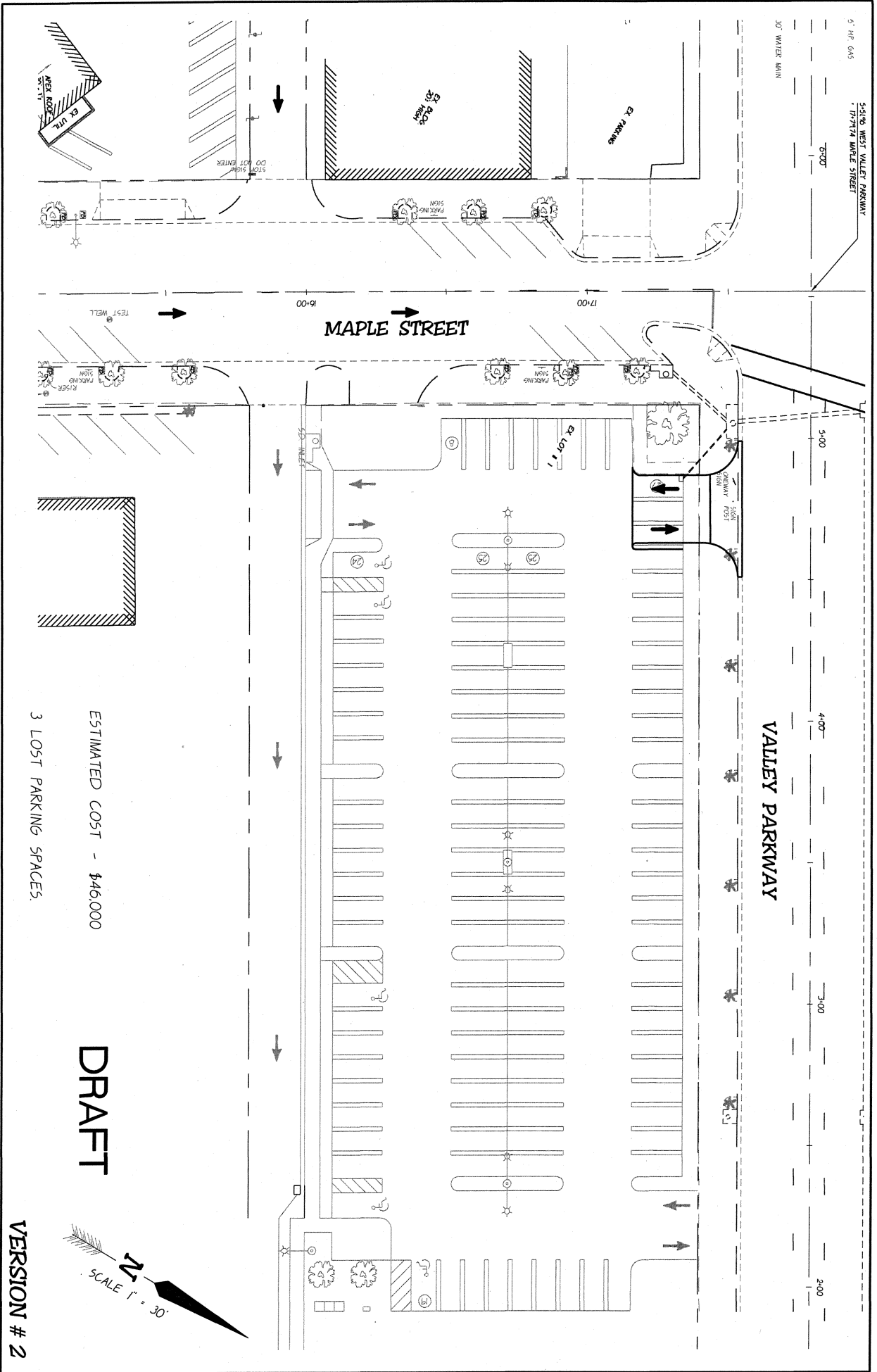


ESTIMATED COST - \$35,000
 3 LOST PARKING SPACES

DRAFT

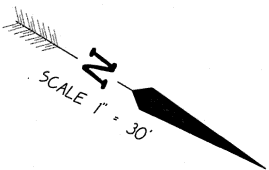
VERSION # 1



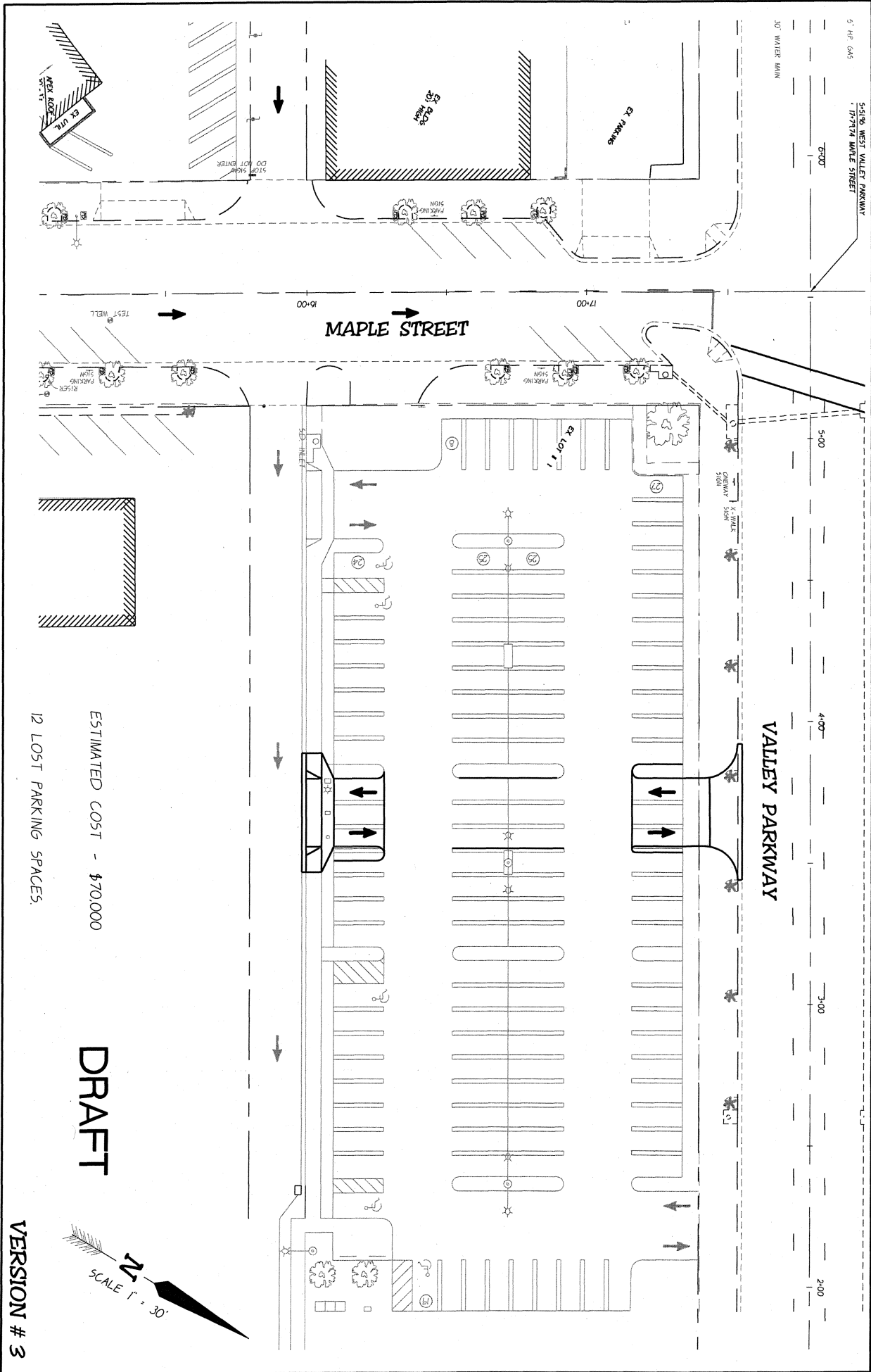


ESTIMATED COST - \$46,000
 3 LOSY PARKING SPACES.

DRAFT



VERSION # 2



FUTURE CITY COUNCIL AGENDA ITEMS
November 8, 2012

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

November 21, 2012
No Meeting (Thanksgiving)

November 28, 2012
No Meeting