



APRIL 4, 2018
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	John Masson
COUNCIL MEMBERS	Olga Diaz Ed Gallo Michael Morasco
CITY MANAGER	Jeffrey Epp
CITY CLERK	Diane Halverson
CITY ATTORNEY	Michael McGuinness
DIRECTOR OF COMMUNITY DEVELOPMENT	Bill Martin
DIRECTOR OF ENGINEERING SERVICES	Julie Procopio

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

**April 4, 2018
3:30 P.M. Meeting**

Escondido City Council

CALL TO ORDER

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

ORAL COMMUNICATIONS

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

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

- I. CONFERENCE WITH LABOR NEGOTIATOR (Government Code §54957.6)**
- a. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Maintenance & Operations, Teamsters Local 911
- II. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)**
- a. **Property:** 235 East Grand Avenue, APN 233-082-09-00
City Negotiator: Jeffrey Epp, City Manager
Negotiating Parties: Grand West Associates, Inc.
Under Negotiation: Price and Terms of Agreement
- b. **Property:** 272 East Via Rancho Parkway, APN 271-030-20-00
City Negotiator: Jeffrey Epp, City Manager
Michael R. McGuinness, City Attorney
Negotiating Parties: EWH Escondido Associates, L.P., a Delaware limited partnership, and North County Fair LP, a Delaware limited partnership
Under Negotiation: Price and Terms of Agreement

- c. **Property:** 130 Woodward Avenue, APNs 229-291-26 and -27
City Negotiator: Jeffrey Epp, City Manager
Negotiating Parties: Cushman & Wakefield
Under Negotiation: Consider Acquisition of Property Offered for Sale

ADJOURNMENT



Council Meeting Agenda

**April 4, 2018
4:30 P.M. Meeting**

Escondido City Council

CALL TO ORDER

MOMENT OF REFLECTION:

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

FLAG SALUTE

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

PROCLAMATIONS: April 2018 Fair Housing Month

PRESENTATIONS: City's Volunteer Program

ORAL COMMUNICATIONS

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

CONSENT CALENDAR

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

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency)**
3. **APPROVAL OF MINUTES: A) Special Meeting of March 14, 2018 B) Regular Meeting of March 21, 2018**

4. **AGREEMENT WITH RAF PACIFICA REGARDING DEVELOPMENT OF CITY PROPERTIES -**
Request the City Council approve authorizing the City Manager and City Attorney to execute an exclusive negotiating agreement between the City of RAF Pacifica to explore the sale and development of properties addressed as 480 North Spruce Street, 455 North Quince Street, and 525 North Quince Street. During the period of the agreement, the City and RAF Pacifica will evaluate the financial and economic feasibility of RAF Pacifica's purchase and development plans for the properties. If applicable, a specific purchase and sale agreement would be presented to City Council at a later date for final approval.

Staff Recommendation: **Approval (City Manager's Office: Michelle Geller)**

5. **BUILDING DIVISION BUDGET ADJUSTMENT -**
Request the City Council approve a budget adjustment of \$50,000 to increase the cost recovery Professional Services budget to fund building plan review services.

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

6. **FIRST AMENDMENT TO ENVIRONMENTAL SCIENCE ASSOCIATES CONSULTING AGREEMENT IN CONNECTION WITH THE VILLAGES SPECIFIC PLAN - ESCONDIDO COUNTRY CLUB PROJECT -**
Request the City Council approve authorizing the City Manager to execute a First Amendment to the Consulting Agreement with Environmental Science Associates.

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

RESOLUTION NO. 2018-38

7. **AUTHORIZATION FOR VOICE NETWORK UPGRADE, FIVE YEAR MAINTENANCE AGREEMENT, AND BUDGET ADJUSTMENT -**
Request the City Council approve authorizing an agreement with Atel Communications, Inc. to upgrade the City's phone system and provide five years of maintenance services. The total estimated cost of the phone system upgrade is \$416,000 and will be phased in over two fiscal years.

Staff Recommendation: **Approval (Information Systems Department: Rob Van De Hey)**

RESOLUTION NO. 2018-40

8. **ADOPTION OF LOCAL DISCHARGE LIMITS BY RESOLUTION -**
Request the City Council approve the adoption of Local Discharge Limits, pursuant to recent changes in Chapter 22, Article 8, Section 174 of the Escondido Municipal Code.

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

RESOLUTION NO. 2018-43

9. **SUPPORT OF THE REDUCING CRIME AND KEEPING CALIFORNIA SAFE ACT OF 2018 -**
Request the City Council approve supporting the passage of the Reducing Crime and Keeping California Safe Act of 2018.

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

RESOLUTION NO. 2018-45

10. **EMERGENCY REPAIRS OF FIVE SECTIONS OF ESCONDIDO SEWER PIPELINE: HALE AVENUE UNDERPASS OF I-15, KIA DEALERSHIP PARKING LOT, SOUTH HALE AVENUE, CASA GRANDE MOBILE ESTATES, AND GREEN TREE MOBILE HOME ESTATES -**

Request the City Council approve declaring that pursuant to the terms of Section 22050 of the California Public Contract Code, the City Council affirms that it was appropriate for City staff to forego normal bidding procedures and to award a contract for emergency repairs of five damaged sewer main sections. The damaged sections are between the intersection at Hale Avenue/Tulip Street and the Hale Avenue Resource Recovery Facility. The resolution, which must be passed by four-fifths vote, also declares that public interest and necessity demand the immediate expenditure to safeguard life, health, or property.

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

RESOLUTION NO. 2018-50

11. **EMERGENCY REPAIR OF A HEATING, VENTILATION AND AIR CONDITIONING (HVAC) PIPELINE FOR THE CALIFORNIA CENTER FOR THE ARTS, ESCONDIDO -**

Request the City Council approve declaring that pursuant to the terms of Section 22050 of the California Public Contract Code, the City Council affirms that it was appropriate for City staff to forego normal bidding procedures and to award a contract for emergency repairs of a damaged hot water pipeline that is preventing the use of the California Center for the Arts, Escondido HVAC system with A.O. Reed, Inc. in an amount not to exceed \$143,000. The resolution, which must be passed by four-fifths vote, also declares that public interest and necessity demand the immediate expenditure to safeguard life, health, or property.

Staff Recommendation: **Approval (City Manager's Office: Jay Petrek)**

RESOLUTION NO. 2018-51

12. **REQUEST FOR AUTHORIZATION TO SUPPORT FILING OF AMICUS CURIAE BRIEF ON BEHALF OF CITY OF ESCONDIDO IN UNITED STATES V. STATE OF CALIFORNIA LAWSUIT -**

Request the City Council approve authorizing the filing of a Motion for Leave to File Amicus Curiae Brief and Amicus Brief on behalf of the City of Escondido in support of the United States in the action United States of America v. State of California, United States District Court Case No. 2:18-cv-00490-JAM (KJN).

Staff Recommendation: **Approval (City Attorney's Office: Michael R. McGuinness)**

RESOLUTION NO. 2018-52

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. **UPDATE OF CHAPTER 22 OF THE ESCONDIDO MUNICIPAL ORDINANCE -**

Approved on March 21, 2018 with a vote of 5/0

ORDINANCE NO. 2018-01 (Second Reading and Adoption)

14. [**SERIES OF ACTIONS TO IMPLEMENT THE SOUTH CENTRE CITY SPECIFIC PLAN \(PHG 15-0003/ENV 17-0005\) -**](#)

Approved on March 21, 2018 with a vote of 5/0

ORDINANCE NO. 2018-04 (Second Reading and Adoption)

15. [**AMENDMENT TO ARTICLE 37 \(PUBLIC ART\) OF THE ESCONDIDO ZONING CODE \(AZ 18-0001\) -**](#)

Approved on March 21, 2018 with a vote of 5/0

ORDINANCE NO. 2018-05 (Second Reading and Adoption)

PUBLIC HEARINGS

16. [**ANNUAL CODE CLEAN UP AND AMENDMENTS TO THE MUNICIPAL AND ZONING CODES \(AZ 16-0008\) -**](#)

Request the City Council approve amending Chapter 32 (Subdivisions) of the Municipal Code and Articles 1, 3, 6, 16, 25, 26, 34, 39, 40, 43, 45, 46, 47, 48, 56, 57, 58, 61, 65, 68, 69, 70, 73, and 75 of the Escondido Zoning Code to address changes in state laws, correct errors, and improve existing regulations.

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

ORDINANCE NO. 2018-07 (First Reading and Introduction)

CURRENT BUSINESS

17. [**CONSULTING AGREEMENT AND BUDGET ADJUSTMENT FOR DESIGN BUILD OWNER'S AGENT SERVICES FOR THE MEMBRANE FILTRATION REVERSE OSMOSIS FACILITY -**](#)

Request the City Council approve authorizing the Mayor and the City Clerk to execute a Consulting Agreement with Black and Veatch Corporation in the amount of \$1,236,890 for design build owner's agent services and approve a budget adjustment in the amount of \$1,000,000.

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

RESOLUTION NO. 2018-33

18. [**REPEAL ESCONDIDO MUNICIPAL CODE CHAPTER 19, ARTICLE 2, BOARD OF REVIEW, AND AMEND CITY PERSONNEL RULES AND REGULATIONS RULE 28, ADMINISTRATIVE REVIEW AND APPEAL TO BOARD OF REVIEW -**](#)

Request the City Council approve amending Personnel Rules and Regulations Rule 28, implementing the changes that will result upon dissolution of the Board of Review; and amend Escondido Municipal Code Chapter 19, Article 2, Board of Review, to transfer the authority for employee due process disciplinary hearings from the Board of Review to an Administrative Law Judge.

Staff Recommendation: **Approval (Human Resources Department: Sheryl Bennett and City Attorney's Office: Michael R. McGuinness)**

A) RESOLUTION NO. 2018-48 B) ORDINANCE NO. 2018-08 (First Reading and Introduction)

FUTURE AGENDA

19. [FUTURE AGENDA -](#)

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

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

COUNCIL MEMBERS' SUBCOMMITTEE REPORTS

CITY MANAGER'S WEEKLY ACTIVITY REPORT

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

- [WEEKLY ACTIVITY REPORT -](#)

ORAL COMMUNICATIONS

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ADJOURNMENT

UPCOMING MEETING SCHEDULE

Date	Day	Time	Meeting Type	Location
April 11	Wednesday	4:00 p.m.	Town Hall Meeting	Council Chambers
April 18	Wednesday	3:30 & 4:30 p.m.	Regular Meeting	Council Chambers
April 25	Wednesday	3:30 & 4:30 p.m.	Regular Meeting	Council Chambers
May 2	Wednesday	3:30 & 4:30 p.m.	Regular Meeting	Council Chambers

TO ADDRESS THE COUNCIL

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

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

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

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

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

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

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

LIVE BROADCAST

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

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

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

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

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



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

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



AFFIDAVITS

OF

ITEM

POSTING



Consent Item No. 2

April 4, 2018

APPROVAL

OF

WARRANT REGISTER

CITY OF ESCONDIDO

MARCH 14, 2018
3:30 p.m. Meeting Minutes

Mitchell Room

Special Meeting of the Escondido City Council, Community Services Commission, Historic Preservation Commission, Public Art Commission, and Planning Commission

CALL TO ORDER

ATTENDANCE

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

Also present was: Diane Halverson, City Clerk

Flag Salute

Deputy Mayor John Masson led the Flag Salute.

ORAL COMMUNICATIONS

JOINT CITY COUNCIL AND BOARD/COMMISSION INTERVIEWS

3:30 – 4:00 p.m. Community Services Commission

Oral Communications

Brief description of the Community Services Commission (**Danielle Lopez, Assistant Director of Community Services**)

Discussion among Council, current Board/Commission members and applicants regarding expectations and responsibilities and duties associated with membership on the Community Services Commission, and the role of the Community Services Commission in City Government.

Adjournment

4:00 – 4:30 p.m. Historic Preservation Commission

Oral Communications

Brief description of the Historic Preservation Commission (**Mike Strong, Assistant Director of Planning**)

Discussion among Council, current Board/Commission members and applicants regarding expectations and responsibilities and duties associated with membership on the Historic Preservation Commission, and the role of the Historic Preservation Commission in City Government.

Adjournment

JOINT CITY COUNCIL AND BOARD/COMMISSION INTERVIEWS - Continued

4:30 – 5:15 p.m. Public Art Commission

Oral Communications

Brief description of the Public Art Commission (**Kristina Owens, Associate Planner**)

Discussion among Council, current Board/Commission members and applicants regarding expectations and responsibilities and duties associated with membership on the Public Art Commission and the role of the Public Art Commission in City Government.

Adjournment

5:15 – 6:15 p.m. Planning Commission

Oral Communications

Brief description of the Planning Commission (**Mike Strong, Assistant Director of Planning**)

Discussion among Council, current Board/Commission members and applicants regarding expectations and responsibilities and duties associated with membership on the Planning Commission, and the role of the Planning Commission in City Government.

Adjournment

ORAL COMMUNICATIONS

Patricia Borchmann, Escondido, affirmed that Public Art is a benefit to the community.

Mike Namou, Escondido, voiced support for the appointment of Mark Watson to the Planning Commission.

ADJOURNMENT

Mayor Abed adjourned the meeting at 6:32 p.m.

MAYOR

CITY CLERK

DEPUTY CITY CLERK

CITY OF ESCONDIDO
March 21, 2018
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, March 21, 2018 in the City Council Chambers at City Hall with Mayor Abed presiding.

ATTENDANCE:

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

ORAL COMMUNICATIONS

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

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

- I. CONFERENCE WITH LABOR NEGOTIATOR (Government Code §54957.6)**
- a. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
 Employee Organization: Maintenance & Operations, Teamsters Local 911
- II. CONFERENCE WITH LEGAL COUNSEL-- EXISTING LITIGATION (Government Code 54956.9(d)(1))**
- a. **Case Name:** Ellen Erwet, et al. v. KB Home California, LLC, et al.
 Case No: 37-2017-00025068-CU-PO-NC
- III. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)**
- a. **Property:** 480 North Spruce Street, APN 232-091-28-00;
 455 North Quince Street, APN 232-091-27-00;
 525 North Quince Street, APN 232-091-06-00
- City Negotiator:** Jeffrey Epp, City Manager
 Negotiating Parties: RAF Pacifica
 Under Negotiation: Price and Terms of Agreement
- DEPUTY MAYOR MASSON ABSTAINED FROM ITEM III. A. AND LEFT THE CLOSED SESSION ROOM.**
- IV. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION/SIGNIFICANT EXPOSURE (Government Code 54956.9(d)(2))**
- a. One Case: Claim No. 4870
- b. One Case: Claim Nos. 4871/4872
- c. One Case: Claim No. 4962

ADJOURNMENT

Mayor Abed adjourned the meeting at 4:30 p.m.

MAYOR

CITY CLERK

DEPUTY CITY CLERK

CITY OF ESCONDIDO
March 21, 2018
4:30 P.M. Meeting Minutes

Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 4:34 p.m. on Wednesday, March 21, 2018 in the City Council Chambers at City Hall with Mayor Abed presiding.

MOMENT OF REFLECTION

Greg Lane led the Moment of Reflection.

FLAG SALUTE

Councilmember Gallo led the flag salute.

ATTENDANCE:

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

Also present were: Jeffrey Epp, City Manager; Michael McGuinness, City Attorney; Bill Martin, Director of Community Services; Julie Procopio, Director of Engineering Services; Diane Halverson, City Clerk; and Jennifer Ekblad, Deputy City Clerk.

ORAL COMMUNICATIONS

CONSENT CALENDAR

MOTION: Moved by Councilmember Morasco and seconded by Councilmember Diaz to approve all Consent Calendar items. Motion carried unanimously.

- 1. AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
- 2. APPROVAL OF WARRANT REGISTER (Council/Successor Agency)**
- 3. APPROVAL OF MINUTES: A) Regular Meeting of February 14, 2018 B) Special Meeting of February 28, 2018 C) Special Meeting of March 7, 2018**
- 4. NOTICE OF COMPLETION FOR SOLUTIONS FOR CHANGE (PHG 15-0009, SUB 15-0008) LOCATED AT 1560 SOUTH ESCONDIDO BOULEVARD -**
Request the City Council approve and accept the public improvements and authorize staff to file a Notice of Completion for the Solutions for Change Project (PHG15-0009, SUB15-0008). (File No. 0800-40)

Staff Recommendation: **Approval (Engineering Services Department: Julie Procopio)**

5. CITY OF ESCONDIDO LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT - PRELIMINARY ENGINEER'S REPORT FOR ZONES 1-38 FOR FISCAL YEAR 2018/19 -

Request the City Council approve initiating the proceedings for the annual levy of assessments for the City of Escondido Landscape Maintenance Assessment District (LMD) for Zones 1 through 38 for the 2018/2019 Fiscal Year, approve the preliminary Engineer's Report for LMD Zones 1 through 38, and set a public hearing date of May 2, 2018, for LMD Zones 1 through 38. (File No. 0685-10)

Staff Recommendation: **Approval (Engineering Services Department: Julie Procopio)**

A) RESOLUTION NO. 2018-31 B) RESOLUTION NO. 2018-32

6. ANNUAL PROGRESS REPORT ON THE IMPLEMENTATION OF THE GENERAL PLAN AND ANNUAL HOUSING ELEMENT REPORT (PHG 18-0001) -

Request the City Council review and receive the General Plan Annual Progress Report and the 2017 Annual Housing Report, documenting the City's progress and compliance with State housing law on implementing the 2013-2020 Housing Element of the General Plan, and authorize submittal of the Reports to the State Office of Planning and Research (OPR), the State Department of Housing and Community Development (HCD), and SANDAG. (File No. 0830-07)

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

7. REQUEST FOR AUTHORIZATION TO PROCESS A GENERAL PLAN TEXT AMENDMENT TO THE SUBURBAN LAND-USE DESIGNATION RELATED TO A PROPOSED RESIDENTIAL-CARE FACILITY LOCATED AT 1802 NORTH CENTRE CITY PARKWAY (PHG 17-0025) -

Request the City Council approve authorizing the processing of the proposed text Amendment to the General Plan to allow building height up to three stories for non-residential structures within the residential Suburban land-use designation. (File No. 0830-20)

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

8. EXTENSION OF TIME FOR A TENTATIVE SUBDIVISION MAP AND MASTER AND PRECISE DEVELOPMENT PLAN - AMANDA ESTATES DEVELOPMENT LOCATED AT 2115 AMANDA LANE (SUB 13-0007 AND PHG 13-0034) -

Request the City Council approve a three-year extension of time for a 21-lot single-family residential planned development. (File No. 0800-40)

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

RESOLUTION NO. 2018-30

9. EXTENSION OF TIME (SUB 17-0035) FOR A TENTATIVE SUBDIVISION MAP, CONDITIONAL USE PERMIT AND GRADING EXEMPTIONS LOCATED AT 383 IDAHO AVENUE (CITY FILE NOS.TR 848 AND 2005-56-CUP/GE) -

Request the City Council approve a three-year extension of time for a nine-lot single-family residential subdivision. (File No. 0800-10)

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

RESOLUTION NO. 2018-34

10. SANDAG ACTIVE TRANSPORTATION GRANT PROGRAM APPLICATION FOR COMPREHENSIVE ACTIVE TRANSPORTATION STRATEGIES PLAN -

Request the City Council approve authorizing the Director of Community Development or his designee to complete an application to SANDAG for the Active Transportation Grant Program and to execute agreements if the grant is funded. (File No. 1020-71)

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

RESOLUTION NO. 2018-35

11. UPDATE OF CHAPTER 22 OF THE ESCONDIDO MUNICIPAL ORDINANCE -

Request the City Council approve updating Chapter 22 of the Escondido Municipal Code to establish and clarify existing regulations and policies related to wastewater and storm water. (File No. 0680-50)

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

ORDINANCE NO. 2018-01 (First Reading and Introduction)

12. SIXTH AMENDMENT TO COMMERCIAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS: 700 WEST GRAND AVENUE -

Request the City Council approve authorizing the Real Property Manager and the City Clerk to execute a Sixth Amendment to the Commercial Property Agreement and Joint Escrow Instructions for the sale of 700 West Grand Avenue to Lyon-Integral Escondido Gateway, LLC. (File No. 0690-20)

Staff Recommendation: **Approval (Engineering Services Department: Julie Procopio)**

RESOLUTION NO. 2018-41

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. AMENDMENT TO ARTICLE 57 (MISCELLANEOUS USE RESTRICTIONS) OF THE ESCONDIDO ZONING CODE AND AMENDMENT TO ARTICLE 11 OF CHAPTER 17 (OFFENSES - MISCELLANEOUS PROVISIONS) OF THE ESCONDIDO MUNICIPAL CODE (AZ 17-0005) -

Approved on February 14, 2018 with a vote of 5/0 (File No. 0810-20)

ORDINANCE NO. 2018-03R (Second Reading and Adoption)

PUBLIC HEARINGS

14. REVIEW AND RE-AFFIRM COMMUNITY DEVELOPMENT PRIORITIES OF THE FISCAL YEARS 2015-2019 CONSOLIDATED PLAN AND APPROVE ALLOCATION PROCESS FOR FISCAL YEAR 2018-2019 FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND EMERGENCY SOLUTIONS GRANT (ESG) FUNDING -

Request City Council review and re-affirm the community development priorities adopted in the Amended 2015-2019 Five-Year Consolidated Plan for CDBG; approve an allocation process for Fiscal Year 2018-2019 CDBG funds to utilize the maximum 15 percent allowable for public service activities to address the priorities of the Consolidated Plan, and the maximum 20 percent allowable for administration of the CDBG program; authorize the release of a Request for Proposals (RFP) for public services and community redevelopment activities; review and re-affirm the homelessness and homelessness prevention priorities adopted in the Amended 2015-2019 Five-Year Consolidated Plan for ESG; and authorize the release of a Notice of Funding Availability (NOFA) for organizations providing

assistance to persons experiencing homelessness or at risk of homelessness within the City. (File No. 0870-10; 0871-11)

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

Karen Youel, Housing and Neighborhood Services Manager, presented the staff report utilizing a PowerPoint presentation.

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

Mirjana Rodriguez, representative from Education Compact, thanked Council for supporting youth and the pilot program; and shared information regarding pilot program funded by ESG.

Mayor Abed asked if anyone else wished to speak regarding this item. No one asked to be heard; therefore, he closed the public hearing.

MOTION: Moved by Deputy Mayor Masson and seconded by Councilmember Morasco to re-affirm the community development priorities adopted in the Amended 2015-2019 Five-Year Consolidated Plan for CDBG; approve an allocation process for Fiscal Year 2018-2019 CDBG funds to utilize the maximum 15 percent allowable for public service activities to address the priorities of the Consolidated Plan, and the maximum 20 percent allowable for administration of the CDBG program; authorize the release of a Request for Proposals (RFP) for public services and community redevelopment activities; re-affirm the homelessness and homelessness prevention priorities adopted in the Amended 2015-2019 Five-Year Consolidated Plan for ESG; and authorize the release of a Notice of Funding Availability (NOFA) for organizations providing assistance to persons experiencing homelessness or at risk of homelessness within the City. Motion carried unanimously.

15. SERIES OF ACTIONS TO IMPLEMENT THE SOUTH CENTRE CITY SPECIFIC PLAN (PHG 15-0003 / ENV 17-0005) -

Request the City Council approve an Initial Study/Negative Declaration, and an amendment to the General Plan to change the land use designation of all properties within the planning area to Specific Plan #15 to support the South Centre City Specific Plan proposal; and approve the South Centre City Specific Plan, amending the Citywide Zoning Map, repealing the South Escondido Boulevard Area Plan, and adopting the Zoning Code Amendments to Articles 44 and 65 to support implementation of the South Centre City Specific Plan (File No. 0800-70)

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

A) RESOLUTION NO. 2018-20 B) ORDINANCE NO. 2018-04 (First Reading and Introduction)

Mike Strong, Assistant Director of Planning, and Claudia Tedford, Consultant, presented the staff report utilizing a PowerPoint presentation.

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

MOTION: Moved by Deputy Mayor Masson and seconded by Councilmember Gallo to approve an Initial Study/Negative Declaration, and an amendment to the General Plan to change the land use designation of all properties within the planning area to Specific Plan #15 to support the South Centre City Specific Plan proposal; and approve the South Centre City Specific Plan, amending the Citywide Zoning Map, repealing the South Escondido Boulevard Area Plan, and adopting the Zoning Code Amendments to Articles 44 and 65 to support implementation of the South Centre City Specific Plan and adopt Resolution No. 2018-20 and introduce Ordinance No. 2018-04. Motion carried unanimously.

16. AMENDMENT TO ARTICLE 37 (PUBLIC ART) OF THE ESCONDIDO ZONING CODE (AZ 18-0001) -

Request the City Council approve an amendment to the Escondido Zoning Code pertaining to Article 37 (Public Art) involving: 1) amending the number of Public Art Commissioners from seven (7) to five (5) members; and 2) amend the Public Art Commissioner eligibility requirements to include allowing up to two members being employed by a business in the Escondido Planning Area. (File No. 0810-20)

Staff Recommendation: **Approval (City Manager's Office: Jay Petrek)**

ORDINANCE NO. 2018-05 (First Reading and Introduction)

Jay Petrek, Assistant City Manager, presented the staff report utilizing a PowerPoint presentation.

Mayor Abed opened the public hearing and asked if anyone 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 Morasco and seconded by Deputy Mayor Masson to approve an amendment to the Escondido Zoning Code pertaining to Article 37 (Public Art) involving: 1) amending the number of Public Art Commissioners from seven (7) to five (5) members; and 2) amend the Public Art Commissioner eligibility requirements to include allowing up to two members being employed by a business in the Escondido Planning Area and introduce Ordinance No. 2018-05. Motion carried unanimously.

CURRENT BUSINESS

17. REQUEST THAT THE CITY COUNCIL CONSIDER AMENDMENTS TO THE CAMPAIGN CONTROL ORDINANCE IN THE ESCONDIDO MUNICIPAL CODE AND PROVIDE DIRECTION FOR FINAL CHANGES AND ADOPTION -

Request the City Council consider amendments to Chapter 2, Article 7 of the Escondido Municipal Code to modernize and simplify the City's Campaign Control Ordinance by (1) modifying the definitions of "Committee" and "Contribution"; (2) eliminating the restrictions on extensions of credit greater than 30 days and greater than \$500; (3) eliminating section 2-104, which relates to campaign checking accounts; (4) allowing for expenditures by electronic payment; (5) modifying or eliminating the petty cash fund restrictions; and (6) modifying or eliminating the cash and anonymous contribution restrictions; and provide direction and feedback on these suggested changes and any other potential amendments which would be brought back for adoption. (File No. 0680-50)

Staff Recommendation: **Provide Direction (City Attorney's Office: Michael McGuinness)**

Allegra Frost, Deputy City Attorney, presented the staff report utilizing a PowerPoint presentation.

M. Greg Dean, Escondido, questioned campaign contributions in Escondido compared to other communities and requested Council reduce the amount.

Patricia Borchmann, Escondido, suggested an amendment to the ordinance regarding attachment "A" to the staff report and requested the item be postponed.

MOTION: Moved by Deputy Mayor Masson and seconded by Councilmember Morasco to provide direction to staff to amend Chapter 2, Article 7 of the Escondido Municipal Code by modifying the definitions of "Committee" and "Contribution", eliminating the restrictions on extensions of credit greater than 30 days and greater the \$500, eliminating section 2-104 which relates to campaign checking accounts, allow for expenditures by electronic payment, eliminate the petty cash fund restrictions, allow cash contributions over \$100, and raise the contribution limit to \$4300. Motion carried unanimously.

18. ANNUAL APPOINTMENTS TO BOARDS AND COMMISSIONS -

Request the City Council ratify the Mayor's appointments to serve on the following Boards and Commissions; terms to expire March 31, 2022 except as noted. (File No. 0120-10)

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

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Diaz to ratify the Mayor's appointment of Chris Christakos, Robert McQuead, and Barry Speer to the Building Advisory and Appeals Board; Frederick Franklin Jr., Miranda Hernandez (Youth Member), Christian Maehler, and Karen Spann to the Community Services Commission; Marc Correll, Errol Cowan, Nicole Purvis, and James Spann to the Historic Preservation Commission; Elmer Cameron to the Library Board of Trustees; Joe Garcia, James McNair, and Mark Watson to the Planning Commission; Matthew Cowell, Patricia Spann, and Ana Marie Velasco to the Public Art Commission; William Durney, Rachel Kassebaum, and Robert Korbecki to the Transportation and Community Safety Commission. Motion carried unanimously.

19. ADOPTION OF RESOLUTION OF INTENTION TO AMEND THE CALPERS CONTRACT AND INTRODUCTION OF FIRST READING OF ORDINANCE AMENDING THE CALPERS CONTRACT

Request the City Council adopt Resolution No. 2018-37, approving the intention to amend the contract between the City of Escondido (City) and the Board of Administration of the California Public Employees' Retirement System (CalPERS) to provide employees sharing an additional cost of one percent for the Escondido Police Officers' Association/Safety Unit (POA) and Firefighters' Association (FFA) Bargaining Unit CalPERS Classic members, Government Code Section 20516; and introduce the first reading of Ordinance No. 2018-06 amending the contract between the City and CalPERS to provide employees sharing an additional cost of one percent for POA and FFA CalPERS Classic members, Government Code Section 20516. (File No. 0720-40)

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

A) RESOLUTION NO. 2018-37 B) ORDINANCE NO. 2018-06 (First Reading and Introduction)

Patrice Russell, Human Resources Manager, presented the staff report utilizing a PowerPoint presentation.

MOTION: Moved by Deputy Mayor Masson and seconded by Councilmember Diaz to adopt Resolution No. 2018-37, approving the intention to amend the contract between the City of Escondido (City) and the Board of Administration of the California Public Employees' Retirement System (CalPERS) to provide employees sharing an additional cost of one percent for the Escondido Police Officers' Association/Safety Unit (POA) and Firefighters' Association (FFA) Bargaining Unit CalPERS Classic members, Government Code Section 20516; and introduce the first reading of Ordinance No. 2018-06 amending the contract between the City and CalPERS to provide employees sharing an additional cost of one percent for POA and FFA CalPERS Classic members, Government Code Section 20516 and adopt Resolution No. 2018-37 and introduce Ordinance No. 2018-06. Motion carried unanimously.

20. PROPOSED CHANGES TO ANNUAL INVENTORY OF CITY FEES -

Request the City Council approve authorizing new City fees, making changes to certain existing fees for services, and deleting fees for services that are no longer used. (File No. 0480-45)

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

RESOLUTION NO. 2018-29

Christina Holmes, Revenue Manager, presented the staff report utilizing a PowerPoint presentation.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Morasco to approve authorizing new City fees, making changes to certain existing fees for services, and deleting fees for services that are no longer used and adopt Resolution No. 2018-29. Motion carried unanimously.

FUTURE AGENDA

21. FUTURE AGENDA -

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

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

COUNCIL MEMBERS' SUBCOMMITTEE REPORTS

CITY MANAGER'S WEEKLY ACTIVITY REPORT

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

- **WEEKLY ACTIVITY REPORT -**

ORAL COMMUNICATIONS

Adeola Ade-Ekisola, Escondido, expressed concern regarding her missing children and commented that her parenting rights and civil rights have been violated.

ADJOURNMENT

Mayor Abed adjourned the meeting at 7:02 p.m.

MAYOR

CITY CLERK

DEPUTY CITY CLERK



CITY COUNCIL STAFF REPORT

Consent Item No. 4

April 4, 2018

File No. 0600-10, A-3241

SUBJECT: Agreement with RAF Pacifica Regarding Development of City Properties

DEPARTMENT: City Manager's Office, Economic Development Division

RECOMMENDATION:

It is requested that the City Council authorize the City Manager and City Attorney to execute an exclusive negotiating agreement between the City and RAF Pacifica (Attachment A) to explore the sale and development of properties addressed as 480 North Spruce Street, 455 North Quince Street, and 525 North Quince Street. During the period of the agreement, the City and RAF Pacifica will evaluate the financial and economic feasibility of RAF Pacifica's purchase and development plans for the properties. If applicable, a specific purchase and sale agreement would be presented to City Council at a later date for final approval.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

Private investment in a high quality development project that will provide positive economic impact and job opportunities relates to the Council's Action Plan regarding Economic Development.

BACKGROUND:

In 2010, a minor league ballpark was proposed in the area where the three properties are located. The City of Escondido purchased the three properties to provide a portion of the land needed for the ballpark project. At the time of acquisition, it was noted that if the ballpark project did not proceed, the properties would be beneficial for completion of other projects that City Council desired for this targeted area.

Property Address	Purchase Date	Purchase Price
480 N. Spruce	12/29/2010	\$5,104,632
525 N. Quince	06/23/2011	\$1,717,244
455 N. Quince	06/30/2011	\$5,128,044

By late 2011, the California Legislature had adopted and the Governor had signed legislation which effectively abolished redevelopment agencies and eliminated this mechanism for funding local projects including the proposed ballpark. Because the City had planned to use redevelopment funds for the ballpark project, the negotiations ended. Shortly thereafter, the City entered into lease agreements with tenants to occupy the properties until a decision could be made to determine permanent uses. To date, the City has collected approximately \$2M in rent on these properties.

The City has considered development opportunities for these and other properties in the area, also known as the “Business Park Area,” and has had appraisals conducted to determine the value and range of uses for the properties.

According to the City of Escondido’s General Plan, the three properties are zoned General Industrial and sit within the Downtown Transit Station Target Area. The guiding principles of this target area include “opportunities and incentives for increasing employment densities and attracting businesses with salaries that raise the City’s median income and improve the jobs/housing balance.” The proposal from RAF Pacifica aligns with the General Plan designation for this area. Additional standards for the disposition of city-owned properties in the “Business Park Area” are being drafted by staff and will be discussed by council at a future date.

One of the properties, 480 North Spruce, was purchased with redevelopment funds, and is included in the City’s Real Property etc. etc. plan, which was approved by the California Department of Finance as part of the redevelopment dissolution. Upon any disposition of this particular property the City would enter into agreements for sharing of the proceeds with the other taxing entities pursuant to the Dissolution Law.

The City recently received an unsolicited proposal from RAF Pacifica for the purchase and development of the three properties into a “creative industrial” project. The proposal would meet the appraised value according to a recent report commissioned by the City. And more importantly, the proposal would offer the City the right to approve or disapprove certain occupancies of the property before any sale would be finalized. Although other inquiries have been made to acquire and develop these properties, staff requests that Council authorize a 90-day exclusive negotiating agreement with RAF Pacifica to explore the possible sale and development. If negotiations are successful, the actual sale documents would be forthcoming to Council in public session. If the negotiations are not successful, the City will again be able to accept proposals from other parties.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Michelle Geller, Economic Development Manager
3/28/2018 3:27 p.m.

ATTACHMENTS:

1. Attachment “A”

NEGOTIATION AGREEMENT

This Negotiation Agreement is made as of [REDACTED], 2018 solely between the City of Escondido, a municipal corporation (“City”) and RAF Pacifica Group, a California Corporation (“RAF Pacifica”), sometimes collectively referred to as the “Parties,” with reference to the following background:

A. RAF Pacifica wishes to evaluate whether or not to purchase and develop certain City properties with Assessor Parcel Numbers 232-091-06, 232-091-27, and 232-091-28 (“Property”).

B. Both the City and RAF Pacifica wish to evaluate the financial and economic feasibility of RAF Pacifica’s purchase and development plans;

Section 1 Negotiation.

1.1 **Good Faith:** The City and RAF Pacifica agree that during the term of this Agreement, the Parties shall negotiate diligently and in good faith to evaluate the purchase and development of the Property.

1.2 **City Commitment:** During the term of this Agreement, the City agrees it will not negotiate with any person or entity, other than RAF Pacifica, including but not limited to affirmatively expending money, holding meetings, or negotiating any other proposals from any other source or entity to purchase and develop the Property with persons or entities other than RAF Pacifica. Notwithstanding the foregoing, this Agreement shall not prohibit the City or its officials or employees from meeting, negotiating, or considering proposals from other persons or entities for development of the property provided such proposals concern large event space developments, professional or recreational sports facilities or franchises, or other similar developments.

The City also agrees that to the extent permissible under the California Public Records Act, it shall maintain the confidentiality of any proposals or financial information provided by RAF Pacifica directly to the City, and which is prominently marked as “confidential” by RAF Pacifica. If the City receives a request under the Public Records Act for such materials, the City’s sole obligation under this Agreement shall be to promptly notify RAF Pacifica of such a request.

1.3 **RAF Pacifica Commitment:** During the Term of this Agreement, RAF

Pacifica agrees that it shall maintain the confidentiality of any proposals or financial information provided by the City directly to RAF Pacifica, and which is prominently marked as “confidential” by City.

Section 2 Term.

- 2.1 Negotiation Period.** The term of this Agreement commences on the Date set forth above and shall continue thereafter for a period of sixty (60) days unless extended as provided in Section 2.2.
- 2.2 Extension.** Upon mutual written agreement executed prior to expiration of this Agreement, the Negotiation Period may be extended for an additional thirty (30) days beyond any automatic extension provided in Section 2.3. The City Manager is hereby authorized to agree to said extension.
- 2.3 Document Preparation and Processing.** In the event that the Parties reach an agreement concerning the purchase or development of the properties, the Negotiation Period will automatically extend for such time as is necessary to prepare the documents memorializing the agreement and for such time as may be necessary for the City to hold any public hearings required for the consideration and adoption of the agreement. In such event, however, either party may terminate this agreement by giving a 30-calendar day written notice.

Section 3 Preservation of Authority, Indemnification and Assumption of Risk.

- 3.1 Entitlements.** RAF Pacifica acknowledges that the City is under no obligation to sell or transfer any interest in the Property. RAF Pacifica further understands that any Entitlements which may be sought for projects proposed for any of the properties require staff and the City Council to act in the public interest and according to applicable legal requirements, including the California Environmental Quality Act, without regard for this Agreement. Nothing in this Agreement shall in any manner affect the City Council or its staff or any of its Boards and Planning Commission’s sole and absolute discretion to disapprove, modify, or otherwise take any action regarding an application or request for any of the entitlement to the extent such entitlement is considered by the City.
- 3.2** RAF Pacifica shall defend, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all claims, demands, and liabilities for loss of any kind or nature which the City, its officers, agents, or employees may sustain or incur or which may be imposed upon them or any of them as a result of, arising out of, this Agreement, or RAF Pacifica’s or RAF Pacifica’s agents’ use of or entry onto the Property. RAF Pacifica further agrees to defend the City against any claim made for which this indemnity applies, with council reasonably

acceptable to the City, and to pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorney's fees related to such defense. However, the provisions of this Agreement shall not be construed to require any such indemnity or defense of the City for claims or acts arising from the sole negligence of the City, its employees, agents, contractors or invitees.

- 3.3** RAF Pacifica and the City each assume the risk of entering into this Agreement. In no event will the City be responsible for RAF Pacifica's loss of profits or for any special, indirect, consequential or incidental damages, however caused, even if the City has been advised of the possibility of such damages due to the failure to renew this Agreement or enter into any subsequent agreement.

Section 4 Law to Govern; Venue.

This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the North County Branch of the San Diego County Superior Court.

Section 5 Drafting.

Each Party has cooperated in the drafting and preparation of this Agreement and any construction to be made of this Agreement, shall not be construed against any Party.

Section 6 Costs and Expenses.

Except as otherwise specified herein, each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken as required by this Agreement and the performance of each Party's obligations under this Agreement.

Section 7 Consultation with Counsel.

Each of the Parties to this Agreement hereby acknowledges that it has executed this Agreement with the consent, and upon the advice, of its own attorney.

Section 8 Amendment.

This Agreement may not be amended, modified, or supplemented except by a writing executed both Parties.

Section 9 Waiver.

No waiver by a Party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision. The exercise by a Party of any right or remedy provided in this Agreement or provided by law shall not prevent the exercise by that Party of any other remedy provided in this Agreement or under the law.

Section 10 Entire Agreement.

This Agreement contains the entire agreement between the Parties hereto, and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties. The terms of this Agreement are contractual in nature and not a mere recital. This Agreement is executed without reliance upon any representation by any person concerning the nature or extent of damages or legal liability therefore, and each signer of this Agreement has carefully read and understood the contents of this Agreement and signs the same as his or her own free act.

Section 11 Notice.

All notices or other documents required or permitted under this Agreement shall be delivered to a party and the recipient of a copy under this Agreement, and shall be delivered at the addresses set forth herein. Any such notices or documents shall, unless otherwise provided herein, be delivered (a) by overnight delivery using a nationally recognized overnight courier, (b) by personal delivery, or (c) by facsimile transmission during normal business hours with a confirmation copy delivered by another method permitted under this Section. Delivery in accordance herewith shall be effective upon the earlier to occur of actual delivery by one of the foregoing methods to the address of the addressee or refusal of receipt by the addressee. Delivery shall be effective if sent by electronic means. An address may be changed by written notice to the other party delivered in accordance with this Section. The following shall serve as the recipients' addresses for all delivery purposes under this Agreement:

If to RAF Pacifica,

to:

RAF Pacifica Group
Mr. Adam Robinson
111 C Street, Suite 200
Encinitas, CA 92024
Telephone: 760-473-8838
Email: adam@rafpacificagroup.com

If to the City, to:

City of Escondido
City Clerk
201 N. Broadway
Escondido, CA 92025
Telephone: 760-839-4617
Facsimile: 760-735-5782

Section 12 Execution in Counterparts.

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

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

RAF PACIFICA GROUP

RAF Pacifica Group by

Date: _____

[Name], [Title]

CITY OF ESCONDIDO

Date: _____

Jeffrey R. Epp, City Manager

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

By: _____



CITY COUNCIL STAFF REPORT

Consent Item No. 5

April 4, 2018

File No. 0430-80

SUBJECT: Building Division Budget Adjustment

DEPARTMENT: Community Development Department

RECOMMENDATION:

It is requested that the City Council approve a budget adjustment to increase the cost-recovery Professional Services budget to fund building plan review services.

FISCAL ANALYSIS:

An increase of \$50,000 is requested for Professional Services provided for plan review. This is a cost recovery service that is funded by applicants and will have no impact on the General Fund.

PREVIOUS ACTION:

The City Council adopted Resolution No. 2017-75 on June 14, 2017, approving the Fiscal Year 2017-18 Annual Operating Budget.

BACKGROUND:

Escondido has contracted with a vendor for many years to conduct plan check services involving plans requiring an engineer's review and for complex projects. Building plans not reviewed by our vendor are plan checked by the City's Deputy Building Official who also provides in-house building expertise to the public. The Building Division budgeted \$115,000 for plan check services in FY 2017-18. A budget adjustment of \$50,000 would allow the continued use of contracted services and maintain the timely review of plan checks without impacting the General Fund. All associated costs are fully reimbursed to Escondido based on fees charged to applicants on a cost-recovery basis.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Bill Martín, Director of Community Development
3/28/2018 4:18 p.m.

ATTACHMENTS:

1. Budget Adjustment Request



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request:
Department: Community Development
Division: Building
Project/Budget Manager: Mike Strong 4556
Name Extension
Council Date (if applicable): April 4, 2018
(attach copy of staff report)

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

Table with 4 columns: Project/Account Description, Account Number, Amount of Increase, Amount of Decrease. Includes handwritten entries for Professional Services and Building Plan Check Fees.

Explanation of Request:

An increase of \$50,000 is requested for Professional Services for plan review. This is a cost recovery service that is funded by applicants and will have no impact on the General Fund

APPROVALS
3/28/18
Date
City Manager
Date
3/28/18
Date
City Clerk
Date

Distribution (after approval): Original: Finance

CITY COUNCIL STAFF REPORT

Consent Item No. 6

April 4, 2018

File No. 0600-10, A-3209

SUBJECT: First Amendment to Environmental Science Associates (ESA) Consulting Agreement in Connection with the Villages Specific Plan - Escondido Country Club Project

DEPARTMENT: Community Development Department

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2018-38, authorizing the City Manager to execute a First Amendment to the Consulting Agreement with Environmental Science Associates.

FISCAL ANALYSIS:

The estimated professional services budget for the Villages Specific Plan was \$147,200. An additional \$20,000 was added to the professional services contract to cover contingencies. As of this writing, the contract extension staff has incurred actual life-to-date expenditures totaling approximately the same amount (i.e. \$162,164.23), with only \$5,035.77 remaining.

Further, project-related work to be completed includes finalizing and recording the subdivision map, street improvement plans, landscaping plans, and building permit applications, as well as condition compliance and mitigation monitoring, totaling an estimated service fee of \$50,000. The First Amendment would provide additional support to help facilitate the City's review and manage post-entitlement permit activities. The services to be provided under the original agreement and this First Amendment will be fully funded by the project applicant, with no cost to the City.

PREVIOUS ACTION:

The Villages Specific Plan was approved by a series of actions of City Council on November 15, 2017, and December 6, 2017.

BACKGROUND:

Currently, the City's Planning Division is experiencing an increase in development applications, which impacts staff resources. Staff has made every effort to minimize delays and is evaluating opportunities to maintain and promote organizational effectiveness and efficiency. One such strategy is through the use of professional consultants. Consultants are not employees of the City, but are used as a third-party resource to help expedite planning services, environmental services, and project case file management during temporary increases in the volume of applications.

First Amendment to Environmental Science Associates (ESA) Consulting Agreement in Connection with the Villages Specific Plan - Escondido Country Club Project

April 4, 2018

Page 2

In October 2016, the City received a land use development application to redevelop the former Escondido Country Club (ECC) and golf course, also known as the Villages Project proposal. Professional contract services were procured to serve as an extension of Planning Division staff and manage the review of the Escondido Country Club development proposal. The City first entered into an agreement with Michael Baker International, Inc. on November 6, 2016, to perform such services. This arrangement was made based on the qualifications of Kristin Blackson, who was selected by the City with concurrence from the project applicant, New Urban West Inc. A First Amendment to the Consulting Agreement, was approved by City Council on February 1, 2017, with Resolution No. 2017-17, increasing the overall contract budget for professional services to \$147,200.

Personnel identified as having a key role in the performance of this agreement were not to be removed from the project without prior written consent of the City. The project planner left Michael Baker International, Inc. during the course of the project's timeline to work for Environmental Science Associates (ESA). Efforts to reassign the contract and the budget balance between Michael Baker International, Inc. and ESA were not successful. At that point, life-to-date expenditures totaled \$78,083.01, and \$69,116.99 was remaining in the project budget for professional services. On June 15, 2017, the MBI contract was terminated to the satisfaction of all parties. A contract with ESA was developed to allow Kristin Blackson to continue serving as contract extension staff and manage project-related activities. The contract established a contingency of \$20,000 to limit the need for additional amendment.

The project was approved by City Council on November 15, 2017, with a second reading of project-related ordinances occurring on December 6, 2017. Now that the project has been approved by City Council, New Urban West, Inc. has expressed a desire to bring Kristin Blackson back to expedite post-entitlement permit activities. Further, project-related work to be completed includes finalizing and recording the subdivision map, street improvement plans, landscaping plans, and building permit applications, as well as condition compliance and mitigation monitoring. The project applicant, New Urban West, Inc., has already agreed to the terms of the First Amendment and has agreed to pay for the total cost of the professional services.

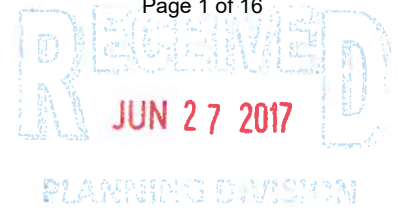
APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Bill Martin, Director of Community Development
3/28/2018 4:18 p.m.

Mike Strong, Assistant Director of Planning
3/29/2018 8:57 a.m.

ATTACHMENTS:

1. Attachment A - June 23, 2017 ESA Consulting Agreement
2. Resolution No. 2018-38
3. Resolution No. 2018-38 – Exhibit "A"



**CITY OF ESCONDIDO
CONSULTING AGREEMENT**

This Agreement is made this 23RD day of June, 2017.

Between: CITY OF ESCONDIDO
a Municipal Corporation
201 N. Broadway
Escondido, California 92025
Attn: Bill Martin, Director of Community Development
760-839-4556
("CITY")

And: ESA / Environmental Science Associates
550 West C Street, Suite 750
San Diego, CA 92101
Attn: Kristin Blackson
619-719-4181
("CONSULTANT")

Witness that whereas:

- A. It has been determined to be in the CITY's best interest to retain the professional services of a consultant to conduct the Planning Division review of the New Urban West, Inc. Environmental and Discretionary Permit General Applications, first submitted to the City on October 31, 2016;
- B. The CONSULTANT is considered competent to perform the necessary professional services for CITY; and

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

- 1. **Services.** The CONSULTANT will furnish all of the services as described in "Attachment A" which is attached and incorporated by this reference.
- 2. **Compensation.** The CITY will pay the CONSULTANT in accordance with the conditions specified in "Attachment A," in the sum of \$89,000.00. Any breach of this Agreement will relieve CITY from the obligation to pay CONSULTANT, if CONSULTANT has not corrected the breach after CITY provides notice and a reasonable time to correct it. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in subsequent amendment(s) shall not exceed a cumulative total of twenty-five percent (25%) of the maximum payment provided for in this Section 2.

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

Acknowledged by CONSULTANT 

Waiver appropriate by CITY _____

- c. Each insurance policy required above must be acceptable to the City Attorney.
 - (1) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A- rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
 - (2) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
 - (3) Both the General Liability and the Automobile Liability policies must name the CITY specifically as an additional insured under the policy on a separate endorsement page. The CITY includes its officials, employees, and volunteers. The endorsement must be ISO Form CG 20 10 11 85 edition or its equivalent for General Liability endorsements and CA 20 01 for Automobile Liability endorsements.
 - (4) The General Liability policy must include coverage for bodily injury and property damage arising from CONSULTANT's work, including its on-going operations and products-completed operations hazard.
 - (5) The General Liability policy must be primary and noncontributory and any insurance maintained by CITY is excess.
 - d. In executing this Agreement, CONSULTANT agrees to have completed insurance documents on file with the CITY within fourteen (14) days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.
9. Indemnification. CONSULTANT (which in this paragraph 9 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless the CITY from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any of the following:
- a. Any claim of liability arising out of the negligence or any acts or omissions of CONSULTANT in the performance of this Agreement;
 - b. Any personal injuries, property damage or death that CONSULTANT may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or
 - c. Any injury or death which results or increases by any action taken to medically treat CONSULTANT.
10. Anti-Assignment Clause. The CONSULTANT may not assign, delegate or transfer any interest or duty under this Agreement without advance written approval of the CITY, and any attempt to do so will immediately render this entire Agreement null and void. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY'S written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
11. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.

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

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


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

Date: 7-11-17

CITY OF ESCONDIDO


Jeffrey R. Epp
City Manager

Date: June 26, 2017

Bobbette Biddulph
(Consultant name)


(Consultant signature)
Senior Vice President
(Title)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

By:  _____

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



June 6, 2017

Steve Wragg, Vice-President
Michael Baker International
9755 Clairemont Mesa Boulevard
San Diego, CA
92124

Subject: City of Escondido – Escondido Country Club /Sub-Consulting Services/San Diego

Dear Mr. Wragg:

ESA appreciates the opportunity to submit this proposal to Michael Baker International to retain Kristin Blackson, Senior Project Manager, for sub-consulting services to the City of Escondido for the Escondido Country Club project.

Firm Profile

ESA offers clients the expanded depth and breadth of approximately 475 technical experts. For more than 45 years, ESA has been preparing environmental documentation for a wide variety of projects throughout California in compliance with the CEQA (California Environmental Quality Act) and the National Environmental Policy Act (NEPA). Since 1969, the firm has services to include not only CEQA/NEPA compliance documents, but also specialty services related to cultural and biological resources, transportation planning, air quality/greenhouse gas, noise, and environmental hydrology; extension of staff and planning services; mitigation compliance monitoring and reporting; and other expert environmental review and reporting work.

Key Personnel and Project Understanding

The Escondido Country Club project will be managed by Kristin Blackson, pursuant to scope of work described in the original agreement (attached).

Schedule and Deliverable Products

Kristin Blackson will work on a time and material basis, as directed by the City of Escondido, pursuant to the scope of work described in the original agreement.

Billing Rates

Kristin Blackson Senior Project Manager

Billing Rate \$160/hour

Thank you for your willingness to work through these contractual issues during this time of transition. If you have any questions, please contact me at (858) 264-7000 or via email at kblackson@essassoc.com.

Sincerely,

Kristin Blackson



Senior Managing Associate

Attachment B

Key Personnel:

Kristin Blackson, Senior Managing Associate, ESA / Environmental Science Associates

The key personnel listed above have particular qualifications to perform CONSULTANT services. Key personnel identified as having key roles in the performance of this CONTRACT may not be removed or substituted from the project without prior written consent of the CITY.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
 6/29/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Woodruff-Sawyer & Co. 50 California Street, Floor 12 San Francisco CA 94111	CONTACT NAME: Chris Kelley PHONE (A/C, No, Ext): 415-402-6521 FAX (A/C, No): 415-989-9923 E-MAIL ADDRESS: ckelley@wsandco.com												
INSURER(S) AFFORDING COVERAGE													
INSURED ENVISCI-01 Environmental Science Associates 550 Kearny Street, Ste 800 San Francisco, CA 94108	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>INSURER A : Greenwich Insurance Company</td> <td style="text-align: right;">NAIC # 22322</td> </tr> <tr> <td>INSURER B : XL Specialty Insurance Company</td> <td style="text-align: right;">37885</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER A : Greenwich Insurance Company	NAIC # 22322	INSURER B : XL Specialty Insurance Company	37885	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
INSURER A : Greenwich Insurance Company	NAIC # 22322												
INSURER B : XL Specialty Insurance Company	37885												
INSURER C :													
INSURER D :													
INSURER E :													
INSURER F :													

COVERAGES CERTIFICATE NUMBER: 106658176 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input checked="" type="checkbox"/> Stop Gap GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: No Deductible	Y		GEC001336714	1/1/2017	1/1/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> No Ded.	Y		AEC001336514	1/1/2017	1/1/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WEC001337414	1/1/2017	1/1/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Professional Liability Cov. A. Claims Made Retro Date: 10/1/89 & 9/1/76			PEC001336814	1/1/2017	1/1/2018	Each Occurrence: \$2,000,000 Aggregate: \$2,000,000 Retention: \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 D170538.00 - Escondido Country Club Contract Staff. City of Escondido and its officials, employees and volunteers are named additional insureds on General Liability and Auto Liability coverage per endorsements, and attached. General Liability coverage is primary and non-contributory per endorsement attached. Policies contain a 30 day notice of cancellation and a 10 day notice of cancellation for non-payment of premium.

CERTIFICATE HOLDER City of Escondido, a Municipal Corporation Attn: Bill Martin, 201 N. Broadway Escondido CA 92025	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

POLICY NUMBER: AEC001336514

XIC 411 1013

ENDORSEMENT #004

This endorsement, effective 12:01 a.m., January 1, 2017 forms a part of Policy No. AEC001336514 issued to ENVIRONMENTAL SCIENCE ASSOCIATES by XL Specialty Insurance Company - US.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTOMATIC ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
AUTO DEALERS COVERAGE FORM

- A. **COVERED AUTOS LIABILITY COVERAGE, Who Is An Insured**, is amended to include as an "insured" any person or organization you are required in a written contract to name as an additional insured, but only for "bodily injury" or "property damage" otherwise covered under this policy caused, in whole or in part, by the negligent acts or omissions of:
1. You, while using a covered "auto"; or
 2. Any other person, except the additional insured or any employee or agent of the additional insured, operating a covered "auto" with your permission;

Provided that:

- a. The written contract is in effect during the policy period of this policy;
 - b. The written contract was signed by you and executed prior to the "accident" causing "bodily injury" or "property damage" for which liability coverage is sought; and
 - c. Such person or organization is an "insured" solely to the extent required by the contract, but in no event if such person or organization is solely negligent.
- B. The Limits of Insurance provided for the Additional Insured shall not be greater than those required by contract and, in no event shall the Limits of Insurance set forth in this policy be increased by the contract.
- C. **General Conditions, Other Insurance** is amended as follows:

Any coverage provided hereunder shall be excess over any other valid and collectible insurance available to the additional insured whether such insurance is primary, excess, contingent or on any other basis unless the contract specifically requires that this policy be primary.

All terms, conditions, exclusions and limitations of this policy shall apply to the liability coverage provided to any additional insured, and in no event shall such coverage be enlarged or expanded by reason of the contract.

All other terms and conditions of this policy remain unchanged.

XIC 411 1013

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Page 1 of 1

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Includes copyrighted material of Insurance Services Office, Inc., with its permission.

ENDORSEMENT #007

This endorsement, effective 12:01 a.m., January 1, 2017 forms a part of Policy No. GEC001336714 issued to ENVIRONMENTAL SCIENCE ASSOCIATES by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –
 SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION THAT YOU ARE REQUIRED IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT TO INCLUDE AS AN ADDITIONAL INSURED PROVIDED THE "BODILY INJURY" OR "PROPERTY DAMAGE" OCCURS SUBSEQUENT TO THE EXECUTION OF THE WRITTEN CONTRACT OR WRITTEN AGREEMENT.	Various
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

All other terms and conditions of this policy remain unchanged.

ENDORSEMENT #006

This endorsement, effective 12:01 a.m., January 1, 2017 forms a part of Policy No. GEC001336714 issued to ENVIRONMENTAL SCIENCE ASSOCIATES by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION THAT YOU ARE REQUIRED IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT TO INCLUDE AS AN ADDITIONAL INSURED PROVIDED THE "BODILY INJURY" OR "PROPERTY DAMAGE" OCCURS SUBSEQUENT TO THE EXECUTION OF THE WRITTEN CONTRACT OR WRITTEN AGREEMENT.	Various
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

All other terms and conditions of this policy remain unchanged.

ENDORSEMENT #010

This endorsement, effective 12:01 a.m., January 1, 2017 forms a part of Policy No. GEC001336714 issued to ENVIRONMENTAL SCIENCE ASSOCIATES by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY INSURANCE CLAUSE ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS COVERAGE PART

It is agreed that to the extent that insurance is afforded to any Additional Insured under this policy, this insurance shall apply as primary and not contributing with any insurance carried by such Additional Insured, as required by written contract.

All other terms and conditions of this policy remain unchanged.

RESOLUTION NO. 2018-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE, ON BEHALF OF THE CITY, A FIRST AMENDMENT TO THE CONSULTING AGREEMENT WITH ENVIRONMENTAL SCIENCE ASSOCIATES (ESA) FOR REVIEW OF THE ESCONDIDO COUNTRY CLUB DEVELOPMENT PROPOSAL

WHEREAS, on November 15, 2017, and December 6, 2017, the City of Escondido City Council approved a series of actions, including a request for a General Plan Amendment, Zone Change, Specific Plan, Tentative Map, Specific Alignment Plan, and Development Agreement, which approved a land use development application called the Villages – Escondido Country Club Project Proposal; and

WHEREAS, the Project applicant has requested and the City has agreed to utilize a contract planner as extension of Planning Division staff services to facilitate the review of the Escondido Country Club project proposal; and

WHEREAS, extension staff professional services provide an administrative activity to help facilitate the City's and public's review of development plan proposals; and

WHEREAS, Kristin Blackson of Environmental Science Associates ("ESA") has been selected to perform the extension staff professional services to review the Escondido Country Club project proposal; and

WHEREAS, a Consulting Agreement ("Agreement") between ESA and the City of Escondido was executed on June 23, 2017, and at this time the City Council desires to amend the Agreement to allow extension staff services to continue; and

WHEREAS, on June 14, 2018, the City of Escondido City Council adopted Resolution No. 2017-75 appropriating the budget for Fiscal Year 2017-18; and

WHEREAS, entering into a professional services contract with Kristin Blackson of ESA does not necessitate a revision of the appropriations for Fiscal Year 2017-18. The City Council's action to enter into a professional services contract, and/or make an amendment thereto as described by Exhibit "A," falls within the existing department budget capacity.

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

1. That the above recitations are true.
2. That the City Council of the City of Escondido does, hereby, authorize the City Manager to execute a First Amendment to the Agreement with ESA and undertake the planning services as summarized in Exhibit "A." A copy of the First Amendment to the Consulting Agreement is attached as Exhibit "A" and is incorporated by this reference.



CITY OF ESCONDIDO
FIRST AMENDMENT TO CONSULTING AGREEMENT

This "Amendment" is made this 4th day of April, 2018.

Between: CITY OF ESCONDIDO
 a municipal corporation
 201 N. Broadway
 Escondido, California 92025
 Attn: Bill Martin, Director of Community Development
 ("CITY")

And: ESA / Environmental Science Associates
 550 West C Street, Suite 750
 San Diego, CA 92101
 Attn: Kristin Blackson
 619-719-4181
 ("CONSULTANT")

Witness that whereas:

- A. CITY and CONSULTANT entered into an agreement on June 23, 2017 ("Agreement"), wherein CITY retained CONSULTANT to provide extension staff services for project-related review and case file management of the Villages – Escondido Country Club Project proposal; and

- B. CITY and CONSULTANT desire to amend the Agreement to include additional work, which is defined in "Attachment A" to this Amendment, which is incorporated by reference.

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

- 1. The CONSULTANT will furnish the services described in "Attachment A" to this Amendment.

- 2. CITY will compensate the CONSULTANT in an additional amount not to exceed \$50,000, pursuant to the conditions contained in "Attachment A" to this Amendment.

3. All additional terms under the Agreement between CITY and CONSULTANT still apply to the additional work to be performed by CONSULTANT under this Amendment. If any of the terms of this Amendment conflict with the Agreement, this Amendment must prevail.

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

CITY OF ESCONDIDO

Date: _____

Jeffrey R. Epp
City Manager

Date: _____

Bobbette Biddulph

Bobbette Biddulph
Senior Vice President

(The above signature should be notarized)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

By: _____

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

Attachment A

March 6, 2018

Mike Strong, Assistant Planning Director
City of Escondido
201 N. Broadway
Escondido, CA 92025

Subject: City of Escondido – The Villages - Escondido Country Club /Consulting Services

Dear Mr. Strong:

ESA appreciates the opportunity to submit this proposal to the City of Escondido to retain Kristin Blackson, Senior Project Manager, for consulting services to the City of Escondido for The Villages- Escondido Country Club project.

Firm Profile

ESA offers clients the expanded depth and breadth of approximately 475 technical experts. For more than 45 years, ESA has been preparing environmental documentation for a wide variety of projects throughout California in compliance with the CEQA (California Environmental Quality Act) and the National Environmental Policy Act (NEPA). Since 1969, the firm has services to include not only CEQA/NEPA compliance documents, but also specialty services related to cultural and biological resources, transportation planning, air quality/greenhouse gas, noise, and environmental hydrology; extension of staff and planning services; mitigation compliance monitoring and reporting; and other expert environmental review and reporting work.

Project Understanding and Scope of Services

The Villages - Escondido Country Club project will be managed by Kristin Blackson who will serve as the project manager to manage the process for all post-entitlement permits and related services (e.g. Grading Permits, Final Map and condition satisfaction) on behalf of the City of Escondido. Kristin Blackson will work on a time and material basis, as directed by the City of Escondido and with either City staff or contract staff hired for engineering peer review. The contract amount below is based on work continuing through December 2018. Other direct costs including reimbursement and production costs may be reimbursed when authorized by the City of Escondido.

Billing Rates

Kristin Blackson Senior Project Manager

Billing Rate \$215/hour

Contract Amount \$50,000

CITY COUNCIL STAFF REPORT

Consent Item No. 7

April 4, 2018

File No. 0600-10, A-3244

SUBJECT: Authorization for Voice Network Upgrade, Five Year Maintenance Agreement, and Budget Adjustment

DEPARTMENT: Information Systems Department, Telecommunications Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2018-40 authorizing an agreement with Atel Communications, Inc. to upgrade the City's phone system and provide five years of maintenance services.

FISCAL ANALYSIS:

The total estimated cost of the phone system upgrade is \$416,000 and will be phased in over two fiscal years. Funding for the project in the current fiscal year will be provided by a combination of available funds in the Telecommunications budget of \$76,045, the Public Facilities Fund of \$95,600, the Water Fund of \$12,500, and the Wastewater Fund of \$12,500. Funding in the next fiscal year in the amount of \$219,355 from Telecommunication budget and reserve fund balance, is contingent upon approval of the proposed Fiscal Year 2018/19 Telecommunications Operating Budget. The estimated cost of maintenance services is \$32,500 per year which will also be contingent on the approval of each respective fiscal year Telecommunications Operating Budget.

BACKGROUND:

The phone system currently servicing the City of Escondido is comprised of three separate systems. Each system has different integration points, vendor contracts and support, designs, licensing, and maintenance requirements. In addition, many individual components of these systems are obsolete, making support unavailable or prohibitively expensive. The proposed single system would reduce staff time necessary to maintain the system and reduce on-going costs. The proposed upgrade will provide unified features to all City staff as well as additional communication functionality.

Information Systems staff researched options for upgrading or purchasing a new phone system also known as a Unified Communications (UC) system. Staff looked at available technology and hosted vendor demos to evaluate features and ask questions. We created a pricing matrix to achieve unbiased cost estimates which allowed us to compare services equally.

The primary evaluation was the differences between an on premise or hosted UC solution. A hosted system resides in the cloud and you will lose the local control of the system. The annual operating costs of a hosted solution are generally more expensive than an on premise system.

On premise systems are purchased and reside at the customer's location. An on premise system also allows staff to control the quality of service and build in redundancy at little additional cost, comparatively. An on premise solution also would allow staff to use existing equipment to defray initial capital costs. Generally, an on premise solution requires a higher initial capital purchase. However, the annual operating costs are significantly less. The cost comparison done by staff showed that hosted solutions, on average, were 60% higher than the average on premise solution over a five-year period. Our cost comparison of an upgrade, leveraging existing assets, were 40% lower than purchasing a new on premise solution over the same five-year period.

Based on our evaluation, the chosen solution leverages existing assets by upgrading our phone system and utilizing as much of our hardware and software as possible. The proposed upgrade would allow for the migration of City staff in a staged deployment that will reduce interruption of services and maintain productivity. The upgrade of the on premise NEC system is projected to occur over the next eight months ensuring high levels of customer service to the public while we deliver the next generation UC features to create staff efficiencies. This will provide the City with a robust, proven reliable phone system that meets or exceeds each objective; budget-friendly cost, features that will enhance collaboration and efficiencies, effectively managed with existing staff resources and industry stability. The final piece of the recommendation is the accompanying maintenance services to ensure uninterrupted use of the system subsequent to the upgrade.

Atel Communications, Inc. is the only company with the history and background required to upgrade our phone services, utilizing existing system equipment. Furthermore, Atel Communications, Inc. is the only company with the expertise to integrate new and refurbished equipment that can meet the City's standards and service level requirements. Staff recommends approval of awarding this agreement to Atel Communications, Inc. as provided in Resolution 2018-40.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Robert Van De Hey, Director of Information Systems
3/29/2018 8:07 a.m.

ATTACHMENTS:

1. Budget Adjustment
2. Resolution No. 2018-40
3. Resolution No. 2018-40 – Exhibit A -Public Services Agreement with Atel Communications, Inc.



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: 04/04/2018

Department: Telecommunications

Division: _____

Project/Budget Manager: Robert Van De Hey x6213
Name Extension

Council Date (if applicable): 04/04/2018
(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
Phone System Upgrade Project	NEW-229	\$196,645	
Transfer In-General Capital Fund	4999-229	196,645	
Transfer Out-Public Facilities Fund	5999-243	95,600	
Transfer Out-Water Fund	5999-555	12,500	
Transfer Out-Wastewater Fund	5999-558	12,500	
Transfer Out-Telecommunications Fund	5999-654	76,045	
Other Telephone	5173-654-771		76,045

Explanation of Request:

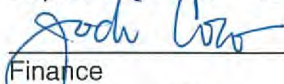
To fund the first phase of the Phone System Upgrade Project. Additional funds will be requested through the FY 18/19 CIP Budget to cover the remaining cost of the project. The estimated total budget needed is \$416,000.

APPROVALS


Department Head

3/27/18
Date

City Manager Date


Finance

3/28/18
Date

City Clerk Date

RESOLUTION NO. 2018-40

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR AND CITY
CLERK, TO EXECUTE, ON BEHALF OF THE
CITY, A PUBLIC SERVICE AGREEMENT TO
UPGRADE AND SUPPORT THE NEC PHONE
SYSTEM

WHEREAS, the City's aging phone services are on multiple platforms and the costs to support and maintain these separate systems have become financially unfeasible; and

WHEREAS, the City of Escondido requires an upgraded, single system to unify and improve the features to all users, as well as increase productivity, communications, and customer service; and

WHEREAS, upgrading the City's existing NEC system will provide a reliable, secure, and cost effective phone system; and

WHEREAS, Atel Communications, Inc. is the only company that has the background and experience with the City's existing system necessary to upgrade and integrate the City's existing system utilizing existing equipment.

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 accept this recommendation from the Director of Information Systems.

3. That the Mayor and the City Clerk are hereby authorized to execute the attached Public Services Agreement to upgrade and support the NEC phone system in substantially similar form as approved by the City Attorney. A copy of this Public Services Agreement is attached as Exhibit "A" and incorporated by this reference.



CITY OF ESCONDIDO
PUBLIC SERVICES AGREEMENT

This Agreement is made this 4th day of April, 2018.

Between: CITY OF ESCONDIDO
 a Municipal Corporation
 201 N. Broadway
 Escondido, California 92025
 Attn: Robert Van de Hey
 760-839-6364
 ("CITY")

And: Atel Communications, Inc.
 8447 Miramar Mall
 San Diego, CA 92121
 Attn: Steve Handelman
 858-646-4600
 ("CONTRACTOR")

WHEREAS, the CITY and CONTRACTOR desire to enter into this Agreement for the performance of services;

NOW, THEREFORE, it is mutually agreed as follows:

1. Description of Services. CONTRACTOR will furnish all of the services described in "Attachment A," which is attached and incorporated by this reference. CONTRACTOR agrees to diligently perform such services to their completion, with professional quality and technical accuracy.
2. Compensation. The CITY will pay and CONTRACTOR will accept in full payment for the above work, the sum not to exceed \$416,000.00. Any breach of this Agreement will relieve CITY from the obligation to pay CONTRACTOR, if CONTRACTOR has not corrected the breach after CITY provides notice and a reasonable time to correct it. If this Agreement is amended at any time, additional compensation of CONTRACTOR contained in subsequent amendment(s) shall not exceed a cumulative total of twenty-five percent (25%) of the maximum payment provided for in this Section 2.
3. Term and Time of Performance. CONTRACTOR must start working within one (1) week from City's notice to begin. CONTRACTOR must diligently perform and complete the work as described in "Attachment A." Extension of terms or time of performance may be made only upon the City's written consent. The term of this Agreement shall be for five (5) years. The City may terminate this Agreement upon ninety (90) days' notice.

4. Scope of Compensation. CONTRACTOR will be responsible for performance of the tasks specified in the Description of Services in "Attachment A." No compensation will be provided for any other tasks without specific prior written consent from the CITY.
5. Performance. CONTRACTOR must faithfully perform in a proficient manner, to the satisfaction of the CITY, all the work or services described in the Description of Services, above.
6. City Property. All original documents, drawings, electronic media, and other material prepared by CONTRACTOR under this Agreement immediately becomes the exclusive property of the CITY, and may not be used by CONTRACTOR for any other purpose without prior written consent of the CITY.
7. Insurance Requirements.
 - a. The CONTRACTOR shall secure and maintain at its own cost, for all operations, the following insurance coverage, unless reduced by the City Attorney:
 - (1) General liability insurance. Occurrence basis with minimum limits of \$1,000,000 each occurrence, \$2,000,000 General Aggregate, and \$1,000,000 Products/Completed Operations Aggregate; and
 - (2) Automobile liability insurance of \$1,000,000 combined single-limit per accident for bodily injury and property damage, unless waived as provided in 7(b) below; and
 - (3) Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship; and
 - b. Each insurance policy required above must be acceptable to the City Attorney.
 - (1) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A- rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
 - (2) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
 - (3) Both the General Liability and the Automobile Liability policies must name the CITY specifically as an additional insured under the policy on a separate endorsement page. The endorsement must be ISO Form CG2010 11/85 edition or its equivalent for General Liability endorsements and CA 20-01 for Automobile Liability endorsements.
 - (4) The General Liability policy must include coverage for bodily injury and property damage arising from CONTRACTOR's work, including its on-going operations and products-completed operations hazard.
 - (5) The General Liability policy must be primary and noncontributory and any insurance maintained by CITY is excess.
 - c. In executing this Agreement, CONTRACTOR agrees to have completed insurance documents on file with the CITY within fourteen (14) days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.

8. Indemnification. CONTRACTOR (which in this paragraph 8 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless the CITY from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any of the following:
- a. Any claim of liability arising out of the negligence or any acts or omissions of CONTRACTOR in the performance of this Agreement;
 - b. Any personal injuries, property damage or death that CONTRACTOR may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or
 - c. Any injury or death which results or increases by any action taken to medically treat CONTRACTOR.

Stormwater Indemnification. CONTRACTOR shall further indemnify, defend, and hold harmless CITY and its officers, employees, and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceeds, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001), as amended or renewed, of the California Regional Water Quality Control Board Region 9, San Diego, which CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction of the Project or the Improvements.

9. Anti-Assignment Clause. Since the CITY has relied on the particular skills of CONTRACTOR in entering this Agreement, CONTRACTOR may not assign, delegate, or sublet any duty or right under this Agreement, or any portion of the Description of Services. Any such purported assignment, delegation, or subletting will void this entire Agreement, unless the CITY has previously approved such action in writing. Unless CONTRACTOR assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY'S written consent, CONTRACTOR shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
10. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.
11. Independent Contractor. CONTRACTOR is an independent contractor and no agency or employment relationship is created by the execution of this Agreement.
12. Merger Clause. This Agreement and its Attachments, if any, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and any of its Attachments, the provisions of this Agreement must prevail.
13. Anti-Waiver Clause. None of the provisions in this Agreement will be waived by CITY because of previous failure to insist upon strict performance, nor will any provision be waived because any other provision has been waived by CITY, in whole or in part.
14. 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.

15. Choice of Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in San Diego County, California.
16. Multiple Copies of Agreement/Counterparts. Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
17. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the CITY.
18. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below. Each party agrees to promptly send notice of any changes of this information to the other party.
19. Business License. The CONTRACTOR is required to obtain a City of Escondido Business License prior to execution of this Agreement.
20. Compliance with Applicable Laws, Permits and Licenses. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. This shall include, but not limited to, all California Labor Code laws regarding payment of prevailing wages and all OSHA regulations. CONTRACTOR shall obtain any and all licenses, permits, and authorizations necessary to perform the services set forth in this Agreement. Neither CITY, nor any elected nor appointed boards, officers, officials, employees, or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
21. Prevailing Wages. If applicable, pursuant to Section 1770 et seq. of the Labor Code, CONTRACTOR agrees that a prevailing rate and scale of wages, in accordance with applicable State and Federal Law, will be paid in the carrying out of this Agreement. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the 'General Prevailing Wage Rates' approved by the Department of Industrial Relations as of the date of the execution of this Agreement. Said rates and scales are herein referred to and adopted in this Agreement as though fully and completely set forth herein, and said scale as adopted by the Department is made a part of this Agreement by reference. Copies of the prevailing rate of per diem wages are available on the Intranet at (<http://www.dir.ca.gov/DLSR>). Neither CITY, nor any elected nor appointed boards, officers, officials, employees, or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
22. Immigration Reform and Control Act of 1986. CONTRACTOR shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. CONTRACTOR affirms that as a licensed Contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. CONTRACTOR agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.

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

CITY OF ESCONDIDO

DATE: _____

Sam Abed
Mayor

Diane Halverson
City Clerk

Atel Communications, Inc.
Contractor

DATE: _____

Steven Handelman
President
(Title)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

BY: _____

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

Attachment "A" NEC Voice System Upgrade and Maintenance Scope of Work

I. Overview and Term

Contractor shall provide a customized upgrade solution, equipment, software, maintenance and support for the City of Escondido's existing NEC 2400 IPX Phone Switch, AVST Call Xpress Voice Mail, Utility Billing Call Center and Fax Service platforms in multiple phases, as provided in this Scope of Work (the "System"). This upgrade will be deployed in two phases. Phase One implementation shall start immediately upon execution. Phase Two, the annual Maintenance Services, and any additional equipment or service purchases must be authorized in writing by the City prior to incurrence of any costs by Contractor and shall be subject to appropriation of funds by the City Council.

II. Phase One

Phase One includes upgrading the hardware and software components of the City's existing phone system. The upgrade includes all necessary equipment, software, installation, and other services to provide a finished and fully functioning phone system utilizing the City's existing NEC voice platform as provided below. Phase One must be completed prior to June 30, 2018 and any costs of delay including but not limited to, maintaining other licenses, will be paid by the Contractor. The cost for providing the entire System in Phase One is \$180,019.00. The pricing breakdown is provided below.

Phase One includes the following:

A. NEC SV8500 Upgrade Bundle

This is a bundled package that will integrate with the City's existing NEC 2400IPX switch that will allow the City to enable IP ports, migrate our users over time and keep the voice services up during the upgrade. Components included in this bundle will allow migration from the Genesys Voice Platform, which includes the Utility Billing Call Center and approximately 200 other users. The voice mail upgrade will provide voicemail to email feature to the City.

- **SPECS:** Refurbished, fully warrantied NEC SV 8500 Chassis, Dual3 Redundant, PRI- (69) Channels, 32 Protims ports, ACD Global Navigator (Call Center), Dimensions 3 rack units, 19 inches wide, System voltage 100-240V AC or 48V DC Processors, Intel Dual Core Duo 2.16 GHz, Number of ports Up to 6,144 Trunks, Analogue trunks 6,000 +, E1/PRI channels 6,000,,IP trunks (SIP) 6,000 + Stations, Digital terminals 6,000, Analogue terminals 6,000, IP terminals 4,000 + Networking, FCCS networking (E1/IP) 64 nodes, CCIS networking (E1/IP) 64 nodes, 999 trunks, Ports Up to 192,000 Peripheral standards, Devices SIP-enabled, Databases LDAP compliant, Languages Java and XML, Wireless LAN 802.11 a/b/g, Other 802.3af Applications, Internal ACD up to 2,000 stations, OAI support UNIVERGE 3rd party applications, Conference bridge UNIVERGE 3rd party applications, Regulatory compliance - A Ticked, Storage 10 to 95%

- **Licensing** - 120 IP ports, VM & Unified Messaging Licensing (Qty 1200)
- **Phones** - NEC DT820 CG, color, desi less phones (Qty 100)
- **Call Center** – 50 ACD Licenses – 2 Supervisor, 48 Agents. System capabilities include these features: Agent personal queues, Assistance - ACD agent, Automatic answer, Auto work for PBX calls, Break modes (9), Call control vectors, Call distribution to agents, Call forwarding – split, Call recover, Call transfer to split queues, Call waiting indication, Connection display, Delay announcements, Do not disturb, hot split, Holiday scheduling, Language default, Logon/logoff, Monitoring - ACD Supv, Logoff warning, Monitor me, Multiple Splits, Multi-split agent (32), Night service – ACD, Non-ACD call, Overflow Outside, Personal emergency and assist, Pilot numbers, Priority queuing, Queuing – ACD, Skills-based Routing, Splits, Split display - ACD position, Split selection, Stranded call routing, Tally count Tally-oh codes, Tally required, time of day/ week routing, Variable queuing, Work modes (99), Work mode time limit, Week Schedules, Zip tone

B. AVST UM8700 Voice Mail Upgrade

UM8700 virtualized software allow users to access messages, navigate and process messages, and place calls to contacts or direct-dial numbers. The personal attendant feature routes calls based on presence, initiates find me/follow me.

C. Utility Billing – Live Record

This allows all calls to be recorded, stored and accessed in the Utility Billing Call Center.

SPECS: Small Business TOWER Server Appliance 32 Bit- For SonicView/CES/E911. Xeon Processor, 4 GB RAM, 500 GB EHDD 7200 RPM, Windows 7 Professional 32 Bit. Records up to 24 channels, stores up to 35000 hours of recording or 200,000 call Live Record-meta-data records for CES or Monitors 1 E911 Site.

- 8-Additional SonicView Recorder Port License
- 12 – D729 license for a single IP port recording
- 1-sonic use supervisor studio basic (search, playback, email)
- 2 tokens try viewing product implementation service up to 2 hours access-based implementation and validation
- Web-based training up to 60 minutes

D. Call Center Reporting Tools

Global Navigator (GNAV) is a management information system that records the activity of calls, tracks the performance of agents and coordinates the scheduling of personnel.

SPECS: NEC GNAV CORE SW-ENT to be installed on our server- virtualize instance (including Cent OS is the operating system for the GNAV)

E. Fax Services

This multi-tech 4 port fax server is an appliance that received incoming faxes and converts them to PDF to mail to users. **SPECS:** Super G3 V.34/33.6K fax communication, MH, MR and MMR compression, Web server interface for system configuration and management, Error Correction Mode (ECM) provides fast and reliable fax transmissions. Window-based manager for easy

firmware updates, copying configuration files and phonebook synchronization, e-mail informs user of failed transmission, faxes converted to PDF or TIFF files, manual client address book synchronization with Microsoft® Outlook®, build one fax of multiple documents from multiple applications, schedule faxes to be sent at a later time, faxes are routed to first available fax server Engineering and Installation Support – This will include all engineering, installation, testing, service installations, network configuration support and Administer Training required to deploy all upgraded components, as specified above.

F. Phones, Licenses and Equipment - Phase One also includes the purchase of phones, licensing, and equipment to be matched to the City’s needs as determined by the Director of Information Services. The purchase of additional phones, licensing, and equipment as part of the Phase One upgrade shall not exceed \$76,044.00.

G. Pricing Breakdown

Phase One NEC SV8500 Pricing	
SV 8500 Voice Platform Upgrade	\$43,723.00
AVST Voice Mail Upgrade (UM8700)	\$8,312.00
NEC DT820CG (Color) Telephones	\$17,662.00
Utility Billing - Live Record	\$9,485.00
Call Center Reporting Tools	\$7,700.00
Fax Services	\$4,652.00
Engineering Installation & Support	\$12,441.00
Additional Phones & Licensing	\$76,044.00
Phase One - Total Cost	\$180,019.00

III. Phase Two

The upgrade includes all necessary equipment, software, installation, and other services to provide a finished and fully functioning phone system utilizing the City’s existing NEC voice platform as provided below. At final completion of this upgrade, Contractor will provide system documentation of all hardware, software, UC licensing, applications and device inventory.

Phase Two includes upgrading the hardware and software components to a warranted NEC SV9500 platform and the migration of the rest of the City’s users and devices to an IP platform. Phase Two shall not commence until the Director of Information Services provides written approval, which shall be subject to appropriation by the City Council.

Phase Two must be completed prior to Feb 28, 2019 and any costs of delay including but not limited to, maintaining other licenses, will be paid by the Contractor. The cost for providing the entire System in Phase Two shall not exceed \$ 235,650.00. The City must authorize Phase Two in writing prior to the incurrence of any cost and is further subject to appropriation of funds by the City Council. The pricing breakdown is provided below.

Phase Two includes the following:

A. NEC SV9500 Upgrade

This upgrade consists of hardware and software upgrade from the NEC SV8500 version to the NEC SV9500 voice platform. The purpose of this phase is to leverage NEC SV9500 platform licensing models, which offer reduced IP feature licensing costs, deploy unified communication features, maintain current and supportable voice services, and to move all City users to the same platform. Licensing costs are determined in the Licensing Pricing Matrix below, and purchasing will be based on user requirements.

NEC UNIVERGE SV 9500 UPRADE BUNDLE

This upgrade allows us to fully deploy the following Unified Communications features for the City's users: Desktop Client, UC Mobility, UC Desktop Softphone, UC Manager Internal/ External ACD Statistics (Global Navigator), UM8700 Voice Mail/ Unified Communications System, High availability for mission critical applications & environments 4 RU (Rack Units), Dual 3 Fully redundant modular hardware, Intel processor memory, simplified management, lockstep operation Hyper-V for virtualization Server Hardware for Apps NEC IP Terminals, standard SIP Terminals, digital terminals, analog terminals networking, SIP Trunk T1/PRI Trunk, Analog Trunk, FCCS/CCIC IP

SPECS: D15 ST CA(S)-A, SV95 P2P CCIS TRK-1 LIC, SV95 CCIS/FCCS NETWORK OPTION, SV95 LIC. TRANSFER MAIN, SV95 PHY-PIR RESOURCE-1 LIC, SV9500 CORE DVD SET, UCE DVD SET, SV95 BASIC USER-1 LIC, SV95 PLATFORM LIC (NEW), SV95 LIC. TRANSFER PER PHY-PIR, SV95 V5 UC APPLIANCE VER LIC, SV95 LIC. TRANSFER PER IP EXT, SV9500 SP CONVERSION, CF-8GB PROGRAMMED-SV95, SV95 ACD 1 AGENT OPTION, SCG-PC00-C, CG FRONT OVERLAYS, GNAV PRO-ENT 1 USER LIC, SCH-IPDA-A PA KIT, D25 EXALM CA-A, SCG-M02-B, SCG-M03-B, GNAV VER 11.0, BLANK PLATE-B

MA4000 MANAGEMENT SYSTEM

NEC's MA4000 Management System is a centralized web based management system for all voice communications servers. It seamlessly supports and manages the day-to-day tasks of all Communication Servers.

B. Phones, Licensing and Miscellaneous Equipment

Phase Two also includes the purchase of phones, licensing, and equipment to matched to the City's needs as determined by the Director of Information Services. The purchase of additional phones, licensing, and equipment as part of the Phase Two upgrade shall not exceed \$235,650.

C. Pricing Breakdown

PHASE 2 NEC UNIVERGE SV 9500 UPRADE BUNDLE	
	\$50,000.00
Additional Phones and Licensing	\$185,650.00
	\$235,650.00
Telephone Model Pricing	
NEC DT820 (B&W) Telephones	\$134.37
NEC DT820CG (Color) Telephones	\$176.62

License Bundles	Quantity 15+	Quantity Under 15
Basic License - IP endpoint License	\$60.00	\$80.00
Standard User - Basic IP, Unified Communications, VMM, UM	\$114.00	\$152.00
Standard Plus User - Basic IP, UC, VMM, UM, and SP350 (Soft Phone) - 2 Devices	\$150.00	\$200.00
Premium User- Basic IP (x3), UC, VMM, UM, SP350, and CMM - 3 Devices	\$210.00	\$280.00
License Add On (requires Basic License)		
UC Desktop / Mobile	\$57.00	\$76.00
UC Desktop Softphone or SP 350 standalone	\$120.00	\$160.00
UCC Connector- Unified Communications S4B Desk Top add-in	\$90.00	\$120.00
CMM Host - Collaboration Meeting Manager Host	\$22.80	\$30.40
UCE ACD Agent - UCE ACD Agent add-on to a UC700 client	\$36.00	\$48.88
VM Seat - Voice Mail Subscriber	\$16.80	\$22.40
UMS Seat -Voice Mail Unified Messaging	\$16.80	\$22.40
UC Desktop / Mobile - Unified Communications Desk Top and Mobile Clients	\$57.00	\$76.00
UC SP350 - DT Softphone	\$120.00	\$160.00

IV. Equipment and Software

The relative costs of the following equipment and software are referenced below in the Pricing Matrix. These prices shall remain firm for the entire term of this Agreement. The City may add and subtract equipment and software as needed which shall be provided to the City by Contractor at the prices listed below. Should the costs of equipment or software drop in price by more than five percent (5%), the prices below shall be revised down to the then current price.

V. Warranty

Contractor warrants that the System will be a fully functioning phone system as provided in this Agreement and that the System, and each component thereof, will conform to the manufacturing specifications and will be free from defects in material and workmanship, under normal use and service when correctly installed and maintained, for a period of thirty-six (36) months, or as long as the annual Maintenance Services continue, whichever occurs later.

Contractor's liability for any equipment or software which is shown to be defective during its warranty is limited to replacing the product or part thereof with a functionally equivalent product or part. The City requires replacement with the same or current version of any failed hardware or

software. The above warranty excludes coverage for products which were installed, repaired or maintained by an unauthorized service provider or caused by the City's gross negligence or wrongful conduct.

Additional equipment and software warrantied or maintained by the contractor must be purchased from Contractor to ensure continuity of operations and coverage eligibility under this Maintenance Scope of Work.

VI. Maintenance Services

Contractor shall also provide annual maintenance and support services for the System as provided in this Section ("Maintenance Services"). The Maintenance Services will be billed on an annual basis at the beginning of each Fiscal Year, beginning July 1, 2018. The cost for Maintenance Services shall be \$32,500 per year. The City must authorize Maintenance Services each year in writing prior to the incurrence of any cost. The City's obligation for payment is subject to appropriation of funds by the City Council each year. Should the total amount of City employees utilizing the System exceed 1200, Contractor and City agree to negotiate in good faith any increase in the cost for Maintenance Services.

A. Annual Maintenance

Contractor shall provide maintenance on an annual basis to ensure the continued operation of the System, which shall include all items purchased from Contractor in Phase 1 and Phase 2 and any further items purchased during the term of this Maintenance Scope of Work.

B. Support Services

Contractor shall maintain Diamond Level status with NEC Corporation of America and will obtain or secure appropriate certification or status levels to maintain authorization to resell and provide service or support on any integrated or peripheral components deemed necessary to maintain the System operations functions and feature add-ons.

Contractor shall have a qualified, certified technician, or engineer provide service and support, whether on site or remote. Chargeable service requests include, but is not limited to, moves, adds, or changes (MAC orders), voice engineering services, and future system add-ons not included in this Agreement.

Service requests that will not incur an additional charge, covered under this Maintenance Agreement Scope of Work will include initial upgrade installation support for Phase 1 and Phase 2, administrator training, replacement or repair of any hardware, software and telephones, and continuity of operations support on existing features and functionality. Remote support calls or initial evaluation under 15 minutes will be non-billable.

All non-emergency service requests, whether chargeable or covered under this Maintenance Scope of Work, will be submitted by service request and responded to within 48 hours. Service requests will be scheduled at a mutually convenient time within one week of City's submission to Contractor, unless there is a service interruption.

Contractor shall respond to any service outage that causes a significant interruption to the System, as determined by the City in its sole discretion, within two (2) hours of notification from the City. Contractor shall respond with a qualified, certified technician on site or available remotely. For all other support requests, Contractor shall have a qualified, certified technician respond, either on site or remote, within twenty-four (24) hours of notification.

Contractor is required to work cooperatively with City employees and other vendors, as needed, to determine cause of, and best practice solutions, to maintain a functioning NEC voice platform, peripheral devices, and integrated systems.

Contractor will report the status of all service request findings directly to the Information Systems staff assigned by the City. Documentation of services requested, required repairs, programming or configuration changes, impact to licensing, or recommendations to the City's NEC infrastructure must be authorized or documented in the course of the services provided to the City.

VII. Additional Services

Any additional services outside this scope of work will be quoted or priced separately and billed at an hourly rate not to exceed \$148.00, billed in 15 minute increments. For engineering or complex requests, quotes for services will be provided and Contractor and the City will negotiate a mutually agreeable start date and project duration. Any additional services must be approved in writing by the City prior to any incurrence of costs.



CITY COUNCIL STAFF REPORT

Consent Item No. 8

April 4, 2018

File No. 1350-20

SUBJECT: Adoption of Local Discharge Limits by Resolution

DEPARTMENT: Utilities Department, Wastewater and Environmental Programs Divisions

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2018-43 for Local Discharge Limits, pursuant to recent changes in Chapter 22, Article 8, Section 174 of the Escondido Municipal Code (EMC).

FISCAL ANALYSIS:

There is no fiscal impact. The numerical values of the Local Discharge Limits are unchanged, but the specification of these limits has been removed from the EMC and instead placed in the resolution under consideration.

PREVIOUS ACTION:

At the March 21, 2018, Council Meeting, the City Council adopted Ordinance No. 2018-01, amending Chapter 22 of the EMC by removing Local Discharge Limits. The amended code now authorizes setting Local Discharge Limits by resolution.

BACKGROUND:

With the adoption of Ordinance No. 2018-01, Local Discharge Limits were removed from EMC Section 22-174 and the City Council was authorized to set the local limits by resolution. Prior to this change, any change to Local Discharge Limits required an amendment to the EMC. In the future, Local Discharge Limits will be set by resolution without the need for an EMC amendment.

The recommended resolution will, if adopted, set Local Discharge Limits identical to those recently removed from the code. The table defining the Local Discharge Limits can be found in Resolution No. 2018-43.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Christopher W. McKinney, Director of Utilities
3/29/2018 9:36 a.m.

ATTACHMENTS:

1. Resolution No. 2018-43

RESOLUTION NO. 2018-43

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
ADOPTING LOCAL DISCHARGE LIMITS,
PURSUANT TO CHAPTER 22, ARTICLE 8,
SECTION 174 OF THE ESCONDIDO
MUNICIPAL CODE

WHEREAS, on March 21, 2018, the City Council of the City of Escondido (“City”) enacted Ordinance No. 2018-01 amending Chapter 22 of the Municipal Code to update wastewater, stormwater and industrial pretreatment requirements and clarify requirements for interagency sewer exchanges; and

WHEREAS, Ordinance No. 2018-01 repealed the daily maximum concentration limits contained in Escondido Municipal Code Section 22-174 and authorized the City Council to set the daily maximum concentration level limits of specific contaminants, which may be present in a user’s discharge to the City sewage system by resolution; and

WHEREAS, Resolution No. 2018-43 adopts the daily maximum concentration level limits as authorized by Escondido Municipal Code Section 22-174.

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 adopts the daily maximum local limits listed below, which shall apply to all discharges to the City’s sewage system. The following values

represent the daily maximum concentration levels limits of specific contaminants which may be present in a user's discharge to the City sewage system:

Discharge Local Limits	
Parameter	Local Limits Daily Maximum (mg/L)
Arsenic (T)	0.1
Cadmium (T)	0.107
Chromium (T)	0.96
Copper (T)	1.05
Lead (T)	0.58
Mercury (T)	0.8
Nickel (T)	1.34
Silver (T)	0.214
Zinc (T)	2.63
Cyanide (T)	0.207
TTO	2.13
Boron	3.0
Manganese	2.9
Fluoride	6.4
Oil and grease	100
pH	6.0—10.0



CITY COUNCIL STAFF REPORT

Consent Item No. 9

April 4, 2018

File No. 0680-20

SUBJECT: Support of the Reducing Crime and Keeping California Safe Act of 2018

DEPARTMENT: Police Department

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2018-45 to approve supporting the passage of the Reducing Crime and Keeping California Safe Act of 2018.

BACKGROUND:

The California Police Chiefs Association is requesting assistance from the City of Escondido to support the Reducing Crime and Keeping California Safe Act of 2018, which addresses the unintended consequences resulting from Proposition 47. This act is intended to keep all citizens safe and foster better communities. More information on this can be found at KeepCalSafe.org.

Proposition 47 was passed in 2014. It reduced the classification of what it referred to as “non-serious, nonviolent crimes” from felonies to misdemeanors. It permitted resentencing of convicts already serving a prison sentence; it increased the value of various theft offenses to \$950; and reclassified the possession of cocaine and date rape drugs to a misdemeanor.

Proposition 57 was passed in 2016. It made changes to the State Constitution to increase the number of inmates eligible for parole consideration and authorized the California Department of Corrections to award credits for good behavior and increase credits for those who were ineligible to receive them prior to this.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Craig Carter, Chief of Police
3/28/2018 3:40 p.m.

ATTACHMENTS:

1. Resolution No. 2018-45
2. Resolution No. 2018-45 - Exhibit A

RESOLUTION NO. 2018-45

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO SUPPORTING
THE REDUCING CRIME AND KEEPING
CALIFORNIA SAFE ACT OF 2018

WHEREAS, the protection of every person in our state from violent crime, including vulnerable children, is of the utmost importance to this City; and

WHEREAS, Proposition 47 (Reduced Penalties for Some Crimes Initiative), Proposition 57 (Parole for Non-Violent Criminals and Juvenile Court Trial Requirements Initiative) and AB 109 (2011 Public Safety Realignment), combined, have led to the release of thousands of inmates into our communities, straining local jails and has been cited as fueling a new surge in local crime and homelessness; and

WHEREAS, Proposition 47 classified what it referred to as “non-serious, nonviolent crimes” as misdemeanors unless the defendant had prior convictions for murder, rape, certain sex offenses or certain gun crimes; it permitted resentencing of convicts already serving a prison sentence; it increased the value of various theft offenses, including grand theft, forgery, fraud and auto theft, to \$950; it reclassified the possession of cocaine and date rape drugs to a misdemeanor; and by reducing several crimes to misdemeanors, it had the effect of eliminating the ability to take DNA samples from convicted defendants; and

WHEREAS, Proposition 57 made changes to the State Constitution to increase the number of inmates eligible for parole consideration and authorized the California Department of Corrections to award credits for good behavior and increase credits for

those currently ineligible to receive them. Proposition 57 also limited the circumstances by which a juvenile could be tried in adult court; and

WHEREAS, AB 109 provided for a change in the location of serving a sentence for a felony conviction whereby a conviction of some 500 felony crimes, including corporal injury of a child, aggravated evading a police officer, and commercial burglary, will now require serving time in a county jail or non-custodial supervision (county probation) as opposed to time in a California state prison; and

WHEREAS, California's efforts to reduce the state prison population has been accomplished by re-classifying what are in fact serious crimes involving violence, such as trafficking a child for sex and felony domestic violence, into "non-serious, non-violent" crimes to allow for less or no state prison time which allows dangerous felons to remain in the community; and

WHEREAS, in 2017 the proponents of Initiative No. 17-0044, also known as the Reducing Crime and Keeping California Safe Act of 2018 ("Act"), began circulating the measure for signatures to qualify for inclusion on the General Election ballot for November 2018. A copy of the Initiative is attached as Exhibit "A," and is incorporated by this reference; and

WHEREAS, the general purpose of the Act is threefold: (1) to reform the parole system to reduce or eliminate early release; (2) to reform theft laws; and (3) to expand DNA collection; and

WHEREAS, the Act will expand the list of violent crimes that would disqualify an inmate from the early release parole program and change standards and requirements governing parole decisions; and

WHEREAS, the Act will authorize felony charges for specified theft crimes currently chargeable only as misdemeanors, including some thefts where the value is below \$950; and

WHEREAS, the Act will increase the list of crimes which allow for the collection of a DNA sample to include various misdemeanor convictions for theft, drug and domestic violence charges; and

WHEREAS, permitting collection of more DNA samples will help identify suspects involved in serious violent crimes, clear the innocent, and free the wrongly convicted; and

WHEREAS, California needs stronger laws for those who are repeatedly convicted of theft-related, drug-related and violent crimes. The Act enacts such reforms; and

WHEREAS, the Act, sponsored by the California Public Safety Partners, is supported by such organizations as the California Police Chiefs Association, the Association of Deputy District Attorneys, the California Grocers Association, the Crime Victims United of California, the Association for Los Angeles Deputy Sheriffs, the California Business Properties Association and various California cities throughout the state.

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

1. That the above recitations are true.

2. That the City Council of the City of Escondido hereby supports the passage of the Reducing Crime and Keeping California Safe Act of 2018 as a mechanism for reducing crime and keeping its citizens safe.

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following circulating title and summary of the chief purpose and points of the proposed measure:

(17-0044.) RESTRICTS PAROLE FOR NON-VIOLENT OFFENDERS. AUTHORIZES FELONY SENTENCES FOR CERTAIN OFFENSES CURRENTLY TREATED ONLY AS MISDEMEANORS. INITIATIVE STATUTE. Imposes restrictions on parole program for non-violent offenders who have completed the full term for their primary offense. Expands list of offenses that disqualify an inmate from this parole program. Changes standards and requirements governing parole decisions under this program. Authorizes felony charges for specified theft crimes currently chargeable only as misdemeanors, including some theft crimes where the value is between \$250 and \$950. Requires persons convicted of specified misdemeanors to submit to collection of DNA samples for state database. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Increased state and local correctional costs likely in the tens of millions of dollars annually, primarily related to increases in penalties for certain theft-related crimes and the changes to the nonviolent offender release consideration process. Increased state and local court-related costs of around a few million dollars annually related to processing probation revocations and additional felony theft filings. Increased state and local law enforcement costs not likely to exceed a couple million dollars annually related to collecting and processing DNA samples from additional offenders.

To the Honorable Secretary of State of California:

We, the undersigned, registered, qualified voters of California, residents of the County (or City and County) referenced on the signature page of this petition, hereby propose amendments to the California Penal Code relating to parole, serial theft, and DNA collection from convicted criminals, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or as otherwise provided by law. The proposed statutory amendments (full title and text of the measure) read as follows:

SEC. 1. TITLE

This act shall be known and may be cited as the Reducing Crime and Keeping California Safe Act of 2018.

SEC. 2. PURPOSES

This measure will fix three related problems created by recent laws that have threatened the public safety of Californians and their children from violent criminals. This measure will:

- A. Reform the parole system so violent felons are not released early from prison, strengthen oversight of post release community supervision and tighten penalties for violations of terms of post release community supervision;
- B. Reform theft laws to restore accountability for serial thieves and organized theft rings; and
- C. Expand DNA collection from persons convicted of drug, theft and domestic violence related crimes to help solve violent crimes and exonerate the innocent.

SEC. 3. FINDINGS AND DECLARATIONS

A. Prevent Early Release of Violent Felons

1. Protecting every person in our state, including our most vulnerable children, from violent crime is of the utmost importance. Murderers, rapists, child molesters and other violent criminals should not be released early from prison.
2. Since 2014, California has had a larger increase in violent crime than the rest of the United States. Since 2013, violent crime in Los Angeles has increased 69.5%. Violent crime in Sacramento rose faster during the first six months of 2015 than in any of the 25 largest U.S. cities tracked by the FBI.
3. Recent changes to parole laws allowed the early release of dangerous criminals by the law's failure to define certain crimes as "violent." These changes allowed individuals convicted of sex trafficking of children, rape of an unconscious person, felony assault with a deadly weapon, battery on a police officer or firefighter, and felony domestic violence to be considered "non-violent offenders."
4. As a result, these so-called "non-violent" offenders are eligible for early release from prison after serving only a fraction of the sentence ordered by a judge.
5. Violent offenders are also being allowed to remain free in our communities even when they commit new crimes and violate the terms of their post release community supervision, like the gang member charged with the murder of Whittier Police Officer, Keith Boyer.
6. Californians need better protection from such violent criminals.
7. Californians need better protection from felons who repeatedly violate the terms of their post release community supervision.
8. This measure reforms the law so felons who violate the terms of their release can be brought back to court and held accountable for such violations.
9. Californians need better protection from such

violent criminals. This measure reforms the law to define such crimes as "violent felonies" for purposes of early release.

10. Nothing in this act is intended to create additional "strike" offenses which would increase the state prison population.
11. Nothing in this act is intended to affect the ability of the California Department of Corrections and Rehabilitation to award educational and merit credits.
- B. Restore Accountability for Serial Theft and Organized Theft Rings
 1. Recent changes to California law allow individuals who steal repeatedly to face few consequences, regardless of their criminal record or how many times they steal.
 2. As a result, between 2014 and 2016, California had the 2nd highest increase in theft and property crimes in the United States, while most states have seen a steady decline. According to the California Department of Justice, the value of property stolen in 2015 was \$2.5 billion with an increase of 13 percent since 2014, the largest single-year increase in at least ten years.
 3. Individuals who repeatedly steal often do so to support their drug habit. Recent changes to California law have reduced judges' ability to order individuals convicted of repeated theft crimes into effective drug treatment programs.
 4. California needs stronger laws for those who are repeatedly convicted of theft related crimes, which will encourage those who repeatedly steal to support their drug problem to enter into existing drug treatment programs. This measure enacts such reforms.
- C. Restore DNA Collection to Solve Violent Crime
 1. Collecting DNA from criminals is essential to solving violent crimes. Over 450 violent crimes including murder, rape and robbery have gone unsolved because DNA is being collected from fewer criminals.
 2. DNA collected in 2015 from a convicted child molester solved the rape-murders of two six-year-old boys that occurred three decades ago in Los Angeles County. DNA collected in 2016 from an individual caught driving a stolen car solved the 2012 San Francisco Bay Area rape-murder of an 83-year-old woman.
 3. Recent changes to California law unintentionally eliminated DNA collection for theft and drug crimes. This measure restores DNA collection from persons convicted for such offenses.
 4. Permitting collection of more DNA samples will help identify suspects, clear the innocent and free the wrongly convicted.
 5. This measure does not affect existing legal safeguards that protect the privacy of individuals by allowing for the removal of their DNA profile if they are not charged with a crime, are acquitted or are found innocent.

SEC. 4. PAROLE CONSIDERATION

Section 3003 of the Penal Code is amended to read: [language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

- (a) Except as otherwise provided in this section, an inmate who is released on parole or postrelease supervision as provided by Title 2.05 (commencing with Section 3450) shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.
- (b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Parole Hearings setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:
 - (1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.
 - (2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.
 - (3) The verified existence of a work offer, or an educational or vocational training program.
 - (4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.
 - (5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.
- (c) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.
- (d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.
- (e)(1) The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) who is released in their jurisdictions:
 - (A) Last, first, and middle names.
 - (B) Birth date.
 - (C) Sex, race, height, weight, and hair and eye color.
 - (D) Date of parole or placement on postrelease community supervision and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole or postrelease community supervision in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the inmate's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(N) Copies of the record of supervision during any prior period of parole.

(2) Unless the information is unavailable, the Department of Corrections and Rehabilitation shall electronically transmit to the county agency identified in subdivision (a) of Section 3451 the inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto postrelease community supervision pursuant to Section 3450, for the purpose of identifying the medical and mental health needs of the individual. All transmissions to the county agency shall be in compliance with applicable provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the federal Health Information Technology for Clinical Health Act (HITECH) (Public Law 111-005), and the implementing of privacy and security regulations in Parts 160 and 164 of Title 45 of the Code of Federal Regulations. This paragraph shall not take effect until the Secretary of the United States Department of Health and Human Services, or his or her designee, determines that this provision is not preempted by HIPAA.

(3) Except for the information required by paragraph (2), the information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(4) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(5) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other law, ~~an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, and paragraph (16) of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on a person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of a victim or witness: the victim or witness, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, any of the following crimes:~~

(1) A violent felony as defined subdivision (c) of Section 667.5 or subdivision (a) of Section 3040.1.

(2) A felony in which the defendant inflicts great bodily injury on a person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9.

(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public

shall not be placed or reside, for the duration of his or her parole, within one-half mile of a public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's or witness' actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or postrelease community supervision, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the supervising county agency, as applicable, finds that there is a need to protect the life, safety, or well-being of the victim. If an inmate who is released on postrelease community supervision cannot be placed in his or her county of last legal residence in compliance with this subdivision, the supervising county agency may transfer the inmate to another county upon approval of the receiving county.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law. The Department of Corrections and Rehabilitation shall coordinate with local entities regarding the placement of inmates placed out of state on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450).

(k)(1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (c). County agencies supervising inmates released to postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison. This information may include all records of supervision, the issuance of warrants, revocations, or the termination of postrelease community supervision. On or before August 1, 2011, county agencies designated to supervise inmates released to postrelease community supervision shall notify the department that the county agencies have been designated as the local entity responsible for providing that supervision.

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

(l) In addition to the requirements under subdivision (k), the Department of Corrections and Rehabilitation shall submit to the Department of Justice data to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. The data required by this subdivision shall be provided via electronic transfer.

Section 3040.1 is added to the Penal Code to read:

(a) For purposes of early release or parole consideration under the authority of Section 32 of Article I of the Constitution, Sections 12838.4 and 12838.5 of the Government Code, Sections 3000.1, 3041.5, 3041.7, 3052, 5000, 5054, 5055, 5076.2 of this Code and the rulemaking authority granted by Section 5058 of this Code, the following shall be defined as "violent felony offenses":

(1) Murder or voluntary manslaughter;

(2) Mayhem;

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262;

(4) Sodomy as defined in subdivision (c) or (d) of Section 286;

(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a;

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288;

(7) Any felony punishable by death or imprisonment in the state prison for life;

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in

subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55;

(9) Any robbery;

(10) Arson, in violation of subdivision (a) or (b) of Section 451;

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289;

(12) Attempted murder;

(13) A violation of Section 18745, 18750, or 18755;

(14) Kidnapping;

(15) Assault with the intent to commit a specified felony, in violation of Section 220;

(16) Continuous sexual abuse of a child, in violation of Section 288.5;

(17) Carjacking, as defined in subdivision (a) of Section 215;

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1;

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22;

(20) Threats to victims or witnesses, as defined in subdivision (c) of Section 136.1;

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary;

(22) Any violation of Section 12022.53;

(23) A violation of subdivision (b) or (c) of Section 11418;

(24) Solicitation to commit murder;

(25) Felony assault with a firearm in violation of subsections (a)(2) and (b) of Section 245;

(26) Felony assault with a deadly weapon in violation of paragraph (1) of subdivision (a) of Section 245;

(27) Felony assault with a deadly weapon upon the person of a peace officer or firefighter in violation of subdivisions (c) and (d) of Section 245;

(28) Felony assault by means of force likely to produce great bodily injury in violation of paragraph (4) of subdivision (a) of Section 245;

(29) Assault with caustic chemicals in violation of Section 244;

(30) False imprisonment in violation of Section 210.5;

(31) Felony discharging a firearm in violation of Section 246;

(32) Discharge of a firearm from a motor vehicle in violation of subsection (c) of Section 26100;

(33) Felony domestic violence resulting in a traumatic condition in violation of Section 273.5;

(34) Felony use of force or threats against a witness or victim of a crime in violation of Section 140;

(35) Felony resisting a peace officer and causing death or serious injury in violation of Section 148.10;

(36) A felony hate crime punishable pursuant to Section 422.7;

(37) Felony elder or dependent adult abuse in violation of subdivision (b) of Section 368;

(38) Rape in violation of paragraphs (1), (3), or (4) of subdivision (a) of Section 261;

(39) Rape in violation of Section 262;

(40) Sexual penetration in violation of subdivision (b), (d) or (e) of Section 289;

(41) Sodomy in violation of subdivision (f), (g), or (i) of Section 286;

(42) Oral copulation in violation of subdivision (f), (g), or (i) of Section 288a;

(43) Abduction of a minor for purposes of prostitution in violation of Section 267;

(44) Human trafficking in violation of subdivision (a), (b), or (c) of Section 236.1;

(45) Child abuse in violation of Section 273ab;

(46) Possessing, exploding, or igniting a destructive device in violation of Section 18740;

(47) Two or more violations of subsection (c) of Section 451;

(48) Any attempt to commit an offense described in this subdivision;

(49) Any felony in which it is pled and proven that the Defendant personally used a dangerous or deadly weapon;

(50) Any offense resulting in lifetime sex offender registration pursuant to Sections 290 through 290.009.

(51) Any conspiracy to commit an offense described in this Section.

(b) The provisions of this section shall apply to any inmate serving a custodial prison sentence on or after the effective date of this section, regardless of when the sentence was imposed.

Section 3040.2 is added to the Penal Code to read:

(a) Upon conducting a nonviolent offender parole consideration review, the hearing officer for the Board of Parole

Hearings shall consider all relevant, reliable information about the inmate.

- (b) The standard of review shall be whether the inmate will pose an unreasonable risk of creating victims as a result of felonious conduct if released from prison.
- (c) In reaching this determination, the hearing officer shall consider the following factors:
 - (1) Circumstances surrounding the current conviction;
 - (2) The inmate's criminal history, including involvement in other criminal conduct, both juvenile and adult, which is reliably documented;
 - (3) The inmate's institutional behavior including both rehabilitative programming and institutional misconduct;
 - (4) Any input from the inmate, any victim, whether registered or not at the time of the referral, and the prosecuting agency or agencies;
 - (5) The inmate's past and present mental condition as documented in records in the possession of the Department of Corrections and Rehabilitation;
 - (6) The inmate's past and present attitude about the crime;
 - (7) Any other information which bears on the inmate's suitability for release.
- (d) The following circumstances shall be considered by the hearing officer in determining whether the inmate is unsuitable for release:
 - (1) Multiple victims involved in the current commitment offense;
 - (2) A victim was particularly vulnerable due to age or physical or mental condition;
 - (3) The inmate took advantage of a position of trust in the commission of the crime;
 - (4) The inmate was armed with or used a firearm or other deadly weapon in the commission of the crime;
 - (5) A victim suffered great bodily injury during the commission of the crime;
 - (6) The inmate committed the crime in association with a criminal street gang;
 - (7) The inmate occupied a position of leadership or dominance over other participants in the commission of the crime, or the inmate induced others to participate in the commission of the crime;
 - (8) During the commission of the crime, the inmate had a clear opportunity to cease but instead continued;
 - (9) The inmate has engaged in other reliably documented criminal conduct which was an integral part of the crime for which the inmate is currently committed to prison;
 - (10) The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime;
 - (11) The inmate was on probation, parole, post release community supervision, mandatory supervision or was in custody or had escaped from custody at the time of the commitment offense;
 - (12) The inmate was on any form of pre- or post-conviction release at the time of the commitment offense;
 - (13) The inmate's prior history of violence, whether as a juvenile or adult;
 - (14) The inmate has engaged in misconduct in prison or jail;
 - (15) The inmate is incarcerated for multiple cases from the same or different counties or jurisdictions.
- (e) The following circumstances shall be considered by the hearing officer in determining whether the inmate is suitable for release:
 - (1) The inmate does not have a juvenile record of assaulting others or committing crimes with a potential of harm to victims;
 - (2) The inmate lacks any history of violent crime;
 - (3) The inmate has demonstrated remorse;
 - (4) The inmate's present age reduces the risk of recidivism;
 - (5) The inmate has made realistic plans if released or has developed marketable skills that can be put to use upon release;
 - (6) The inmate's institutional activities demonstrate an enhanced ability to function within the law upon release;
 - (7) The inmate participated in the crime under partially excusable circumstances which do not amount to a legal defense;
 - (8) The inmate had no apparent predisposition to commit the crime but was induced by others to participate in its commission;
 - (9) The inmate has a minimal or no criminal history;
 - (10) The inmate was a passive participant or played a minor role in the commission of the crime;
 - (11) The crime was committed during or due to an unusual situation unlikely to reoccur.

Section 3040.3 is added to the Penal Code to read:

- (a) An inmate whose current commitment includes a concurrent, consecutive or stayed sentence for an offense or allegation defined as violent by subdivision (c) of

Section 667.5 or 3040.1 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.

- (b) An inmate whose current commitment includes an indeterminate sentence shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.
- (c) An inmate whose current commitment includes any enhancement which makes the underlying offense violent pursuant to subdivision (c) of Section 667.5 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.
- (d) For purposes of Section 32 of Article I of the Constitution, the "full term" of the "primary offense" shall be calculated based only on actual days served on the commitment offense.

Section 3040.4 is added to the Penal Code to read:

- Pursuant to subsection (b) of Section 28 of Article I of the Constitution, the Department shall give reasonable notice to victims of crime prior to an inmate being reviewed for early parole and release. The Department shall provide victims with the right to be heard regarding early parole consideration and to participate in the review process. The Department shall consider the safety of the victims, the victims' family, and the general public when making a determination on early release.
- (a) Prior to conducting a review for early parole, the Department shall provide notice to the prosecuting agency or agencies and to registered victims, and shall make reasonable efforts to locate and notify victims who are not registered.
 - (b) The prosecuting agency shall have the right to review all information available to the hearing officer including, but not limited to the inmate's central file, documented adult and juvenile criminal history, institutional behavior including both rehabilitative programming and institutional misconduct, any input from any person or organization advocating on behalf of the inmate, and any information submitted by the public.
 - (c) A victim shall have a right to submit a statement for purposes of early parole consideration, including a confidential statement.
 - (d) All prosecuting agencies, any involved law enforcement agency, and all victims, whether or not registered, shall have the right to respond to the board in writing.
 - (e) Responses to the Board by prosecuting agencies, law enforcement agencies, and victims must be made within 90 days of the date of notification of the inmate's eligibility for early parole review or consideration.
 - (f) The Board shall notify the prosecuting agencies, law enforcement agencies, and the victims of the Nonviolent Offender Parole decision within 10 days of the decision being made.
 - (g) Within 30 days of the notice of the final decision concerning Nonviolent Offender Parole Consideration, the inmate and the prosecuting agencies may request review of the decision.
 - (h) If an inmate is denied early release under the Nonviolent Offender Parole provisions of Section 32 of Article I of the Constitution, the inmate shall not be eligible for early Nonviolent Offender parole consideration for two (2) calendar years from the date of the final decision of the previous denial.

Section 3041 of the Penal Code is amended to read:

- [language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]
- (a)(1) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the sixth year before the inmate's minimum eligible parole date for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to parole eligibility. During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing.
 - (2) One year before the inmate's minimum eligible parole date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally grant parole as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner.
 - (3) In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the

board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e).

- (4) Upon a grant of parole, the inmate shall be released subject to all applicable review periods. However, an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046 unless the inmate is eligible for earlier release pursuant to his or her youth offender parole eligibility date or elderly parole eligibility date.
- (5) At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.
- (b)(1) The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual. The panel or the board, sitting en banc, shall consider the entire criminal history of the inmate, including all current or past convicted offenses, in making this determination.
- (2) After July 30, 2001, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing.
- (3) A decision of a panel shall not be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting.
- (c) For the purpose of reviewing the suitability for parole of those inmates eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each inmate until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.
- (d) It is the intent of the Legislature that, during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings, or life rescission hearings, hearings will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.
- (e) For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:
 - (1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.
 - (2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.
 - (3) The board shall separately state reasons for its decision to grant or deny parole.
 - (4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the

en banc review.

Section 3454 of the Penal Code is amended to read: [language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

- (a) Each supervising county agency, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall establish a review process for assessing and refining a person's program of postrelease supervision. Any additional postrelease supervision conditions shall be reasonably related to the underlying offense for which the offender spent time in prison, or to the offender's risk of recidivism, and the offender's criminal history, and be otherwise consistent with law.
- (b) Each county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, may determine additional appropriate conditions of supervision listed in Section 3453 consistent with public safety, including the use of continuous electronic monitoring as defined in Section 1210.7, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate, structured, and intermediate sanctions up to and including referral to a reentry court pursuant to Section 3015, or flash incarceration in a city or county jail. Periods of flash incarceration are encouraged as one method of punishment for violations of an offender's condition of postrelease supervision.
- (c) As used in this title, "Flash incarceration" is a period of detention in a city or county jail due to a violation of an offender's conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary more frequent, periods of detention for violations of an offender's postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.
- (d) Upon a decision to impose a period of flash incarceration, the probation department shall notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.

Section 3455 of the Penal Code is amended to read: [language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

- (a) If the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions as authorized in subdivision (b) of Section 3454 are not appropriate, or if the supervised person has violated the terms of his or her release for a third time, the supervising county agency shall petition the court pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision. At any point during the process initiated pursuant to this section, a person may waive, in writing, his or her right to counsel, admit the violation of his or her postrelease community supervision, waive a court hearing, and accept the proposed modification of his or her postrelease community supervision. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of postrelease community supervision, the circumstances of the alleged underlying violation, the history and background of the violator, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of postrelease community supervision, the revocation hearing officer shall have authority to do all of the following:
- (1) Return the person to postrelease community supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail.
- (2) Revoke and terminate postrelease community supervision and order the person to confinement in a county jail.
- (3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.
- (b) (1) At any time during the period of postrelease community supervision, if a peace officer, including a probation officer, has probable cause to believe a

- person subject to postrelease community supervision is violating any term or condition of his or her release, or has failed to appear at a hearing pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision, the officer may, without a warrant or other process, arrest the person and bring him or her before the supervising county agency established by the county board of supervisors pursuant to subdivision (a) of Section 3451. Additionally, an officer employed by the supervising county agency may seek a warrant and a court or its designated hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the authority to issue a warrant for that person's arrest.
- (2) The court or its designated hearing officer shall have the authority to issue a warrant for a person who is the subject of a petition filed under this section who has failed to appear for a hearing on the petition or for any reason in the interests of justice, or to remand to custody a person who does appear at a hearing on the petition for any reason in the interests of justice.
- (3) Unless a person subject to postrelease community supervision is otherwise serving a period of flash incarceration, whenever a person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation, the court may order the release of the person under supervision from custody under any terms and conditions the court deems appropriate.
- (c) The revocation hearing shall be held within a reasonable time after the filing of the revocation petition. Except as provided in paragraph (3) of subdivision (b), based upon a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or that the person may not appear if released from custody, or for any reason in the interests of justice, the supervising county agency shall have the authority to make a determination whether the person should remain in custody pending the first court appearance on a petition to revoke postrelease community supervision, and upon that determination, may order the person confined pending his or her first court appearance.
- (d) Confinement pursuant to paragraphs (1) and (2) of subdivision (a) shall not exceed a period of 180 days in a county jail for each custodial sanction.
- (e) A person shall not remain under supervision or in custody pursuant to this title on or after three years from the date of the person's initial entry onto postrelease community supervision, except when his or her supervision is tolled pursuant to Section 1203.2 or subdivision (b) of Section 3456.

SEC. 5. DNA COLLECTION

Section 296 of the Penal Code is amended to read: [language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

- (a) The following persons shall provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis:
- (1) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense.
- (2) Any adult person who is arrested for or charged with any of the following felony offenses:
- (A) Any felony offense specified in Section 290 or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.
- (B) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.
- (C) Commencing on January 1, 2009, any adult person arrested or charged with any felony offense.
- (3) Any person, including any juvenile, who is required to register under Section 290 ~~through 290.002~~ or 457.1 because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense.
- (4) Any person, excluding a juvenile, who is convicted of, or pleads guilty or no contest to, any of the following offenses:
- (A) A misdemeanor violation of Section 459.5;
- (B) A violation of subdivision (a) of Section 473 that is punishable as a misdemeanor pursuant to subdivision (b) of Section 473;
- (C) A violation of subdivision (a) of Section 476a that is

- punishable as a misdemeanor pursuant to subdivision (b) of Section 476a;
- (D) A violation of Section 487 that is punishable as a misdemeanor pursuant to Section 490.2;
- (E) A violation of Section 496 that is punishable as a misdemeanor;
- (F) A misdemeanor violation of subdivision (a) of Section 11350 of the Health and Safety Code;
- (G) A misdemeanor violation of subdivision (a) of Section 11377 of the Health and Safety Code;
- (H) A misdemeanor violation of paragraph (1) of subdivision (e) of Section 243;
- (I) A misdemeanor violation of Section 273.5;
- (J) A misdemeanor violation of paragraph (1) of subdivision (b) of Section 368;
- (K) Any misdemeanor violation where the victim is defined as set forth in Section 6211 of the Family Code;
- (L) A misdemeanor violation of paragraph (3) of subdivision (b) of Section 647.
- ~~(4)~~(5) The term "felony" as used in this subdivision includes an attempt to commit the offense.
- ~~(5)~~(6) Nothing in this chapter shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.
- (b) The provisions of this chapter and its requirements for submission of specimens, samples and print impressions as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of death, life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult or juvenile tried as an adult, or whether the person is diverted, fined, or referred for evaluation, and regardless of disposition rendered or placement made in the case of juvenile who is found to have committed any felony offense or is adjudicated under Section 602 of the Welfare and Institutions Code.
- (c) The provisions of this chapter and its requirements for submission of specimens, samples, and print impressions as soon as administratively practicable by qualified persons as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:
- (1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
- (2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.
- (3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
- (d) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subdivision (a).
- (e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.
- (f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter.
- However, failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of

a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 6. SHOPLIFTING

Section 459.5 of the Penal Code is amended to read: [language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

- (a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to ~~commit larceny~~ steal retail property or merchandise while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.
- (b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.
- (c) "Retail property or merchandise" means any article, product, commodity, item or component intended to be sold in retail commerce.
- (d) "Value" means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.
- (e) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484c, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

Section 490.2 of the Penal Code is amended to read: [language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

- (a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.
- (b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.
- (c) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484c, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

SEC. 7. SERIAL THEFT

Section 490.3 is added to the Penal Code to read:

- (a) This section applies to the following crimes:
- (1) petty theft;
 - (2) shoplifting;
 - (3) grand theft;
 - (4) burglary;
 - (5) carjacking;
 - (6) robbery;
 - (7) a crime against an elder or dependent adult within the meaning of subdivision (d) or (e) of Section 368;
 - (8) any violation of Section 496;
 - (9) unlawful taking or driving of a vehicle within the meaning of Section 10851 of the Vehicle Code.
 - (10) Forgery.
 - (11) The unlawful sale, transfer, or conveyance of an

access card pursuant to Section 484e.

- (12) Forgery of an access card pursuant to Section 484f.
 - (13) The unlawful use of an access card pursuant to Section 484g.
 - (14) Identity theft pursuant to Section 530.5.
 - (15) The theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.
- (b) Notwithstanding subsection (3) of subdivision (h) of Section 1170, subsections (2) and (4) of subdivision (a) of Section 1170.12, subsections (2) and (4) of subdivision (c) of Section 667, any person who, having been previously convicted of two or more of the offenses specified in subdivision (a), which offenses were committed on separate occasions, and who is subsequently convicted of petty theft or shoplifting where the value of the money, labor, or real or personal property taken exceeds two hundred fifty dollars (\$250) shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.
- (c) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

SEC. 8. ORGANIZED RETAIL THEFT

Section 490.4 is added to the Penal Code to read:

- (a) "Retail property or merchandise" means any article, product, commodity, item or component intended to be sold in retail commerce.
- (b) "Value" means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.
- (c) Any person, who, acting in concert with one or more other persons, commits two (2) or more thefts pursuant to Sections 459.5 or 490.2 of retail property or merchandise having an aggregate value exceeding two hundred fifty dollars (\$250) and unlawfully takes such property during a period of one hundred eighty days (180) is guilty of organized retail theft.
- (d) Notwithstanding subsection (3) of subdivision (h) of Section 1170, subsections (2) and (4) of subdivision (a) of Section 1170.12, subsections (2) and (4) of subdivision (c) of Section 667, organized retail theft shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.
- (e) For purposes of this section, the value of retail property stolen by persons acting in concert may be aggregated into a single count or charge, with the sum of the value of all of the retail merchandise being the values considered in determining the degree of theft.
- (f) An offense under this section may be prosecuted in any county in which an underlying theft could have been prosecuted as a separate offense.
- (g) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

SEC. 9. AMENDMENTS

This act shall not be amended by the Legislature except by a statute that furthers the purposes, findings and declarations of the Act and is passed in each house by roll call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters.

SEC. 10. SEVERABILITY

If any provision of this Act, or any part of any provision, or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

SEC. 11. CONFLICTING INITIATIVES

- (a) In the event that this measure and another measure addressing parole consideration pursuant to Section 32 of Article I of the Constitution, revocation of parole and post release community supervision, DNA collection, or theft offenses shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.
- (b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot

measure is later held invalid, this measure shall be self-executing and given full force and effect.

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following circulating title and summary of the chief purpose and points of the proposed measure:

(17-0044.) RESTRICTS PAROLE FOR NON-VIOLENT OFFENDERS. AUTHORIZES FELONY SENTENCES FOR CERTAIN OFFENSES CURRENTLY TREATED ONLY AS MISDEMEANORS. INITIATIVE STATUTE. Imposes restrictions on parole program for non-violent offenders who have completed the full term for their primary offense. Expands list of offenses that disqualify an inmate from this parole program. Changes standards and requirements governing parole decisions under this program. Authorizes felony charges for specified theft crimes currently chargeable only as misdemeanors, including some theft crimes where the value is between \$250 and \$950. Requires persons convicted of specified misdemeanors to submit to collection of DNA samples for state database. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Increased state and local correctional costs likely in the tens of millions of dollars annually, primarily related to increases in penalties for certain theft-related crimes and the changes to the nonviolent offender release consideration process. Increased state and local court-related costs of around a few million dollars annually related to processing probation revocations and additional felony theft filings. Increased state and local law enforcement costs not likely to exceed a couple million dollars annually related to collecting and processing DNA samples from additional offenders.

NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

THE PROponents OF THIS PROPOSED INITIATIVE MEASURE HAVE THE RIGHT TO WITHDRAW THIS PETITION AT ANY TIME BEFORE THE MEASURE QUALIFIES FOR THE BALLOT.

All signers of this petition must be registered to vote in _____ County.		This column for official use only
R E G I S T E R E D V O T E R S O N L Y	1. Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	
	2. Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	
	3. Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	
	4. Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	
	5. Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	
	6. Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	
	7. Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	
	8. Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	
	9. Print Your Name: _____ Residence Address ONLY: _____ Sign As Registered To Vote: _____ City: _____ Zip: _____	

DECLARATION OF CIRCULATOR (To be completed in circulator's own hand after the above signatures have been obtained.)

I, _____ (print name), am 18 years of age or older.
 My residence address is _____ (address, city, state, zip). I circulated this section of the petition and witnessed each of the appended signatures being written. Each signature on this petition is, to the best of my information and belief, the genuine signature of the person whose name it purports to be. All signatures on this document were obtained between the dates of _____ (month, day, year) and _____ (month, day, year).
 I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Executed on _____ (month, day), _____ (year), at _____ (place of signing), California. Signature of Circulator _____ (complete signature indicating full name of circulator)

CITY COUNCIL STAFF REPORT

Consent Item No. 10

April 4, 2018

File No. 0600-10, A-3242

SUBJECT: Emergency Repairs of Five Sections of Escondido Sewer Pipeline: Hale Avenue Underpass of I-15, Kia Dealership Parking Lot, South Hale Avenue, Casa Grande Mobile Estates, and Green Tree Mobile Home Estates

DEPARTMENT: Utilities Department, Wastewater Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2018-50, declaring that pursuant to the terms of Section 22050 of the California Public Contract Code, the City Council affirms that it was appropriate for City staff to forego normal bidding procedures and to award contracts for emergency repairs of damaged sewer main sections along Hale Avenue. The resolution, which must be passed by four-fifths vote, also declares that public interest and necessity demand the immediate expenditure to safeguard life, health, or property.

FISCAL ANALYSIS:

Funding for this emergency sewer pipeline work is available in the Wastewater Fund. The contracts will be time and materials contracts, meaning that the contractors will bill for staff time, equipment, and construction materials necessary to complete the repairs. Staff will return to the City Council at future scheduled meetings with updates on the “not-to-exceed” amounts of any contracts.

BACKGROUND:

The existing sewer pipeline in Hale Avenue, is a 24-inch to 27-inch diameter reinforced concrete pipe, which was installed in 1959. The pipeline runs for approximately 7,300 feet from Tulip Street to the Hale Avenue Resource Recovery Facility (HARRF). This pipeline conveys raw sewage from approximately 40 percent of the City of Escondido to the HARRF.

On March 27-29, 2018, Utilities staff performed closed circuit televising (CCTV) of the existing sewer main pipeline (24-inch and 27-inch) that conveys wastewater to the HARRF. During this investigation, severely damaged portions of the pipeline were discovered in five locations. Wastewater is contained and flowing normally. There has been no spill, but there is imminent danger of pipeline collapse if the pipeline is not repaired immediately. Utilities staff anticipates bypassing the line to restore services temporarily while the extent of damage to the pipeline is fully evaluated and repaired.

Contractors have been contacted that have the staff expertise and equipment to immediately mobilize to repair the sewer pipeline on a time and material basis. The anticipated work over the five sections

Emergency Repair of Five Sections of the Sewer Pipeline in Hale Avenue
April 4, 2018
Page 2

is beyond any one contractor's ability to mobilized and perform immediately. Multiple contractors will be used to promptly start the necessary repairs. As of March 29, 2018, Public Improvement Agreements were being finalized for City Manager approval under the emergency declaration.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Christopher W. McKinney, Director of Utilities
3/29/2018 1:00 p.m.

ATTACHMENTS:

1. Resolution No. 2018-50

RESOLUTION NO. 2018-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ACCEPTING THE RECOMMENDATION OF THE DIRECTOR OF UTILITIES THAT AN EMERGENCY REQUIRES THE IMMEDIATE REPAIR OF FIVE SECTIONS OF THE ESCONDIDO SEWER PIPELINE IN HALE AVENUE

WHEREAS, the City Council recognizes that five sections of the sewer pipeline generally along Hale Avenue: in Hale Avenue underpass of I-15; under the Kia Dealership Parking Lot; in South Hale Avenue; through the Casa Grande Mobile Estates; and through the Green Tree Mobile Home Estates, are at risk of an imminent, catastrophic failure; and

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

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

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

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to accept the recommendation of the Director of Utilities and affirm the City Manager's emergency declaration.

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

1. That the above recitations are true.
2. That the Mayor and City Council accepts the determination by the Director of Utilities that the failure of the five sections of sewer pipeline generally along Hale Avenue is a public health and safety emergency; that this emergency will not permit the delay that would result from a competitive bidding process; and that the proposed action and expenditure is necessary to respond to the emergency requiring immediate repair of the sewer pipeline.

CITY COUNCIL STAFF REPORT

Consent Item No. 11

April 4, 2018

File No. 0600-10, A-3243

SUBJECT: Emergency Repair of a Heating, Ventilation and Air Conditioning (HVAC)
Pipeline for The California Center for The Arts, Escondido

DEPARTMENT: City Manager's Office

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2018-51 declaring that, pursuant to Section 22050 of the California Public Contract Code, it was appropriate for City staff to forego standard bidding procedures in order to award a contract for emergency repairs involving a damaged hot water pipeline that is preventing the use of the Escondido California Center for the Arts' ("CCA") HVAC system. The resolution, which must be passed by four-fifths vote, also declares that public interest and necessity demand the immediate expenditure to safeguard life, health, or property.

FISCAL ANALYSIS:

The contract value with A.O. Reed Inc. for the repair is not to exceed \$143,000, including contingencies, without further City approval. The contract is a 'time and materials' contract, meaning that the contractor will bill for staff time, equipment, and construction materials necessary to complete the repairs. Staff is evaluating funding options for this repair and will be filing an insurance claim for this emergency pipeline work. If the claim is denied, staff recommends utilizing anticipated budgetary savings at year end to cover the repair costs.

BACKGROUND:

The HVAC system at the CCAE includes four waterlines that were installed during the Center's original construction in 1994. Two, 3-inch diameter pipelines supply hot water for the HVAC system to provide heating for the CCAE's buildings. Two, 6-inch diameter pipelines supply cold water for the buildings' air conditioning, as well as the Conference Center's large kitchen 'walk-in' refrigerator and freezer units. These four pipelines parallel each other and extend beneath the lawn immediately east of the CCAE Lyric Court.

Staff first suspected a hot waterline leak in February 2018, based on increased water required to supply the HVAC system. A leak detection company was hired and the damaged water line was isolated in March 2018. The leak is occurring several feet underground where the pipes are incased in a 9-foot by 9-foot by 5-foot solid concrete 'thrust block' that must be removed in order to conduct the repair. Staff immediately responded and sought out contractors to complete the repairs. A.O. Reed, Inc. has the staff expertise and equipment to immediately mobilize and repair the pipeline. The leak inside the thrust block increased the cost and scope of the necessary repair.

DISCUSSION:

The hot water leak is severe and has increased over time, from a loss of approximately 200 gallons per day, to a current estimate of 1,000+ gallons per day. The HVAC system for the most of the CCAE campus, including the conference center kitchen's large walk-in refrigerators and freezers are integrated together and function as a single unit. Shutting off the leaking pipe during the repair requires powering down the entire HVAC system for CCAE heating and cooling, as well as the conference center kitchen's walk-in freezer/refrigeration units. The conference center will need to lease temporary refrigeration facilities during the HVAC waterline repair.

City Staff have coordinated with CCAE staff in order to minimize the disruption to activities at the Center for the Arts as much as possible during the repair effort. The necessary equipment to repair the water leak has been ordered and work is tentatively scheduled to commence as early as April 6, 2018. The timeframe for completion is estimated to be 20 working days. The repair will include installing isolation valves, as well as a vault to access the waterlines in this location. In the future, staff will be able to manipulate the water flow serving the HVAC system allowing the campus buildings to be serviced independently.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Jay Petrek, Assistant City Manager
3/29/2018 9:01 a.m.

ATTACHMENTS:

1. Resolution No. 2018-51
2. Resolution No. 2018-51 - Exhibit A

RESOLUTION NO. 2018-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ACCEPTING THE RECOMMENDATION OF THE ASSISTANT CITY MANAGER THAT AN EMERGENCY REQUIRES THE IMMEDIATE REPAIR OF A BROKEN HVAC WATER LINE AT THE CALIFORNIA CENTER FOR THE ARTS

WHEREAS, the City Council recognizes that a portion of the 3-inch diameter hot water pipeline serving the heating, ventilation, and air conditioning (HVAC) system necessary for the continued heat and air circulation at the Escondido California Center for the Arts (“CCA”) has suffered a catastrophic failure; and

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

WHEREAS, the Assistant City Manager, in consultation with the City Manager, has determined that the failure of the hot water pipeline associated with the HVAC system at the CCAE constitutes an immediate risk to the health of the public and the continued services of the CCAE, requiring immediate action that will not permit the delay that would result from a competitive bidding process; and

WHEREAS, A.O. Reed, Inc. has the ability and expertise to design and construct the repair for the pipeline; and

WHEREAS, the Assistant City Manager has recommended that emergency funds be expended on the immediate repair of the pipeline by A.O. Reed, Inc. and a Public Improvement Agreement (“Agreement”) has been entered into with A.O. Reed, Inc. in an amount not to exceed one hundred forty-three thousand dollars (\$143,000); and

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

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to accept the recommendation of the Assistant City Manager and authorize the emergency expenditure of an amount not to exceed one hundred forty-three thousand dollars (\$143,000).

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

1. That the above recitations are true.
2. That the Mayor and City Council accepts the determination by the Assistant City Manager that the failure of the pipeline and the heating and air for the CCAE is a public health and safety emergency; that this emergency will not permit the

delay that would result from a competitive bidding process; and that the proposed action is necessary to respond to the emergency requiring immediate repair of the pipeline.

3. That the Mayor and City Council accepts the recommendation of the Assistant City Manager and that it is in the best public interest to authorize the Director of Finance to issue a Purchase Order to A.O. Reed, Inc., in an amount not to exceed one hundred forty-three thousand dollars (\$143,000) to fund this emergency repair. A copy of the Agreement is attached as Exhibit "A" to this Resolution and is incorporated by this reference.

PUBLIC IMPROVEMENT AGREEMENT

This "Agreement", dated the 28th day of March 2018 in the County of SAN DIEGO, State of California, is by and between **THE CITY OF ESCONDIDO** (hereinafter referred to as "CITY"), and AO Reed (hereinafter referred to as "CONTRACTOR").

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

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

CCAЕ Heating Hot Water Pipe Repair

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

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

One Hundred Twenty-Three Thousand, Six Hundred Fifty Dollars (\$123,650.00). An additional 15% Contingency for approved change orders of Eighteen Thousand, Five Hundred Forty-Eight Dollars (\$18,548.00) for a total up to One Hundred Forty-Two Thousand, One Hundred Ninety-Eight Dollars (\$142,198.00).

4. The work shall be commenced on or before the fifth (5th) working day after receiving the CITY'S Notice to Proceed and shall be completed within **Twenty (20) working days** from the date specified in the Notice to Proceed.

5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage(s), in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to CITY as fixed and liquidated damages, and not as a penalty, the sum(s) indicated in the LIQUIDATED DAMAGES SCHEDULE below for each calendar day of delay until work is completed and accepted. This amount shall be deducted from any payments due to or to become due to CONTRACTOR. CONTRACTOR and CONTRACTOR'S surety shall be liable for the amount thereof. Time extensions may be granted by the CITY as provided in the General Conditions.

Liquidated damages schedule:

If the overall project is delayed **one (1) calendar day or more**, the rate shall be \$250/day.

Acknowledged: N/A
 Initials of Principal

6. In the event CONTRACTOR, for a period of **ten (10) calendar days** after receipt of written demand from CITY to do so, fails to furnish tools, equipment, or labor in the necessary quantity or quality, or to prosecute said work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said **ten (10) calendar days**, fails to continue to do so, then the CITY may exclude the CONTRACTOR from the premises, or any portion thereof, and take possession of said premises or any portion thereof, together with all material and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work, either by furnishing the tools, equipment, labor or material necessary, or by letting the unfinished portion of said work, or the portion taken over by the CITY to another contractor, or demanding the surety hire another contractor, or by any combination of such methods. In any event, the procuring of the completion of said work, or the portion thereof taken over by the CITY, shall be a charge against the CONTRACTOR, and may be deducted from any money due or to become due to CONTRACTOR from the CITY, or the CONTRACTOR shall pay the CITY the amount of said charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment should CONTRACTOR fail to pay in full any said cost incurred by the CITY. The permissible charges for any such procurement of the completion of said work should include actual costs and fees incurred to third party individuals and entities (including, but not limited to consultants, attorneys, inspectors, and designers) and actual costs incurred by CITY for the increased dedication of time of CITY employees to the Project.
7. To the fullest extent permitted by law, the CONTRACTOR agrees to and does hereby agree to fully defend, indemnify and hold the CITY, its governing board, officers, agents, Project design team members (architect and consulting engineers), consultants, attorneys, and employees harmless of and from each and every claim, assertion, action, cause of action, arbitration, suit, proceedings, or demand made, and every liability, loss, judgment, award, damage, or expense, of any nature whatsoever (including attorneys' fees, consultant costs), which may be incurred by reason of:
- (a) Asserted and/or actual liability arises from claims for and/or damages resulting from damages for:
- (1) Death or bodily injury to persons.
- (2) Injury to, loss or theft of tangible and/or intangible property/ e.g. economic loss.

- (3) Any other loss, damage or expense arising under either (1) or (2) above, sustained by the CONTRACTOR upon or in connection with the work called for in this Project, except for liability resulting from the sole active negligence, or willful misconduct of the CITY.
- (b) Any injury to or death of any person(s) or damage, loss or theft of any property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm, or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with the work covered by this Agreement, whether said injury or damage occurs on or off City property.
- (c) Any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01), and updates or renewals, of the California Regional Water Quality Control Board Region 9, San Diego, which the CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction, reconstruction, maintenance, and/or repair of the work under this Agreement.

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

- 8. CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this contract, and shall require all subcontractors, if any, of every tier, to take out and maintain:
 - (a) General Liability and Property Damage Insurance as defined in the General Conditions in the amount with a combined single limit of not less that **\$3,000,000 per occurrence**.
 - (b) Course of Construction / Builder's Risk Insurance. See Article 5.2 of General Conditions.
 - (c) Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to the above-mentioned public liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance in amounts as follows:
 - (1) Automotive and truck where operated in amounts as above
 - (2) Material hoist where used in amounts as above
 - (d) Workers' Compensation Insurance.
 - (e) Each insurance policy required above must be acceptable to the City Attorney, as follows:
 - (1) Each policy must name the CITY specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation and the Errors and Omissions policies.

- (2) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
 - (3) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
- (f) In executing this Agreement, CONTRACTOR agrees to have completed insurance documents on file with the CITY within 14 days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.
9. This Agreement is subject to California Public Contract Code Section 22300, which permits the substitution of securities for any monies withheld by the City under this Agreement, and permits the CONTRACTOR to have all payments of earned retentions by the City paid to an escrow agent at the expense of the CONTRACTOR.
10. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.
11. The complete contract as set forth in Paragraph 1 of this Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Escondido City Council.
12. CONTRACTOR shall comply with those provisions of the Labor Code requiring payment of prevailing wages, keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions, and shall file the required workers' compensation certificate before commencing work. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR shall post any job site notices required by regulation.
13. The terms "Project Documents" and/or "Contract Documents" where used, shall refer to those documents included in the definition set forth in the General Conditions made a part hereof.

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

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

By: _____
Jay Petrek, Assistant City Manager

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

By: _____

CONTRACTOR

By: _____
Signature

Print Name

Title

(CORPORATE SEAL OF CONTRACTOR, if
corporation)

By: _____
Signature*

Print Name

Title

(Second signature required only for corporation)

By: _____
Signature**

Print Name

Title

Contractor's License No.

Tax ID/Social Security No.

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

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

SECTION A-00630 - CITY OF ESCONDIDO BUSINESS LICENSE

In accordance with Municipal Code Section 16, the successful bidder is required to obtain a City of Escondido Business License prior to execution of contract.

The following information must be submitted to the City Clerk prior to execution of contract:

City of Escondido Business License No. **111980**_____

Expiration Date **December 31, 2018**_____

Name of Licensee **A O Reed & Co**_____

SECTION A-00660 - WORKERS' COMPENSATION INSURANCE CERTIFICATE

If self-insured for Workers' Compensation, the Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

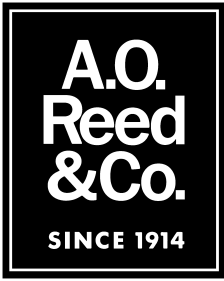
I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, Sections 1860 and 1861, and I will comply with such provisions before commencing the performance of the work of the contract.

Dated: _____

Contractor

By: _____

Signature



Quote No. 0474780
 Type Installation
 Prepared By Greg Harris
 Created On 03/28/2018

Quote For CITY OF ESCONDIDO
 CITY OF ESC CTR FOR
 ARTS
 400 North Escondido
 Boulevard
 Escondido CA 92025

Description of Work

Supply and installation of HHW & CHW valves in park area.

Services to be completed

[Commercial Plumbing] Location - Building

1. Use of a commercial leak detection service to attempt to locate a suspected below grade HHW leak in the park courtyard area.
2. Includes up to 8 hours of leak detection services.
3. Includes use of an air compressor to help pressurize system to assist in leak detection.
4. Includes connection of air line to an existing POC in the theater basement mechanical area.
5. Includes mark out / flagging of suspected leak location(s).
6. Includes excavation of leaking pipe.
7. Includes demolition and removal of existing thrust block as required.
8. Includes prepping of excavation for leak repair and piping replacement.
9. Includes shoring cost.
10. Cut and safe off of HHW and CHW lines at thrust block area.
11. Demolition and removal of concrete thrust block at location of below grade HHW leak.
12. Excavate, grade and prep for setting of a new concrete valve vault.
13. Supply and installation of new concrete vault with removable lid.
14. Coring of new vault to accommodate new pipe penetrations.
15. Supply and installation of PVC and RFP flanges to accommodate new piping / valves.
16. Supply and installation of 8 new flanged butterfly valves.
17. Prefabrication of steel tees, flanges, 90's and valves for setting in new vault.
18. Supply and installation of new 'link seal' fittings at vault penetrations.
19. Insulation of new piping and fittings.
20. Backfill and compaction of excavation. Haul away of excess spoils.
21. Build up of fill material on one new and one existing valve vault.
22. This proposal excludes mechanical system refill, startup, supply or installation of chemical.

Parts, labor, and fees	Quantity	Unit Price	Total
Labor & Materials	1	\$123,650.00	\$123,650.00
15% Contingency	1	\$18,548.00	\$18,548.00
GRAND TOTAL			\$142,198.00

Terms and Conditions

Warranty:

Manufacturer's limited one (1) year warranty on new parts against manufacturing defects and workmanship. A.O. Reed's one (1) year replacement labor. Warranty to commence upon startup date.

Terms: Payable upon completion of work. Should the duration of the job extend beyond thirty days we provide progress billing on a monthly basis.

Our Scope of Work Excludes the Following Unless Otherwise Specified in Scope of Work Above:

- Modifications to the existing systems other than what is specifically identified above.
- Building management system controls or wiring.
- City permit fees.
- Structural engineering and members beyond equipment and material hangers. (We shall attach our hangers to the existing structures)
- Electrical utilities, including conduit, wiring, starters, components and final connections to all equipment. (Including line-voltage power to the controls components)
- Priming, painting and surface preparation.
- General Jobsite dust and noise control.
- After hours and overtime work.
- Site security fees. (We shall provide our own jobsite equipment and material lock boxes)
- Dumpster fees.
- Warranty or repair of existing equipment, piping and plumbing systems.
- Unforeseeable conditions. (These include additional scope items that could not in any way have been identified during the time of submitting our proposal)
- Final duct test for leakage and all necessary paperwork as required by city permitting for new 2005 Title 24 requirements (if required). Note: Final duct test for leakage verification must be performed by third party agency and cannot be contracted by the mechanical contractor or any other work not specifically listed in this proposal.
- This proposal is for only the work stated. If any other deficiencies are found during this work or after start up, that is not a part of this quotation, they will be brought to your attention for action and approval, prior to any additional work being performed. This repair proposal does not include any initial diagnostic charge. All diagnostic fees, if any, will be billed separately.

General Terms and Conditions:

Contractors are required by law to be licensed and regulated by the Contractors state license board. Refer any questions to the register of the board whose address is: Contractor State License Board, 1020 N. Street. Sacramento, CA 95814.

It is expressly agreed that the above described property shall be and remain personal property, and the title to same is hereby retained by A.O. Reed & Co., and shall not pass to the purchaser until the full contract price has been paid. In case of default by the purchaser, of any of its obligations under this contract and it is necessary that same be placed in the hands of an attorney for enforcement, purchaser agrees to pay all costs, including a reasonable attorneys fee.

There are no warranties, express or implied by employees, unless expressly set forth in this contract, and this contract is the entire agreement of the parties. A.O. Reed & Co. is not required to furnish labor without charge for the replacement of defective materials or equipment. A.O. Reed & Co. shall not be liable for any delay, loss or damage caused by acts of god, strikes, accidents, or any other reason beyond its control. No consequential damages will be recoverable by reason of the work performed hereunder.

The undersigned agrees to pay for said work, labor and materials promptly and in the event of failure to pay the same or any portion thereof, within 30 days, the undersigned, unless otherwise specified below, 1% per month, which is an annual percentage rate of 12%. The undersigned further agrees to pay any reasonable attorney fees and costs of collection incurred by A.O. Reed & Co. enforce the provisions of this agreement. The person signing below warrants his authority to sign this contract on behalf of the owner or entity stated above.

Asbestos/Mold: A.O. Reed & Co. scope of work shall not include the identification, detection, abatement, encapsulation or removal of asbestos, mold, mildew, or other products or materials containing hazardous substances. Any statement by any employee of A.O. Reed & Company contradicting the above is unauthorized.

Our quotation is based on the prevailing cost of labor and materials, and is subject to revision thirty (30) days from this date, unless it is bonded by a purchase order or signed agreement. The quotation is subject to credit approval. Payments to be made per terms on AO Reed Invoice. If the project takes more than 30 days to complete, interim billings will be rendered (OAC).All recyclable material will be recycled and applied back to the job costs when applicable.

By my signature below, I authorize work to begin and agree to pay the Grand Total according to the terms and conditions of this agreement.

Name: _____ Date: _____

Signature: _____

Attachment "B"
SECTION A-00700 - GENERAL CONDITIONS

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ARTICLE 1 – DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated in this Article 1, with meanings applicable to both the singular and plural forms thereof. Descriptions of these terms are binding, and form an integral part of these General Conditions.

Addenda – Written or graphic representations issued prior to the opening of Bids which make additions, deletions, or revisions to the Contract Documents.

Agreement – The written Public Improvement Agreement Contract between the City and the CONTRACTOR covering the Work to be performed; other documents are attached to the Agreement and made a part thereof as provided therein.

Application for Payment – The form accepted by the City which is to be used by the CONTRACTOR to request progress payments or final payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

Approval – The written authorization by the Engineer or City for specific applications. Approvals required by the Escondido City Council shall mean the approval of a specific resolution by that Council.

Asbestos – Any material that contains more than one percent (1%) asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

As directed, accepted, rejected, approved, or others of similar meaning which authorize any exercise of judgment shall be distinctly understood to mean that such power to direct, accept, reject, and approve shall be vested only in the City and/or the Engineer.

As shown, as indicated, and as detailed refer to drawings accompanying the specification.

Bid – The offer or proposal of the Bidder, submitted on the prescribed form, setting forth the price or prices for the Work.

Bonds – Bid, performance, and Payment Bonds as well as other instruments of security.

Called For – As called for, shown, noted, and/or indicated in the specifications and/or drawings.

City – The City of Escondido with whom the CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

Clarification – A document issued by the Engineer to the CONTRACTOR that interprets the requirement(s) and/or design intent of the Contract Documents, which may not represent an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times.

Competent Person – *"One who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and has authorization to take prompt corrective measures to eliminate them."* Excerpt from the California Occupational Safety and Health Standards Board.

Confined Space – *"Confined space means a space that:*

- (1) *Is large enough and so configured that an employee can bodily enter and perform assigned work;*
- (2) *Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and*
- (3) *Is not designed for continuous employee occupancy."* Excerpt from Title 8, General Industry Safety Orders Section 5157.

Construction Administration Documents: Terms, uses and protocols- Notwithstanding any other provisions in the General Conditions, the following terms and definitions shall be used.

- (1) **CCD** – The term "CCD" shall mean Construction Change Directive. The CCD is a written instrument prepared by the City or its designee and submitted to the CONTRACTOR. The CCD is a written order directing a change in the Work and stating the required pricing method, if any, in the contract sum, and the Contract Time adjusted to reflect a previously approved Fragnet, if any. The CCD, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions, or other revisions within. The CCD shall become

effective when the City has signed the CCD (CONTRACTOR signature is not required). If the CCD results in additional time, the CONTRACTOR shall provide a Fragnet Submittal within **fourteen (14) days**. If the Fragnet Submittal is approved, the Contract Time adjustment shall be incorporated into originating CCD, or incorporated into a separate CCD and/or a Change Order (CO). The approved Fragnet, if any, shall become incorporated into the next monthly schedule update to reflect the time impact(s).

- (2) **CO** – The term "CO" shall mean Change Order. The Change Order shall state the change in Work and the contract sum and/or time adjustments, if any. RFP's, FO's and/or CCDs may be incorporated into a Change Order after any adjustments in the contract sum and/or time have been reviewed and accepted by the City. The Change Order and items contained therein cannot be incorporated into the progress payments until the Change Order has been fully executed and accepted by the Contractor and the City.
- (3) **COR** – The term "COR" shall mean Change Order Request. The COR is a written instrument prepared by the CONTRACTOR and submitted to the City. The COR is the CONTRACTOR's method for requesting the full and complete terms for changes in the contract sum and/or time, if any. All of the terms of the COR need to be presented without reservations so that the City and/or Engineer can consider the full impact of the COR. The request shall provide an explanation of the basis for entitlement referenced by or based on the Contract Documents. The City shall endeavor to respond to the COR on or within **twenty-one (21) days** of receipt.
- (4) **FO** – The term "FO" shall mean Field Order. A Field Order may be approved by the Inspector, at the City's discretion. A written order signed by the City, which may or may not involve a change in the Work, without invalidating the Contract, within the general scope of the Contract. If the FO results in additional time, the CONTRACTOR shall provide a Fragnet Submittal within **fourteen (14) days**. If the Fragnet Submittal is approved, the Contract Time adjustment shall be incorporated into the next monthly schedule update to reflect the time impact, if any.
- (5) **RFI** – The term "RFI" shall mean Request for Information. An RFI is a written instrument prepared by the CONTRACTOR and submitted to the City or its designee. An RFI shall be considered a tool for requesting additional information above and beyond that which is available in the Contract Documents and all reference standards, as well as fulfilling the Contract coordination requirements for which the CONTRACTOR is obligated to perform. The RFI shall not be used for requesting design and/or material substitutions.

Prior to issuing an RFI, the CONTRACTOR, Subcontractors, material suppliers and the like shall thoroughly review the Contract Documents and refer to all reference standards for the information sought.

When submitting an RFI, the document shall specify the date issued and the date the information is needed by. However, the contractual response time shall be **fourteen (14) days** from the date the City or its designee receives the RFI. The CONTRACTOR shall plan its work and submit questions in sufficient time to accommodate the response time. For those contracts requiring a CPM schedule, the CONTRACTOR shall include in the RFI the CPM Activity Number and the originating Subcontractor.

The CONTRACTOR shall make efforts to coordinate the work in a timely fashion so as to alleviate priority RFIs. If the RFI is considered a priority, the CONTRACTOR shall state the word "Priority" on the document, and the CONTRACTOR shall provide weekly

RFI Priority Schedules. The CONTRACTOR shall issue and maintain weekly RFI Priority Schedules.

The RFI Priority Schedule shall include a listing of pending requests, including the most current request, which ranks the RFIs in order of priority. The Engineer shall endeavor to respect the CONTRACTOR's requested order of priorities and requested response dates.

The Engineer's response to the RFI shall be considered a Supplemental Instruction (SI) in which the contract sum and/or time is not altered. If the RFI response alters the contract sum and/or time, a Construction Change Directive (CCD) or a Request for Proposal (RFP) may be issued for the changed condition(s).

Should the CONTRACTOR determine the response to the RFI creates changes in the contract sum and/or time, the CONTRACTOR must submit a Change Order Request (COR) to the City for review and decision along with a Fragnet if required.

- (6) **RFP** – The term "RFP" shall mean Request for Proposal. The RFP is a written instrument prepared by the City and submitted to the CONTRACTOR. The RFP is a request for changes in the contract sum and/or time, and a proposal for potential change in contract conditions, for which the contract sum and/or time may or may not be affected. The CONTRACTOR shall provide the full and complete terms of the request in a Change Order Request (COR) within **fourteen (14) days**: If the RFP results in added time, the CONTRACTOR shall provide a Fragnet Submittal within the same **fourteen (14) days**. If the City accepts the full terms of the RFP, the RFP shall be incorporated into a Construction Change Directive (CCD) and/or a Change Order (CO), and/or a Field Order (FO) and the approved Fragnet, if any, shall become incorporated into the next monthly schedule update to reflect the time impact(s).
- (7) **SI** – The term "SI" shall mean Supplemental Instruction. The SI is a written instrument prepared by the Engineer and submitted to the CONTRACTOR. The SI can order changes in the Work that do not affect the contract sum and/or time. Supplemental Instructions can also be made in an RFI response by issuing a formal SI document or by written letter from the City's or its designee's office.

Contract Price – The total monies payable by the City to the CONTRACTOR under the terms and conditions of the Contract Documents.

Contract Time – The duration of the Project as defined in the Agreement.

Contractor – The individual, partnership, corporation, joint venture, or other legal entity with whom the City has executed the Agreement.

Day – Days shall be considered calendar days and measured from midnight to the next midnight.

Defective work- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or Work that has been damaged prior to the final payment.

Deficiency List – A list maintained by the City, representing an ongoing list of items that do not conform to the Contract Documents. The Deficiency List is added to the Punch-List when the CONTRACTOR asserts that the Work is complete.

Deficiency Notice – A notice from the City to the CONTRACTOR describing work that does not conform to the Contract Documents.

Delay Days – Delay Days shall be considered working days. Assuming a 5-day workweek, delay days shall be converted into calendar days by a factor of 1.4. Hence 10 Delay Days equal 14 Calendar Days. Delay Days will be evaluated and identified as one of the three categories listed below. Excusable delays will create adjustments in the Contract Time. Compensable delays will create

adjustments in both the contract sum and Contract Time. In the event of concurrent delays caused by the City and CONTRACTOR or its subcontractors, material men or suppliers, no delay damages are recoverable by either the City or the CONTRACTOR, but an extension in time shall be granted for each contemporaneous Delay Day occurring on the critical path. Contemporaneous delays shall be evaluated using a schedule fragnet(s), schedule updates, daily reports, notices, and any other records of delaying events. In the event of a delay, the CONTRACTOR shall provide a Notice of Delay in accordance with Article 11.5 "CONTRACTOR SHALL PROVIDE NOTICE" and submit a schedule fragnet depicting the delay with all substantiating documentation within **fourteen (14) days** of the event.

<u>Excusable & Compensable</u>	<u>Excusable & Non-Compensable</u>	<u>Inexcusable</u>
Delays caused by the City, the Engineer, or the City's separate Contractor(s).	1. Unusual weather 2. Strikes or labor shortages 3. Acts of God 4. Fires, war, acts of government & pestilence 5. Unusual and unanticipated delays in manufacturing and/or deliveries of materials and/or equipment 6. Concurrent Delays	Delays caused by the CONTRACTOR, Subcontractor(s), material-men or suppliers.

- (1) **Concurrent Delay** – Delays caused by both the Contractor and the City and occurring at the same time; existing together, relating to same activity or activities, and affecting the critical path.
- (2) **Contemporaneous Delay** – Delays existing or happening in the same period of time.

Drawings – The drawings, plans, maps, profiles, diagrams, and other graphic representations which indicate the character, location, nature, extent, and scope of the Work and which have been prepared by the Engineer and are included and/or referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

Effective Date of the Agreement – The Effective Date is indicated in the Agreement, but if no such date is indicated, the Effective Date is when the Agreement is signed and delivered by the last of the two parties.

Engineer – The individual, partnership, corporation, joint venture, or other legal entity designated by the City, if any is so designated, in the Supplementary General Conditions. Such designation may include more than one individual or entity, and may be changed by the City with written notification to the CONTRACTOR.

Engineer of Work - The responsible Engineer who wet stamped and signed the Contract Specifications and Drawings. The responsibilities of the Engineer of Work are set forth in California Business and Professions code and other laws as may be applicable. The responsibilities under law of the Engineer of Work are not modified by these General Conditions.

Fragnet –Also known as a "Sub-network." Refer to the specification section titled CONSTRUCTION SCHEDULING for the definition of a Fragnet and the requirements thereof. A Fragnet will be required for time impact analysis and time extensions. CONTRACTOR's failure to provide a Notice of Delay within **24 hours**, and submit a Fragnet for time impact analysis and time extension(s) on or within **14 days** of the delaying event, shall forfeit and invalidate all considerations for time and/or payment. (Refer to the definition of "Delay Days" for additional information.) The costs to prepare Fragnets and schedule updates resulting from approved Fragnets

are part of the Work, regardless of number and difficulty. The City will provide a response to the Fragnet on or within **14 days**.

Hazardous Waste – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6906), as amended from time to time.

Inspector – The City's appointed representative(s) for inspection of in-progress or completed Work.

Laws and Regulations; Laws or Regulations – Any and all applicable laws, rules, regulations, ordinances, codes, and/or orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Materials – Materials incorporated in the project or used or consumed in the performance of the Work.

Milestone – A principal event specified in the Contract Documents relating to an intermediate completion date of a separately identifiable part of the Work or a period of time within which the separately identifiable part of the Work should be performed prior to Project Completion of all the Work.

Notice of Award – The written notice by the City to the apparent successful bidder stating that, upon compliance by the apparent successful bidder with the precedent conditions enumerated therein within the time specified, the City will enter into an Agreement.

Notice of Completion – A form signed by the City indicating that the Work is Complete ("Project Completion") and stating the date of completion. After acceptance of the Work by the City's governing body, the Escondido City Council, and due authority is given to the Deputy Director of Public Works, the form is signed by the Deputy Director of Public Works and filed with the San Diego County Recorder. This filing starts the 30-day lien filing period on the Work.

Notice to Proceed – The written notice issued by the City to the CONTRACTOR authorizing the CONTRACTOR to proceed with the Work and establishing the date of commencement of the Contract Times.

Partial Utilization – Use by the City of a completed part of the Work for the purpose for which it is intended prior to Project Completion.

Project – The total construction project of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.

Project Completion – The acceptance by the Escondido City Council of the Work of improvement (as in the Notice of Completion).

Project Documents and/or Contract Documents – Includes collectively, to wit: Notice Inviting Sealed Bids/Notice to Contractors, Instructions to Bidders, Bid Form, Designation of Subcontractors, Workers' Compensation Certificate, Change Orders, Shop Drawing Transmittals, Information Required of CONTRACTOR, Non-collusion Affidavit, Faithful Performance Bond, Payment Bond, Insurance Certificates, Guarantees, General Conditions, Supplementary General Conditions, Special Conditions, Plans, Drawings, Specifications, the Agreement and all modifications, addenda, and amendments thereto.

Provide – Term shall include "provide complete in place," that is, "furnish and install."

Punch-List – A list generated by the Engineer, in conjunction with the City, of missing work, of damaged existing facilities, and a list of any and all work described by the Contract Documents that has not been completed in conformance with the Contract Documents. A Punch-List may be amended by the City from time to time based on the results of CONTRACTOR re-work and the discovery of additional non-conforming work.

Resident Project Representative – The authorized representative of the City/Engineer who is assigned to the Site or any part thereof.

Safety Orders/Records – Those issued by the Division of Industrial Safety and OSHA standards for construction.

Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for the CONTRACTOR and submitted by the CONTRACTOR to illustrate some portion of the Work.

Site – The physical locale where the Project is to be constructed, including all public rights-of-way, utilities, improvements, and shall be limited solely by formal, recorded property lines adjacent to the physical locale where the Project is to be constructed.

Specifications – Those technical or additional project management provisions that are binding on the Work as described in the Supplementary General Conditions.

Stipulated Prices or Markups – Prices or markups set forth as a condition of the Contract.

Stop Notice – A legal remedy for subcontractors and suppliers who contribute to public works but who are not paid for their work, which secures payment from construction funds possessed by the City. The Stop Notice may also be issued by public entities, such as the department of Labor, as a notice to withhold due to failure to pay the required wages to workers.

Subcontractor – A licensed entity of any tier (whether having a direct contractual relationship with Contractor or another Subcontractor) that provides labor to the Project and/or furnishes material worked to a special design according to plans, drawings, and specifications of this work, but does not include one who merely furnishes material not so worked.

Supplementary General Conditions – The part of the Contract Documents which make additions, deletions, or revisions to these General Conditions.

Supplier – A manufacturer, fabricator, distributor, material-man, or vendor having a direct contract with the CONTRACTOR or with any Subcontractor to furnish materials, equipment, or product to be incorporated in the WORK by the CONTRACTOR or any Subcontractor.

Surety – The person, firm, or corporation that executes as surety the CONTRACTOR's Bid Security, faithful performance bond and/or payment bond.

Utilities – All pipelines, conduits, ducts, cables, wires, tracks, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which have been installed underground or above the ground to furnish any of the following services or materials: water, sewage, sludge, drainage, fluids, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, traffic control, or other control systems.

Work – The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

Workers – Workers include laborers, workers, and mechanics.

ARTICLE 2 – PRELIMINARY MATTERS

2.1 **DELIVERY OF BONDS AND INSURANCE CERTIFICATES.** When the CONTRACTOR delivers the signed Agreement to the City, the CONTRACTOR shall also deliver to the City such Bonds and insurance policies and certificates and documents as the CONTRACTOR may be required to furnish in accordance with the Contract Documents.

2.2 **COPIES OF DOCUMENTS.** The City will furnish to the CONTRACTOR as many copies of the Contract Documents specified in the Instructions to Bidders. Additional copies will be provided, upon request, at the cost of duplication.

2.3 **ESCROW OF BID DOCUMENTS**

A. **SCOPE:**

1. The CONTRACTOR shall submit, within **ten (10) days** after the award of contract one (1) copy of all documentary information generated in preparation of the bid price for the project. This material is hereinafter referred to as the "Escrow Bid Documents." The Escrow Bid Documents will be held in escrow for the duration of the contract.

2. The CONTRACTOR agrees that the Escrow Bid Documents constitute all of the information used in preparation of the bid, and that no other bid preparation information will be considered in resolving claims.
 3. Nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract.
- B. **PROPERTY:** The Escrow Bid Documents are and will always remain the property of the CONTRACTOR, subject only to joint review by the City and the CONTRACTOR, as provided in paragraph (G) "EXAMINATION." The City stipulates and expressly acknowledges that the Escrow Bid Documents constitute trade secrets and are proprietary and confidential. This acknowledgment is based on the City's express understanding that the information contained in the Escrow Bid Documents is not known outside the CONTRACTOR's business, is known only to a limited extent and only by a limited number of employees of the CONTRACTOR, is safeguarded while in CONTRACTOR's possession, is extremely valuable to CONTRACTOR and could be extremely valuable to CONTRACTOR's competitors by virtue of it reflecting CONTRACTOR's contemplated techniques of construction. The City acknowledges that the CONTRACTOR expended substantial sums of money in developing the information included in the Escrow Bid Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The City further acknowledges that the Escrow Bid Documents and the information used in the CONTRACTOR's business were intended to give the CONTRACTOR an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation. The City agrees to safeguard the Escrow Bid Documents and all the information contained therein against disclosure to the fullest extent permitted by law.
- C. **PURPOSE:** Escrow Bid Documents will be used to assist in the negotiation for the settlement of claims. They will not be used for evaluation of the CONTRACTOR's anticipated methods of construction or to assess the CONTRACTOR's qualification for performing the Work.
- D. **FORMAT AND CONTENTS:**
1. CONTRACTOR may submit Escrow Bid Documents in the usual cost-estimating format. Escrow Bid Documents shall be adequate to enable complete understanding and proper interpretation for their intended use.
 2. Escrow Bid Documents shall clearly itemize the estimated costs of performing the Work. Items shall be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all quantity takeoffs, labor, equipment, calculations of rate production and progress, copies of quotations from Subcontractors and suppliers, memoranda, narratives, consultant's reports, add/deduct sheets, and all other information used by the CONTRACTOR to arrive at the prices contained in the bid proposal. Estimated costs shall be broken down into the CONTRACTOR's usual estimate categories such as direct labor, repair labor, material, equipment, construction equipment operation, construction equipment ownership, expendable materials, materials and Subcontractor cost as appropriate. Plant and equipment, indirect costs shall be detailed in the CONTRACTOR's usual format. The CONTRACTOR's allocation of plant and equipment, indirect costs, contingencies, markup and other items shall be included.
 3. All costs shall be identified for all items. Sub-items amounting to less than \$10,000.00 estimated unit costs are acceptable without a detailed cost estimate,

provided that labor, equipment, materials, construction equipment, expendable materials and subcontracts, as applicable, are included, provided that indirect costs, contingencies, and markups, as applicable, are allocated.

4. Bidding materials provided by the City shall not be included in the Escrow Bid Documents unless needed to comply with the requirements of this specification.

E. SUBMITTAL:

1. The Escrow Bid Documents shall be submitted by the CONTRACTOR in a sealed container(s) within **10 days** after the day of award of the contract. The container shall be clearly marked on the outside with the CONTRACTOR's name, date of submittal, project name and the words "Escrow Bid Documents."
2. The Escrow Bid Documents shall be accompanied by an index to inventory the contents of the submittal and a Bid Documentation Certification, signed by the individual who executed the bidding proposal, stating that the material in the Escrow Bid Documents constitutes all documentary information used in preparation of the bid and that he/she has personally examined the contents of the Escrow Bid Documents container and has found that the documents in the container(s) are complete and organized as shown by the CONTRACTOR's index.
3. The City shall examine the index. This examination is to ensure that the index is detailed and complete and conforms to the "format and contents" as stated in paragraph (D) above. If all the documentation required in paragraph (D) "FORMAT AND CONTENTS" has not been indexed in the original submittal a revised index shall be submitted at the CITY's discretion. Timely submission of complete Escrow Bid Documents is an essential element of the CONTRACTOR's responsibility. Failure to provide the necessary Escrow Bid Documents may be sufficient cause for the CITY to assess damages under the contract. If the CONTRACTOR's proposal is based on subcontracting any part of the Work, each Subcontractor, whose total subcontract price exceeds the lesser of five percent (5%) of the total contract price proposed by the CONTRACTOR or \$200,000 shall provide separate Escrow Bid Documents to be submitted with those of the CONTRACTOR. These submittals will be examined in the same manner and at the same time as the examination described above. If the CONTRACTOR wishes to subcontract any portion of the Work or requests substitutions of any Subcontractor after award, the CITY retains the right to require the CONTRACTOR to submit Escrow Bid Documents from the proposed Subcontractor before the subcontract or substitution is approved.

F. STORAGE: The escrow bid documents will be placed in escrow, for the life of the contract, in a mutually agreeable institution. The city will pay the cost of storage.

G. EXAMINATION:

1. The Escrow Bid Documents shall be examined by the City, the Engineer and CONTRACTOR, at any time deemed necessary by either the City or the CONTRACTOR, to assist in the negotiation for the settlement of claims.
2. Examination of the Escrow Bid Documents is subject to the following conditions:
 - a. As trade secrets, the Escrow Bid Documents are proprietary and confidential as described in paragraph (B).

- b. The City and the CONTRACTOR shall each designate, in writing to the other party and a minimum of **five (5) days** prior to examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents.
- c. Access to the Escrow Bid Documents under this paragraph will take place only in the presence of duly designed representatives of both the City and the CONTRACTOR.

H. **FINAL DISPOSITION:** The escrow bid documents will be returned to the contractor at such time as the contract has been completed and final settlement has been achieved.

2.4 **COMMENCEMENT OF CONTRACT TIMES; NOTICE TO PROCEED.** The Contract Times will start to run on the commencement date stated in the Notice to Proceed.

2.5 **STARTING THE WORK**

A. The CONTRACTOR shall begin to perform the Work on the commencement date stated in the Notice to Proceed, but no Work shall be done at the Site prior to said commencement date. The Work shall be commenced immediately after Notice to Proceed, and shall be diligently prosecuted until completion.

B. Before undertaking each part of the Work, the CONTRACTOR shall review the Contract Documents in accordance with Article 3 of these General Conditions.

2.6 **CONTINUING THE WORK.** The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the CONTRACTOR and the City may otherwise agree in writing.

2.7 **PRECONSTRUCTION MEETING.** A preconstruction meeting shall be called after the award and execution of the Contract and prior to construction. The CONTRACTOR (a Principal and Project Superintendent) shall attend. The CONTRACTOR shall plan on spending no less than **four (4) hours** of time with Subcontractor(s) and project superintendent(s) for this meeting.

2.8 **CITY OBSERVED HOLIDAYS.** CONTRACTOR is required to observe City holidays. The City observes the following holidays:

1. New Years Day
2. Martin Luther King, Jr. Day
3. Presidents' Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Veterans Day
8. Thanksgiving Day
9. Day after Thanksgiving
10. Christmas Day

ARTICLE 3 – INTENT AND USE OF CONTRACT DOCUMENTS

3.1 CONTRACTOR MUST REVIEW CONTRACT DOCUMENTS, DRAWINGS AND SPECIFICATIONS

- A. Drawings and Specifications are intended to be complementary (that which is required by one shall be required by the other; to the extent there is more than one reference which exists, the reference requiring the more stringent and/or best standards and requirements shall be furnished and installed) and delineate and describe the Project and its component parts to such a degree as will enable a skilled and competent CONTRACTOR to intelligently bid upon the Work, coordinate the Work and to carry out the Work to a successful conclusion. If, as and to the extent that Public Contract Code section 1104 is deemed to apply after the Award of Contract, CONTRACTOR shall not be required to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications, notwithstanding any other provision in the Project Documents, except to the extent that CONTRACTOR discovered or should have discovered and reported any errors and omissions to the City, including but not limited to as the result of any review of the plans and specifications by CONTRACTOR required by the Instructions to Bidders or other Project Documents, whether or not actually performed by CONTRACTOR.
- B. Drawings and Specifications are intended to comply with all laws, ordinances, rules and regulations of constituted authorities having jurisdiction, and where referred to in the Project Documents, these laws, ordinances, rules and regulations shall be considered as a part of the Agreement within the limits specified. The CONTRACTOR shall bear all expenses of correcting Work done contrary to applicable laws, ordinances, rules and regulations and if the CONTRACTOR performed the Work (1) without first consulting the City for further instructions regarding the Work, or (2) disregarded the City's instructions regarding the Work.
- C. Questions regarding interpretation of drawings and specifications shall be submitted in writing to be clarified by the City; provided, however, that in the event the City determines that CONTRACTORS requests for information (RFI's) are not justified or do not reflect adequate or competent supervision, coordination, and / or knowledge by the CONTRACTOR or its Subcontractors, CONTRACTOR shall be required to pay the City's reasonable and customary fees in processing and responding to such requests. Should the CONTRACTOR commence Work or any part thereof without seeking clarification, and/or performing its own coordination obligations, the CONTRACTOR waives any claim for extra Work or damages as a result of any ambiguity, conflict or lack of information.
- D. Figured dimensions on drawings shall govern, but Work not dimensioned or mis-described shall be as directed. Work not particularly shown, mis-described or specified shall be the same as similar parts that are shown or specified. Large scale drawings shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and specifications are intended to be fully cooperative and to agree. If through the process of contract-required coordination, CONTRACTOR observes that drawings and specifications are in conflict, CONTRACTOR shall promptly notify the City in writing, and any necessary changes shall be adjusted as provided in Article 10 titled CHANGES IN THE Work; provided, however, that the specification calling for the higher quality material or workmanship shall prevail without additional cost to the City.

- E. Materials or Work described in words, which so applied, have a well known technical or trade meaning shall be deemed to refer to such recognized standards.
- F. It is not the intention of the Agreement to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to CONTRACTOR that it will be required to complete the Work so named with all its incidental and accessory items according to the best practices of the trade.
- G. The naming of any material and/or equipment shall mean furnishing and installing, including all incidental and accessory items thereto and/or labor necessary to achieve full and complete functioning of the material and/or equipment according to the best practices of the trade(s) involved, unless specifically noted otherwise.

3.2 AGREEMENT TO THOROUGHLY REVIEW DETAIL DRAWINGS AND INSTRUCTIONS

- A. All parts of the described and shown construction drawings shall be of the best quality of their respective kinds and in executing the Agreement, the CONTRACTOR agrees to use all diligence to become fully informed as to the required construction and finish, and in no case to proceed with the different parts of the Work without obtaining first from the City such directions and/or drawings as may be necessary for the proper performance of the Work.
- B. In case of ambiguity, conflict, or lack of information, the City shall furnish additional instructions by means of drawings or otherwise, as necessary for proper execution of the Work. All such drawings and instructions shall be consistent with Project Documents, true developments thereof, and reasonably inferable therefrom. Such additional instructions shall be furnished with reasonable promptness, provided that CONTRACTOR informs the City of the relationship of the request to the critical path of construction. Refer to the term, use and protocol of an RFI defined in Article 1 entitled "Definitions" under "Construction Administration Documents."
- C. Work shall be executed in conformity therewith and CONTRACTOR shall do no Work without proper drawings and instructions.
- D. The City may furnish necessary additional details to more fully explain the Work, which details shall be considered as part of the Project Documents.
- E. Should any details be more elaborate, in the opinion of the CONTRACTOR, than scale drawings and specifications warrant, CONTRACTOR shall give written notice thereof to the Engineer within **21 days** of receipt. In case no notice is given to the Engineer within **21 days**, it will be assumed the details are reasonable development of the scale drawings. In case proper notice is given, then it will be considered, and if found justified, the Engineer will either modify the drawings or shall recommend a change order for any extra Work that may be involved.
- F. If it is found at any time, before or after completion of the Work, that the CONTRACTOR has varied from the drawings and/or specifications, in materials, quality, form, finish, or in the amount or value of the materials and labor used, the City shall take the issue under advisement and consider the following options:
 - 1. That all such improper Work should be removed, remade, replaced, and all Work disturbed by these changes be made good at the CONTRACTOR's expense; or

2. That the City deduct from any amount due CONTRACTOR, the sum of money equivalent to the difference in value between the Work performed and that called for by the drawings and specifications. The City shall determine such difference in value. The City, at its option, may pursue a recommendation made by the Engineer.
- 3.3 REFERENCED STANDARD. No provision of any referenced standard specification, manual or code shall be effective to change the duties and responsibilities of the City, the CONTRACTOR, the Engineer, or any of their consultants, agents, or employees, from those set forth in the Contract Documents, nor shall it be effective to assign to the City, Engineer, or any of Engineer's consultants, agents, or employees any duty or authority to direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.
- 3.4 AMENDING CONTRACT DOCUMENTS. The Contract Documents may be amended only in writing to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by a Change Order (pursuant to Article 10-CHANGES IN THE WORK).
- 3.5 NO ASSIGNMENT. The CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of its rights, title or interest in or to the same or any part thereof. If the CONTRACTOR shall assign, transfer, convey, sublet or otherwise dispose of the Agreement or its right, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and the Agreement may, at the option of the City, be terminated, revoked and annulled, and the City shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the CONTRACTOR, and to its purported assignee or transferee.
- 3.6 REUSE OF DOCUMENTS. Neither the CONTRACTOR, nor any Subcontractor or Supplier, nor any other person or organization performing any of the Work under a contract with the City shall have or acquire any title to or ownership rights in any of the Drawings, Technical Specifications, or other documents used on the Work, and they shall not reuse any of them on the extensions of the Project or any other project without written consent of City.

ARTICLE 4 – SITE OF THE WORK

- 4.1 AVAILABILITY OF LANDS. The City will furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the City, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands or rights-of-way provided. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment; provided, that the CONTRACTOR shall not enter upon nor use any property not under the control of the City until a written temporary construction easement agreement has been executed by the CONTRACTOR and the property owner, and a copy of said easement furnished to the Engineer prior to said use; and, neither the City nor the Engineer will be liable for any claims or damages resulting from the CONTRACTOR's trespass on or use of any such properties. The CONTRACTOR shall provide the City with a signed release from the property owner confirming that the lands have been satisfactorily restored upon completion of the Work.

4.2 SOILS INVESTIGATION REPORT & CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

- A. SUBSURFACE EXPLORATIONS: Reference is made to the Supplementary General Conditions for identification of those reports of explorations and tests, if any, of subsurface conditions at the Site that have been utilized by the City or its Engineer in the preparation of the Contract Documents.
- B. SOILS INVESTIGATION REPORT. When a soils investigation report has been prepared or referenced by the City or its Engineer to assist with the design of the facility, such report is available for the CONTRACTOR's use in preparing its bid and Work under this Agreement. All soil and test-hole data, water table elevations, and soil analyses shown on the drawings or included in the Specifications apply only at the location of the test holes and to the depths indicated. Geotechnical reports for the test holes, if any, which have been drilled are available from the City. Any additional subsurface exploration shall be done by the CONTRACTOR or Bidder at their own expense. The indicated elevation of a water table is that which existed on the date when test holes were made and the level of the groundwater was determined. It is the CONTRACTOR's responsibility to determine the level of ground water or water table at the time of project construction. A difference in elevation between the level of ground water or water table indicated on the soil boring logs and groundwater actually encountered during construction is a risk of the CONTRACTOR's bid amount, and will not be considered as a basis for extra Work or additional compensation.
- C. CONTRACTOR SHALL NOTIFY THE CITY OF UNKNOWN CONDITIONS. If, during the course of Work under this Agreement, CONTRACTOR encounters subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in contract activities of the character provided for in the Contract Documents, then CONTRACTOR shall notify the City of the discovery of the condition before the condition is materially changed, disturbed and/or covered, and before any additional Work is performed. The CONTRACTOR must notify the City, in writing of unforeseen conditions, or differing Site conditions, promptly upon their discovery and before they are disturbed. Reference Article 11.5 "CONTRACTOR SHALL PROVIDE NOTICE".
- D. WARNING: THE CITY DOES NOT WARRANT THE SOILS AT THE PROJECT SITE. SOILS INVESTIGATION REPORTS ARE PROVIDED FOR CONTRACTOR'S INFORMATION ONLY. THE CITY OF ESCONDIDO DOES NOT WARRANT THE SOILS CONDITIONS OF THE SITE AND CONTRACTOR IS FULLY RESPONSIBLE TO ASCERTAIN SITE CONDITIONS FOR THE PURPOSES OF DETERMINING CONSTRUCTION MEANS AND METHODS PRIOR TO COMMENCING CONSTRUCTION. IF ANY CONTRACTOR WISHES TO PERFORM A PRE-BID SITE INSPECTION, WHICH INCLUDES SOILS TESTING, A METHOD TO DO SO IS AVAILABLE AND IS DESCRIBED IN PARAGRAPHS 4.7 and 4.8 OF THE "INSTRUCTIONS TO BIDDERS".

4.3 PHYSICAL CONDITIONS - UNDERGROUND UTILITIES

- A. The information and data indicated in the Contract Documents with respect to existing underground Utilities at or contiguous to the Site are based on information and data furnished to the City or the Engineer by the owners of such underground Utilities. The Contract plans depict the various utilities as they are believed to exist, however, the

CONTRACTOR shall not rely on the locations and depths indicated. The CONTRACTOR shall comply with California Government Code Section 4216 ("Section 4216"). The CONTRACTOR shall determine the location and depth of all utilities that are indicated and those that are not indicated as follows:

1. As provided in Section 4216, at least **2 working days** prior to commencing any excavation, but not more than **14 calendar days**, the CONTRACTOR shall contact the regional notification center (Underground Service Alert of Southern California) and obtain an inquiry identification number. Refer to Article 6.28.
2. Where underground main distribution conduits such as water, gas, sewer, electric power, telephone, or cable television are shown on the Plans, the CONTRACTOR shall assume that every property parcel will be served by a service connection of each type of utility.
3. Section 4216 does not require the Local Agency to mark out non-pressurized sewer lines, non-pressurized storm drains or other non-pressurized drain lines.
4. The California Department of Transportation, CALTRANS, is not required by Section 4216 to become a member of the regional notification center. The CONTRACTOR shall call CALTRANS directly for location of its subsurface installations.
5. The CONTRACTOR shall determine the location and depth of all utilities (the top and the bottom), including joint trenches and service connections, which have been marked by the respective owners and which may affect or be affected by its operations. The CONTRACTOR shall determine the location and depth of all utilities not required to be marked out by the Local Agency.
6. The CONTRACTOR shall further determine the location and depths of all utilities that were not known or indicated on the project plans, but, after CONTRACTOR compliance with Section 4216, were marked out by the utility owners.
7. The CONTRACTOR shall not assume that existing utilities are buried at depths and locations specified in the pertinent standard drawings. In Escondido, existing utilities are frequently found at depths and locations that are not in conformance with the existing standard drawings.
8. The CONTRACTOR shall have the responsibility for coordinating as many call-backs of utility owners and CONTRACTOR mobilizations as may be required to determine the exact location, or identity, of all utilities. Utilities that are indicated on the Contract plans in a certain location, and are marked out in a different location by the utility owner, are considered by this Contract to be the same utility. The City is not responsible for errors in mark-outs made by the Utility owners.
9. The CONTRACTOR shall have full responsibility for the safety and protection of all existing utilities, to the extent allowed by California Government Code Section 4215, and repairing any damage thereto resulting from the Work. The CONTRACTOR shall use hand tools and/or vacuum equipment and use reasonable care to protect existing utilities.
10. Unknown Utility on the Contract plans, but marked out in the field by the utility owner: The Work of potholing, protecting in place, trenching over or under, repairing the road surface, backfilling with the utility owner's preference of material, plotting on the record drawings, and describing a previously unknown utility is fully contemplated by the City as being a regular occurrence on trenching projects.

11. Unknown utilities not marked out by the utility owner: Should the CONTRACTOR come across utilities that are not known nor marked out by the utility owner, the CONTRACTOR shall immediately call Underground Service Alert and the City. The City is not responsible for the consequences of the failure of a Utility owner to mark out its facilities.
 12. Abandoned Utilities. Abandoned utilities are considered as unknown utilities for the purpose of CONTRACTOR payment, unless they are indicated on the project plans.
 13. The CONTRACTOR shall call for a "standby inspector" when requested to do so by a utility owner, and follow their direction.
- B. Locating Subsurface Installations (excerpted from California Government Code section 4216):
1. The excavator shall determine the exact location of subsurface installations in conflict with the excavation by excavating with hand tools within the area of the approximate location of subsurface installations as determined by the field marking provided in accordance with (California Government Code) section 4216.3 before using any power-operated or power-driven excavating or boring equipment within the approximate location of the subsurface installation, except that power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there are no subsurface installations contained in the pavement. If mutually agreeable with the operator (*the operator is the owner of the Utility in this case*) and the excavator (*the excavator is the CONTRACTOR in this case*), the excavator may utilize power-operated or power-driven excavating or boring equipment within the approximate location of a subsurface installation and to any depth. (*Clarification added*)
 2. If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subdivision B1, the excavator (the CONTRACTOR) shall request the operator (the owner of the Utility) to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation. (*Clarification added*)

4.4 HAZARDOUS MATERIALS

- A. The provisions of Articles 4.2, 4.3, and 4.4 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material uncovered or revealed at the Site.
- B. Reference is made to the Supplementary General Conditions for identification of those reports and drawings relating to Asbestos, Hazardous Waste, PCBs, Petroleum and/or Radioactive Material identified at the Site that have been utilized by the Engineer in the preparation of the Contract Documents, if any.
- C. Copies of these reports and drawings may be examined at the office of the City during regular business hours. Please make an appointment. The CONTRACTOR may rely upon the accuracy of the technical data contained in such reports and drawings, except for such physical dimensions that can be field verified; however, the interpretation of such technical data, including any interpolation or extrapolation thereof, and opinions contained in such reports and drawings are not to be relied on by the CONTRACTOR.

- D. The City shall be responsible for any Asbestos, Hazardous Waste, PCBs, Petroleum, or Radioactive Material uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the Site. The City will not be responsible for any such material brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

4.5 REFERENCE POINTS

- A. The City will provide access to the bench-mark book maintained by the City Surveyor, and provide any survey reference material that may be on file. The CONTRACTOR shall furnish all other lines, grades, and bench-marks required for proper execution of the Work.
- B. The CONTRACTOR shall preserve all bench marks, stakes, and other survey marks and in case of their removal or destruction by any party, the CONTRACTOR shall be responsible for the accurate replacement of such reference points by personnel qualified under the applicable state codes governing land surveyors. The recording of any replacement corners, or other points, shall be the responsibility of the CONTRACTOR.

ARTICLE 5 – BONDS AND INSURANCE

5.1 BONDS

- A. CONTRACTOR shall furnish a surety bond in an amount equal to **one hundred percent (100%)** of the contract price as security for faithful performance of this Agreement and shall furnish a separate bond in an amount equal to **one hundred percent (100%)** of the contract price as security for payment to persons performing labor and furnishing materials in connection with this Project. Bonds shall be in the form set forth in these Project Documents.
- B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- C. If the surety on any Bond furnished by the CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, the CONTRACTOR shall, within **seven (7) days** thereafter, substitute another Bond and surety, which must be acceptable to the City. No Work shall be performed without Bonds, in a form and issued by a surety acceptable to the City, required by the Contract Documents to be in full force and effect. If one or more of such Bonds shall, at any time, not be in full force and effect, CONTRACTOR shall immediately cease performance until it is in full compliance with the bonding requirements of the Contract Documents and California law. All delays and costs incurred and/or resulting from such occurrence shall be to the exclusive account of CONTRACTOR. Failure of the CONTRACTOR to promptly cure any failure to have the necessary Bonds in full force and effect shall be grounds for termination for default.
- D. All Bonds required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety companies that are duly licensed or

authorized in the State in which the Project is located to issue Bonds for the limits so required. Such surety companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary General Conditions.

5.2 LIABILITY, PROPERTY, FIRE, BUILDER'S RISK AND OTHER INSURANCE REQUIREMENTS

- A. LIABILITY AND PROPERTY DAMAGE. Before the commencement of the Work and for the minimum amount of limits set forth herein the CONTRACTOR shall purchase from and maintain such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the Agreement and automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement as will protect the CONTRACTOR, and those required to be endorsed as additional insured from claims set forth below, which may arise out of or result from the CONTRACTOR's operations under the Contract and for which the CONTRACTOR may be legally liable, whether such operations are by the CONTRACTOR, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
1. Claims for damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than the CONTRACTOR's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;
 2. Claims for damages arising from personal or advertising injury in a form at least as broad as ISO Form CG 0001 11188;
 3. Claims for damages because of injury or destruction of tangible property, including loss of use resulting there from, arising from operations under the Project Documents; and
 4. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work; and
 5. Claims involving blanket contractual liability applicable to the CONTRACTOR's obligations under the Project Documents, including liability assumed by and the indemnity and defense obligations of the CONTRACTOR and the Subcontractors; and
 6. Claims involving Operations/Premises and Completed Operations/Products, Independent CONTRACTOR's coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. Coverage for completed operations must be at least as broad as CG 2010 11/85.
- B. If commercial general liability insurance or another insurance form with a general aggregate limit is used, the general aggregate limit shall apply separately to the project location (with the ISO CG 2503 or insurer's equivalent endorsement provided to the City).
- C. Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-

insured retentions as respects the City, its Board of Trustees, members of its Board of Trustees, officers, employees, agents and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- D. **CONSENT OF INSURER.** Partial occupancy or use in accordance with the Contract Documents shall not commence until the City's insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The City and the CONTRACTOR shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.
- E. **FIRE INSURANCE.** Before the commencement of the Work, the CONTRACTOR shall procure, maintain, and cause to be maintained at the CONTRACTOR's expense, fire insurance on all Work subject to loss or damage by fire and the entire structure on which the Work of this Contract is to be done to the insurable value thereof. The amount of fire insurance shall be subject to approval by the City and shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the City. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the City.
- F. **OTHER INSURANCE.** The CONTRACTOR shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.
- G. **COMPLIANCE.** In the event of the failure of any CONTRACTOR to furnish and maintain any insurance required by this Article, the CONTRACTOR shall be in default under the Contract. Compliance by CONTRACTOR with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the CONTRACTOR from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the City and the Engineer.
- H. **BUILDER'S RISK/ "ALL RISK" INSURANCE.** The Contractor, during the progress of the Work and until final acceptance of the Work by City upon completion of the entire Contract, shall maintain Builder's Risk/"All Risk," course-of-construction insurance satisfactory to City issued on a completed value basis on all outstanding projects and on all insurable Work included under the Contract Documents. Coverage is to provide extended coverage and insurance against vandalism, theft, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for the Engineer's services and expenses required as a result of such insured loss upon the entire Work which is the subject of the Contract Documents, including completed Work and Work in progress to the full insurable value thereof. Such insurance shall include the City and the Engineer as an additional named insured and any other person with an insurable interest designated.

5.3 PROOF OF CARRIAGE INSURANCE

- A. CONTRACTOR shall not commence Work nor shall it allow any Subcontractor to commence Work under this Agreement until all required insurance certificates and endorsements have been obtained and delivered in duplicate to and approved by the City.

Such insurance shall be with an insurance company with a minimum rating of "A/VII", as rated by the current edition of Best's Key Rating Guide, published by A.M. Best Co., Oldwick, New Jersey 08858 and admitted or qualified to do business in California.

- B. Certificates and insurance policies shall include the following:
1. A clause stating:
"This policy shall not be canceled or reduced in required limits of liability or amount of insurance until notice has been mailed to City stating date of cancellation or reduction. Date of cancellation or reduction may not be less than **30 days** after date of mailing notice."
 2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 3. Separate additional insured endorsement specifically naming the City as a named additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the City.
- C. In case of CONTRACTOR's failure to provide insurance as required by the Agreement, the City may, at the City's option, take out and maintain at the expense of the CONTRACTOR, such insurance in the name of CONTRACTOR, or Subcontractor, as the City may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which are due or to become due to the CONTRACTOR under this Agreement.
- D. The CONTRACTOR shall purchase and maintain the insurance required under this Article. Such insurance shall include the specific coverages set out herein and be written for not less than the limits of liability and coverages provided in this Article, or required by Laws or Regulations, whichever are greater. All insurance shall be maintained continuously during the life of the Agreement up to the date of Project Completion when all punch-list items have been completed. The CONTRACTOR's liabilities under this Agreement shall not be deemed limited in any way to the insurance coverage required.
1. CONTRACTOR shall have insurance in the following amounts:
 - a. Commercial general liability insurance with at least three million dollars (\$3,000,000) combined single limit coverage per occurrence for bodily injury and property damage; or, if a general aggregate limit is applicable, either: (i) the general aggregate limit shall specifically apply to the project identified in the bid specifications or to the location of such project which is the subject of these bid specifications with coverage to be no less than three million dollars (\$3,000,000), or (ii) the general aggregate shall be at least three million dollars (\$3,000,000) combined single limit coverage per occurrence for bodily injury and property damage; and
 - b. Automobile liability insurance of three million dollars (\$3,000,000) combined single limit per accident for bodily injury and property damage; and
 - c. Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended.
 2. Each insurance policy required above, except for workers' compensation, shall name the City specifically and separately as an additional insured under the policy on a separate ISO CG 2010 endorsement or equivalent, to the satisfaction of the

City Attorney. The company providing insurance must provide at least **30 days** written notice of cancellation or termination, if such cancellation or termination of the policy is to occur prior to the indicated expiration date on the face of the certificate. General and auto liability insurance coverage must be provided by a Best's 'A' rated, Class VII carrier, admitted in California, and shall be in form satisfactory to the City Attorney. Insurance companies that are not admitted in California must be on the list of approved Non-Admitted Insurers able to write in the state of California and must additionally provide a service of suit endorsement. All insurance requirements must be in a form satisfactory to the City Attorney. Failure to comply with insurance requirements under this Agreement or failure to have completed insurance documents on file within **15 working days** after CONTRACTOR executes this Agreement shall be a material breach of this Agreement.

3. Workers' Compensation and Employer's Liability In accordance with the provisions of Section 3700 of the California Labor Code, the CONTRACTOR and every Subcontractor shall be required to secure the payment of compensation to its employees. The CONTRACTOR shall provide, during the life of the Agreement, workers' compensation insurance for all of its employees engaged in Work under this Agreement, on or at the site of the Project, and, in case any of its Work is sublet, the CONTRACTOR shall require the Subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the CONTRACTOR's insurance. In case any class of employees engaged in Work under this Agreement, on or at the site of the Project, is not protected under the workers' compensation statute, the CONTRACTOR shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected before the Subcontractor commences Work. The CONTRACTOR shall file with the City certificates of its insurance protecting workers and a **30 day** notice shall be provided to the City before the cancellation or reduction of any policy of CONTRACTOR or Subcontractor. The CONTRACTOR and each Subcontractor shall provide a waiver of subrogation in favor of the City and Engineer.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

None of the following responsibilities, as between City and CONTRACTOR, shall be delegated by CONTRACTOR to another individual or entity.

6.1 COMMUNICATIONS.

- A. Written communications shall be directly to the City, however, the City reserves the right to direct the CONTRACTOR to communicate directly with a construction manager or other consultant, and to copy the City with correspondence.
- B. Notice to Surrounding Properties. CONTRACTOR must provide Notice of Construction to all property owners and businesses at least 3 days before commencement of such work. A sample form notice is found in the Proposed Contract Documents, at page A-00670-1.

- 6.2 INDEPENDENT CONTRACTOR. CONTRACTOR is and shall at all times be deemed to be an independent CONTRACTOR and shall be wholly responsible for the manner in which it performs the services required of it by the terms of the Project Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the City and CONTRACTOR or any of CONTRACTOR's subcontractors (of

every tier), suppliers, agents or employees. CONTRACTOR assumes exclusively the responsibility for the acts of its subcontractors (of every tier), suppliers, agents, and employees as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its subcontractors (of every tier), suppliers, agents and employees shall not be entitled to any rights or privileges of City employees and shall not be considered in any manner to be City employees. The City shall be permitted to monitor all the activities of the CONTRACTOR to determine compliance with the terms of the Project Documents.

- 6.3 CONTRACTOR LICENSE. CONTRACTORS are required by law to be licensed and regulated by the Contractors' State License Board. Any CONTRACTOR not so licensed is subject to penalties under the law, and the contract will be considered void pursuant to Section 7028.7 of the Business and Professions Code. Any questions concerning a CONTRACTOR may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, P.O. Box 2600, Sacramento, CA 95826. CONTRACTOR shall be duly licensed at all times during performance. Substantial compliance shall not be sufficient.
- 6.4 CONTRACTOR REGISTRATION: CONTRACTOR, as well as any subcontractors, shall be registered pursuant to Cal. Lab. Code § 1725.5 to be qualified to bid on, be listed in a bid proposal, (subject to the requirements of Section 4104 of the Public Contract Code) or engage in the performance of any public work contract that is subject to the requirements of Chapter 1, Part 7, Division 2 of the California Labor Code.
- 6.5 CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY. Before CONTRACTOR makes any change in the name or legal nature of the CONTRACTOR's entity, CONTRACTOR shall first notify the City in writing and cooperate with the City in making such changes as the City may request in the Project Documents.
- 6.6 CONTRACTOR SUPERINTENDENT. During progress of the Work, CONTRACTOR shall keep on the Work site a competent, English-speaking Superintendent satisfactory to the City. Before commencing the Work herein, CONTRACTOR shall give written notice to the City of the name, qualifications and experience of such Superintendent. If, at any time, the Superintendent is found unsatisfactory by the City, CONTRACTOR shall replace the Superintendent with one acceptable to the City. Superintendent shall not be changed or removed from the project except with written consent of the City, unless a Superintendent proves to be unsatisfactory to CONTRACTOR and ceases to be in its employ, in which case, CONTRACTOR shall notify the City in writing and replace said Superintendent with one acceptable to the City. Superintendent shall represent CONTRACTOR and all directions given to Superintendent shall be as binding as if given to CONTRACTOR. During planned absences longer than one Workday (e.g. vacation), CONTRACTOR shall, at least **ten (10) days** prior, provide written notice to the City the name of the individual proposed to assume the responsibilities of Superintendent during his/her absence.
- 6.7 CONTRACTOR SUPERVISION. Without a right to claim additional reimbursement, CONTRACTOR shall staff the project with a sufficient number of experienced, skilled and knowledgeable personnel to meet the needs (both administrative and supervisory) of the Project, and shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the Work in accordance with the Project Documents. CONTRACTOR shall carefully study and compare all plans, drawings, specifications, and other instructions and shall at once report to the City any error, inconsistency or omission which CONTRACTOR or its employees may discover. The CONTRACTOR represents itself to the City as a skilled, knowledgeable, and experienced CONTRACTOR. The CONTRACTOR shall carefully study and compare the Project Documents with each other, and shall at once report to the City any errors, inconsistencies, or omissions discovered. The CONTRACTOR shall be liable to the City for damage resulting from errors, inconsistencies, or omissions in the Project Documents that the CONTRACTOR recognized and which CONTRACTOR knowingly failed to

report and which a similarly skilled, knowledgeable, and experienced CONTRACTOR would have discovered.

- 6.8 **FIELD MEASUREMENTS, LAYOUT, RECORD DRAWINGS AND FIELD ENGINEERING.** The CONTRACTOR shall verify all indicated dimensions at its expense before ordering materials or equipment, or before performing Work. The CONTRACTOR shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the CONTRACTOR with the Project Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be reported to the City at once. Upon commencement of any item of Work, the CONTRACTOR shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make Work properly fit at no additional cost to the City. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to Subcontractors or agents. The CONTRACTOR shall keep up-to-date record drawings of this project through the course of the project. The City shall approve these record drawings periodically, and the release of progress payments may be delayed if the record drawings are not kept up to date. After the project punch- list has been completed, the CONTRACTOR shall supply a single clean set of accurate blue-line (as-built) plans to the City. Failure to submit these as-builts will delay the Final Notice of Completion and final payment.
- 6.9 **DETAILS OF THE WORK.** Omissions from the plans, drawings or specifications, or the mis-description of customary and usual details of Work which are manifestly necessary to carry out the intent of the plans, drawings and specifications, or which are customarily performed, shall not relieve the CONTRACTOR from performing such omitted or mis-described Work, but they shall be performed as if fully and correctly set forth and described in the plans, drawings and specifications.
- 6.10 **MEANS AND METHODS.** The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Project Documents. The CONTRACTOR shall be solely responsible for all safety precautions and programs incidental thereto.
- 6.11 **SUBCONTRACTORS**
- A. CONTRACTOR agrees to bind every Subcontractor by terms of the Project Documents as far as such terms are applicable to Subcontractor's Work. If CONTRACTOR shall subcontract any part of the Work, CONTRACTOR shall be as fully responsible to the City for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in Project Documents shall create any contractual relation between any Subcontractor and the City, nor shall the Contract Documents be construed to be for the benefit of any Subcontractor.
- B. The City's consent to any Subcontractor shall not in any way relieve CONTRACTOR of any obligations under the Project Documents and no such consent shall be deemed to waive any provision of any Project Document.
- C. CONTRACTOR must submit with its bid a Designation of Subcontractors pursuant to the Subletting and Subcontracting Fair Practices Act. If CONTRACTOR specifies more than one Subcontractor for the same portion of Work or fails to specify a Subcontractor, and such portion of the Work exceeds one-half of one percent of the total bid, CONTRACTOR agrees that it is fully qualified to perform and shall perform such Work itself, unless CONTRACTOR provides for substitution or addition of Subcontractors. Substitution or addition of Subcontractors shall be permitted only as authorized under the

Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100, et seq.

- D. In accordance with California Business and Professions Code Section 7059, if CONTRACTOR is designated as a "specialty CONTRACTOR" (as defined in Section 7058 of the Business and Professions Code), all of the Work to be performed outside of the CONTRACTOR's license specialty shall be performed by a licensed Subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100, et seq.
- E. INELIGIBLE SUBCONTRACTOR. Pursuant to Public Contract Code Section 6109, no CONTRACTOR may perform Work on a public works project with a subcontractor who is ineligible to perform Work on the project pursuant to sections 1777.1 or 1777.7 of the Labor Code.
- F. A copy of each subcontract, if in writing, or, if not in writing, then a written statement signed by the CONTRACTOR giving the name of the Subcontractor and the terms and conditions of such subcontract, shall be filed with the City before the Subcontractor begins Work. Each subcontract shall contain an express reference to and incorporate the Agreement between the City and the CONTRACTOR and the terms of that Agreement and all parts of the Project Documents shall be made a part of such subcontract insofar as applicable to the Work covered thereby. Each subcontract will provide for termination in accordance with the Article entitled City's RIGHT TO TERMINATE AGREEMENT of these General Conditions. Each subcontract shall provide for its annulment by the CONTRACTOR at the order of the City if in the City's opinion the Subcontractor fails to comply with the requirements of the Project Documents insofar as the same may be applicable to this Work. Nothing herein contained shall relieve the CONTRACTOR of any liability or obligation hereunder.

6.12 DUTY TO PROVIDE FIT WORKERS

- A. CONTRACTOR and Subcontractors shall at all times enforce strict discipline and good order among their employees and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned to such person. It shall be the responsibility of CONTRACTOR to ensure compliance with this Article.
- B. Any person in the employ of the CONTRACTOR or Subcontractors whom the City or Engineer may deem incompetent, unfit, troublesome or otherwise undesirable shall be excluded from the Work site and shall not again be employed on it except with the written consent of the City.

6.13 OVERTIME.

- A. Except as otherwise provided in this Article, the CONTRACTOR shall receive no additional compensation for overtime Work, i.e., Work in excess of **8 hours** in any **1 calendar day** or **40 hours** in any **1 calendar week**, even though such overtime Work may be required under emergency conditions and may be ordered by the City in writing. Additional compensation will be paid to the CONTRACTOR for overtime Work only in the event extra Work is ordered by the City and the Change Order specifically authorizes the use of overtime Work and then only to such extent as overtime wages are regularly being paid by the CONTRACTOR for overtime Work of a similar nature in the same locality.
- B. All increased or additional costs of inspection and/or testing, performed by or on behalf of the City, during overtime Work by the CONTRACTOR which is allowed solely for the convenience of the CONTRACTOR shall be borne by the CONTRACTOR. The City

has the authority to deduct the costs of all such inspection and testing from any partial payments otherwise due to the CONTRACTOR. Payment for inspection overtime beyond a normal Workday (9 hours), Saturdays, Sundays or Union observed holidays will be deducted from the CONTRACTOR's payment at the rate of One Hundred Twelve Dollars and Fifty Cents (\$112.50) per hour (one hour minimum) pursuant to City of Escondido Resolution No. 2007-115(RR).

6.14 MATERIALS AND WORK

- A. Except as otherwise specifically stated in this Agreement, CONTRACTOR shall provide and pay for all materials, supplies, tools, equipment, labor, transportation, administration, management, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete the Project within the specified time.
- B. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified free from defects, and workmanship shall be of excellent quality.
- C. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of Work and shall be stored properly and protected as required.
- D. CONTRACTOR shall, after issuance of the Notice to Proceed by the City, place orders for materials and/or equipment as specified so that delivery may be made without delays to the Work. CONTRACTOR shall, upon demand by the City, furnish to the City documentary evidence showing that orders have been placed.
- E. The City reserves the right, due to any neglect in not complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed by the date specified in the Agreement, and all expenses incidental to the procuring of these materials and/or equipment shall be paid for by the CONTRACTOR.
- F. No materials, supplies, or equipment for Work under this Agreement shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. CONTRACTOR warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all Work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by it, to the City free from any claims, liens, or charges. CONTRACTOR further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work covered by this Agreement shall have any right to any lien upon the premises or any improvement or appurtenance thereon, except that CONTRACTOR may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by the utility company or political subdivision. In the event of installation of any such metering device or equipment, CONTRACTOR shall advise the City as to the owner thereof.
- G. Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by CONTRACTOR for their protection or any rights under any law permitting such persons to look to funds due CONTRACTOR in the hand of the City, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all

persons furnishing materials or labor when no formal contract is entered into for such materials or labor.

- H. Materials and/or equipment and the attendant liability for its protection and safety shall remain with the CONTRACTOR until incorporated in the Work and accepted by the City, no part of the materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work; and CONTRACTOR shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to the City or its authorized representative.

6.15 ACCESS TO CONTRACTOR'S RECORDS. The CONTRACTOR agrees that the City (including the City's designees) have the right to access, review, obtain and copy upon reasonable written notice (which shall be no greater than **3 working days**), all Records pertaining to the Agreement and/or the Project, including the bid. The CONTRACTOR agrees to provide the City with any relevant information requested and shall permit the State or the City access to its premises upon reasonable notice for purposes of interviewing employees and inspecting Records. The CONTRACTOR agrees to maintain such Records for a period of **3 years** after final payment under the contract. Should the project be funded by the State Revolving Fund, the CONTRACTOR shall maintain records for **20 years**.

6.16 CONTRACTOR SUBSTITUTION OF "OR EQUAL" ITEMS

- A. CONTRACTOR shall follow all instructions and requirements set forth in the "INSTRUCTIONS TO BIDDERS", for compliance with this Article.
- B. Whenever in specifications any materials, process, service or equipment is indicated or specified by brand name, trade name, proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of material, process, service or equipment desired and shall be deemed to be followed by the words "or equal", CONTRACTOR may, unless otherwise stated, offer any material, process, service, or equipment which shall be substantially equal or better in every respect to that so indicated or specified subject to the City's approval.
- C. If material, process, service, or equipment offered by CONTRACTOR is not, in the City's sole discretion determined to be, equal or better in every respect to that specified, then CONTRACTOR shall furnish the material, process, service, or equipment specified. The burden of proof as to equality of any material, process, service, or equipment shall rest with CONTRACTOR. This provision authorizing submission of "or equal" substantiating data shall not in any way authorize an extension of time for performance of this Agreement.
- D. "Or equal" and substitution requests with substantiating data shall be submitted for consideration no later than **14** calendar days prior to bid opening.
- E. The City may choose to allow an "or equal" substitution, if the City determines, in its sole discretion, that the requested substitution is an equal product, and that there is a cost savings resulting in a deductive change order, an increase in the performance with the substituted product, or any other reason deemed by the City to be in the City's best interest to allow the substitution.
- F. If a CONTRACTOR initiated material substitution occurs after the Award of Contract, CONTRACTOR must establish that the specified material is no longer being manufactured or available, that the substituted material is the best possible material

substitution for that which is no longer available, or that there is some other benefit to the City in approving said substitution.

- G. If the City allows the substitution anytime after the Award of Contract, the CONTRACTOR will be responsible for reasonable fees incurred by the Engineer or Engineer's consultants in reviewing the proposed substitution which fees may be deducted from progress payments to CONTRACTOR.
- H. In the event CONTRACTOR furnishes material, process, service, or equipment more expensive than that specified, any difference in cost of such material, process, service, or equipment so furnished shall be borne by CONTRACTOR. Any engineering, design fees, or approval agencies' fees required to make adjustments in material or Work of all trades directly or indirectly affected by the approved substituted items shall be borne entirely by CONTRACTOR. Any difference in cost between an approved substitution that is lower in cost than the originally specified item shall be refunded by CONTRACTOR to the City.
- I. All costs associated with and caused by a CONTRACTOR's "or equal" submittal, including any consequential design changes needed to accommodate the "or equal", and any delay caused to the project schedule resulting from the review of the requested "or equal" submittal shall be borne by the CONTRACTOR.

6.17 PERMITS

- A. Unless otherwise provided in the Supplementary General Conditions, the CONTRACTOR shall obtain and pay for all construction permits and licenses from the agencies having jurisdiction, including the furnishing of insurance and bonds if required by such agencies. The enforcement of such requirements shall not be made the basis for claims for additional compensation by CONTRACTOR. When necessary, the City will assist the CONTRACTOR, in obtaining such permits and licenses. The CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids. The CONTRACTOR shall pay all charges of utility owners for inspection or connections to the Work. Compensation for all permit fees is included in the Lump Sum payment for Mobilization.
- B. The CONTRACTOR shall indemnify, defend and hold harmless the City and its officers, employees and agents from any and all liability arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01), and updates, of the California Regional Water Quality Control Board Region 9, San Diego, which the City might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by performance of the Work.
- C. Prior to beginning Work, the CONTRACTOR shall obtain a no-fee Encroachment Permit from the office of the City of Escondido Field Engineer, 201 N. Broadway, unless otherwise specified in the Supplemental General Conditions. CONTRACTOR shall adhere to all requirements and provisions of said Encroachment Permit as though fully set forth herein.
- D. The CONTRACTOR shall be responsible for complying with the requirements of all permits acquired by the City.

Except for the permits specifically set forth in 'A' above, the CONTRACTOR shall acquire all permits required by Laws or Regulations, including, without limitation, the following specific permits (if applicable):

1. State permits to construct and/or operate sources of air pollution.
2. Certificates and permits are required for sources such as, but not limited to:
 - a. Fuel burning equipment
 - b. Gasoline and petroleum distillate storage containers
 - c. Land disturbing activities
 - d. Processing equipment (sand, gravel, concrete batch plant, etc.)
 - e. Odors
3. Stormwater Permit.
4. Permit-Required Confined Space

The workplace in which the Work is to be performed may contain permit-required confined spaces (permit spaces) as defined in 29 CFR 1910.146 and, if so, permit space entry is allowed only through compliance with a confined space entry program meeting the requirements of 29 CFR 1910.146.

5. Others as required in the Supplementary General Conditions.

6.18 PATENT FEES AND ROYALTIES. The CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the City or the Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed by the City in the Contract Documents. The CONTRACTOR's indemnification obligation under this Article, for all claims and liabilities arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents shall be in accordance with Article 6.16 of these General Conditions.

6.19 LAWS AND REGULATIONS. The CONTRACTOR shall observe and comply with all Laws and Regulations which in any manner affect those engaged or employed on the Work, the materials used in the Work, or the conduct of the Work. If any discrepancy or inconsistency should be discovered between the Contract Documents and any such Laws or Regulations, the CONTRACTOR shall report the same in writing to the Engineer. Any particular Law or Regulation specified or referred to elsewhere in the Contract Documents shall not in any way limit the obligation of the CONTRACTOR to comply with all other provisions of federal, state, and local laws and regulations. The CONTRACTOR's indemnification obligations for all claims or liability arising from violation of any such law, ordinance, code, order, or regulation, whether by CONTRACTOR or by its employees, Subcontractors or Suppliers shall be in accordance with Article 6.16 of these General Conditions.

6.20 TAXES. The CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by the CONTRACTOR in accordance with the laws and regulations of the place of the Project which are applicable during the performance of the Work.

6.21 USE OF PREMISES. The CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site, the land and areas identified in and permitted by the Contract Documents, and the other land and areas permitted by Laws and

Regulations, rights-of-way, permits, and easements. The CONTRACTOR shall assume full liability and responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the City or the Engineer by any such owner or occupant because of the performance of the Work, the CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim through litigation at the CONTRACTOR's sole liability any expense. The CONTRACTOR's indemnification obligations for all claims and liability, arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any such owner or occupant against the City, the Engineer, their consultants, subconsultants, and the officers, directors, employees and agents of each and any of them to the extent caused by or based upon the CONTRACTOR's performance of the Work shall be in accordance with Article 6.25 of these General Conditions.

6.22 SAFETY AND PROTECTION

- A. The CONTRACTOR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. All persons at the Site and other persons and organizations who may be affected thereby;
 2. All the Work materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, mailboxes, and utilities not designated for removal, relocation, or replacement in the course of the performance of the Work.
- B. The CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property or to the protection of persons or property from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and in accordance with Article 14.11. that the Work is acceptable.
- C. During the entire construction period, it shall be the responsibility of the contractor to maintain conditions at the project location so as to meet in all aspects the requirements of the California Code of Regulations, Title 8, Industrial Relations, Chapter 4, Division of Industrial Safety Orders CAL/OSHA. This provision shall cover the CONTRACTOR's employees and all other persons working upon or visiting the project location. To this end, the Contractor shall inform himself and his representatives of CAL/OSHA standards.
- D. The CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. MSDS. Materials that contain hazardous substances or mixtures may be required on the Work. A Material Safety Data Sheet (MSDS.) shall be made available at the Site by the CONTRACTOR for every hazardous product used. Material usage shall strictly conform to OSHA safety requirements and all manufacturer's warnings and application instructions

listed on the MSDS and on the product container label. The CONTRACTOR shall be responsible for the exchange of every MSDS or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

- F. The CONTRACTOR shall notify the City if it considers a specified product or its intended use to be unsafe. This notification must be given to the City prior to the product being ordered, or if provided by some other party, prior to the product being incorporated in the Work.
 - G. **CONFINED SPACES.** The CONTRACTOR will not enter any confined space without using a Confined Space Entry Permit. The CONTRACTOR shall be responsible for implementing, administering and maintaining a confined space entry program (CSEP) in accordance with Sections 5156, 5157 and 5158, Title 8, CCR.
 - H. The CONTRACTOR shall provide a **COMPETENT PERSON** for all excavation operations.
- 6.23 **EMERGENCIES.** In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR, without special instruction or authorization from the City or Engineer, is obligated to immediately act to prevent threatened damage, injury, or loss. CONTRACTOR shall give City prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If City determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Order will be issued to document the action.
- 6.24 **SUBMITTALS.** The City requires submittals for all materials, equipment, parts and systems.
- A. **SHOP DRAWINGS**
 - 1. The City may designate a consultant to receive and review submittals and may require the CONTRACTOR to transmit the submittals to that consultant. Commensurate with the requirements of the project schedule, the CONTRACTOR shall check and verify all field measurements and shall submit to the City six (6) copies, checked, coordinated and approved by CONTRACTOR, of all shop or setting list drawings, schedules, and materials list required for the Work of various trades: If this project consists of any remodel / modernization Work, field dimensions require verification prior to the preparation of the Shop Drawings. The City shall review such drawings, schedules and materials list only for conformance with the design concept of Project and compliance with information given in Project Documents, and return with notations and with guidance as to required corrections within **30 days**. CONTRACTOR shall make any corrections required by the City, file three (3) corrected copies with the City, and furnish such other copies as may be needed for construction within **30 days**. The City's approval of such drawings, schedules, or materials list shall not relieve CONTRACTOR from responsibility for deviations unless CONTRACTOR has in writing called the City's attention to such deviations at time of submission by clearly writing the phrase "**DEVIATION REQUEST**" in bold type at the head of the submittal, and secured the City's written approval, nor shall it relieve CONTRACTOR from responsibility for errors in shop drawings or schedules.

2. The City is entitled to additional review time. The additional review time may be required to review complex and difficult submittals, including but not limited to structural steel shop drawings, mechanical equipment, electrical equipment, and special system components and parts. The CONTRACTOR shall breakout critical submittals into separate packages so as to expedite the review process of an individual item. The coordination of the overall submittal packages shall be the responsibility of the CONTRACTOR.
3. Shop Drawings requiring "**Deferred Approval**" require a substantial amount of time for City review and approval. The Project Documents will identify those shop drawings requiring Deferred Approval, if any. The Contractor shall apply its skill and knowledge to expedite the Deferred Approval(s) from preparation to approval. The Contractor shall schedule the project activities to avoid critical path delays as a result of the Deferred Approval process. Notwithstanding anything to the contrary herein, the CONTRACTOR shall make submittals of all Deferred Approvals to the City within **120 days** of the Award of Contract. The City shall review such Deferred Approval submittal, and shall return as approved or disapproved with guidance as to the required corrections within **60 days**. If resubmittals are required, the City shall endeavor to review and return the resubmittal within **60 days**. CONTRACTOR shall allow sufficient time in its scheduling for corrections and resubmittals of Deferred Approval items in conformance with these requirements.
4. All submittals of shop drawings, catalog cuts, data sheets, schedules and material lists shall be complete and shall conform to contract drawings and specifications. The CONTRACTOR shall prepare layout and coordination drawings to demonstrate the accuracy and fit of the materials and Work.
5. The term "shop drawing" as used herein shall be understood to include, but not be limited to, coordination efforts by CONTRACTOR involving detail design calculations for the development of the Shop Drawing, fabrication and installation drawings, lists, graphs and operating instructions.
6. Shop drawings shall be submitted at a time sufficiently early to accommodate the rate of construction progress required under the Project Documents. CONTRACTOR will be required to pay the City or its consultant's reasonable and customary fees in order to expedite review of Shop Drawings which are not submitted in a timely fashion.
7. All submittals shall be accompanied by an accurately completed transmittal form using the format bound herein, or as approved by the City. Any shop drawing submittal not accompanied by such a form, or where all applicable items on the form are not completed, will be returned for resubmittal. The CONTRACTOR may authorize a material or equipment supplier to deal directly with the City with regard to Shop Drawings. However, ultimate responsibility for the accuracy and completeness of the information contained in the submittal shall remain with the CONTRACTOR.
8. Normally, a separate transmittal form shall be used for each specific item, scheduled activity task, or class of material or equipment for which a submittal is required. However, due to the critical nature of a submittal, a submittal can be broken into separate sub-submittals in order to obtain the review of a more

critical portion(s) of a submittal prior to the review of other sub-submittals. The transmittal form shall include the CPM Activity / Submittal Task Number, Early Start (ES), Early Finish (EF), Late Finish (LF) and the float for the activity. Transmittal of shop drawings on various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency indicates review of the group or package as a whole.

9. CONTRACTOR's review and approval of Shop Drawings and submittals shall include the following stamp:

"The CONTRACTOR has reviewed and approved not only the field dimensions but the construction criteria and has also made written notation regarding any information in the Shop Drawings or submittal that does not conform to the Project Documents. This Shop Drawing or submittal has been coordinated with all other shop drawings and submittals received to date by CONTRACTOR and this duty of coordination has not been delegated to Subcontractors, material suppliers, the Engineer, or the architects on this project. The Contractor also indicates that it has not relied upon the dimensions shown on the drawings, specifications and schedules, and that the Contractor has double-checked all dimensions for accuracy and fit.

Signature of CONTRACTOR"

10. Within **30 days** after receipt of Shop Drawings, the City will endeavor to return one or more prints of each drawing to CONTRACTOR with City's comments noted thereon. The CONTRACTOR shall make a complete and acceptable submittal to the City by the second submission of drawings. The City shall withhold funds due the CONTRACTOR to cover additional costs of the City's review beyond the second submission and any other costs incurred by the City.
11. If prints of the shop drawing are returned to the CONTRACTOR marked "**NO EXCEPTIONS TAKEN,**" formal revision of said drawing will not be required. If prints of the drawing are returned to the CONTRACTOR marked "**MAKE CORRECTIONS NOTED,**" formal resubmittal of said drawings will not be required. If prints of the drawing are returned to the CONTRACTOR marked "**REVISE AND RESUBMIT,**" the CONTRACTOR shall revise said drawing and shall resubmit six (6) copies of the revised drawing to the City. If prints of the drawing are returned to the CONTRACTOR marked "**REJECTED RESUBMIT,**" the CONTRACTOR shall resubmit six (6) new copies of the drawing to the ARCHITECT. Submittals being resubmitted for revisions or submitted due to previous rejection, the CONTRACTOR shall provide a written response indicating the nature of the correction(s) and/or cloud the revised item(s).
12. Fabrication of an item shall not be commenced before the City has reviewed the pertinent Shop Drawings and returned copies to the CONTRACTOR marked with "NO EXCEPTIONS TAKEN," or "MAKE CORRECTIONS NOTED." Revisions indicated on shop drawings shall be considered as changes necessary to meet the requirements of the Project Documents and shall not be taken as the

basis of claims for extra Work. The review of such drawings by the City will be limited to checking for general agreement with the Project Documents, and shall in no way relieve the CONTRACTOR of responsibility for errors or omissions contained therein, nor shall such review operate to waive or modify any provision contained in the Project Documents. Fabricating dimensions, quantities of material, applicable code requirements, and other contract requirements shall be the CONTRACTOR's responsibility.

13. No Work represented by required Shop Drawings shall be purchased or commenced until the applicable submittal has been approved. The Work shall conform to the approved Shop Drawings and all other requirements of the Project Documents. The CONTRACTOR shall not proceed with any related Work which may be affected by the Work covered under Shop Drawings until the applicable Shop Drawings have been approved, particularly where piping, machinery, and equipment and the required arrangements and clearances are involved.
14. Except where the preparation of a Shop Drawing is dependent upon the approval of a prior shop drawing, all shop drawings pertaining to the same class or portion of the Work shall be submitted simultaneously.
15. THE CONTRACTOR SHALL HAVE NO CLAIM FOR DAMAGES OR EXTENSION OF TIME DUE TO ANY DELAY RESULTING FROM THE CONTRACTOR HAVING TO MAKE THE REQUIRED REVISIONS TO SHOP DRAWINGS UNLESS REVIEW BY THE CITY IS DELAYED BEYOND THE TIME PROVIDED HEREIN AND THE CONTRACTOR CAN ESTABLISH THAT IT BEARS NO RESPONSIBILITY FOR CAUSING AND/OR CONTRIBUTING TO THE DELAY AND THAT THE CITY'S DELAY IN REVIEW ACTUALLY RESULTED IN A DELAY TO THE CRITICAL PATH IN THE CONTRACTOR CONSTRUCTION SCHEDULE.

B. PAYROLL SUBMITTALS

1. Copies of all payrolls shall be submitted weekly to the City. Payrolls shall contain the full name, address and social security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which that name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or the employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Contract. The CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors. The CONTRACTOR shall ensure that the payrolls match the Daily Work Reports. The CONTRACTOR shall certify that no Work was done on the job if no Work was done on the job.
2. If by the 15th of the month, the CONTRACTOR has not submitted satisfactory payrolls for all Work performed during the monthly period ending on or before the 1st of that month, the City will retain an amount equal to ten percent (10%) of the estimated value of the Work performed (exclusive of Mobilization) during the month from the next monthly estimate, except that this retention shall not exceed \$10,000 nor be less than \$1,000. Retentions for failure to submit

satisfactory payrolls shall be additional to all other retentions provided for in the Contract. The retention for failure to submit payrolls for any monthly period will be released for payment on the monthly estimate for partial payments next following the date that all the satisfactory payrolls for which the retention was made are submitted.

3. The CONTRACTOR shall also submit a second copy of all certified payrolls with all personal information fully redacted. The CONTRACTOR and each subcontractor shall preserve their payroll records for a period of **3 years** from the date of completion of the Contract. The form of the certification shall be as follows:

I, _____ (print name), the undersigned,
am _____ (position in business) with the authority to act
for and on behalf of

(Name of business and/or CONTRACTOR), certify under penalty of
perjury that the records or copies thereof submitted and consisting of
_____ (description,
number of pages) are the originals or true, full and correct copies of the
originals which depict the payroll record(s) of the actual disbursements
by way of cash, check, or whatever form to the individual or individuals
named.

Dated: _____

Signature: _____

- C. **SUBMITTAL OF HOME OFFICE OVERHEAD.** CONTRACTOR shall furnish within **7 days** after the Notice to Proceed, a certified statement and detailed calculation from its accountant establishing the job site and pro rata home office overhead rates for CONTRACTOR and major Subcontractors, as determined by the City. Such shall be updated quarterly and filed with the City.
- D. **SUBMITTAL OF HOURLY RATES.** CONTRACTOR shall furnish within **7 days** after the Notice to Proceed, a complete listing of CONTRACTORS and Subcontractors hourly labor rates, indicating the direct hourly wage rate, payroll taxes and insurance costs.
- E. **ESCROW BID DOCUMENTS.** The Escrow Bid Documents shall be submitted by the CONTRACTOR in a sealed container(s) within **10 days** after the day of award of the contract. The container shall be clearly marked on the outside with the CONTRACTOR's name, date of submittal, project name and the words "Escrow Bid Documents."
- F. **SWPPP/BMP.** CONTRACTOR shall submit the required Storm Water Pollution Prevention Plan or Best Management Practices, before commencement of any Work.

6.25 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

- A. CONTRACTOR warrants that the Work (which includes all equipment furnished by CONTRACTOR as part of the materials) shall:
 1. Be free from defects in workmanship, integration and material; be free from defects in any design performed by CONTRACTOR;

2. Be new, and conform and perform to the requirements stated in the specifications and where detail requirements are not so stated, shall conform to applicable industry standards; and
 3. Be suitable for the use stated in the specifications.
- B. The warranty period for discovery of defective Work shall commence on the date stamped on the Notice of Completion verifying County recordation and continue for the period set forth in the specifications or for **1 year** if not so specified. If, during the warranty period, the Work is not available for use due to defective Work, such time of unavailability shall not be counted as part of the warranty period. The warranty period for corrected defective Work shall continue for a duration equivalent to the original warranty period.
- C. The City shall give CONTRACTOR prompt written notice after discovery of any defective or incomplete Work. CONTRACTOR shall correct any such defective or incomplete Work, as well as any damage to any other part of the Work resulting from such defective or incomplete Work, and shall provide repair, replacement, or reimbursement, at its sole expense, in a manner approved by the City and with due diligence and dispatch as required to make the Work ready for use by the City, ordinary wear and tear, unusual abuse or neglect excepted. Such corrections shall include, but not be limited to, any necessary adjustments, modifications, changes of design (unless of City's design), removal, repair, replacement or reinstallation, and shall include all necessary parts, materials, tools, equipment, transportation charges and labor as may be necessary, and cost of removal and replacement of Work shall be performed at a time and in such a manner so as to minimize the disruption to the City's use of the Work.
- D. In the event of failure of CONTRACTOR or Surety to commence and pursue with diligence any such repairs or replacements within **10 days** after being notified in writing, the City is hereby authorized to proceed to have defects repaired or replaced and made good at the expense of the CONTRACTOR and the Surety who hereby agree to pay any costs and charges therefore immediately on demand.
- E. If, in the opinion of the City, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the City or to prevent interruption of operations of the City, the City will attempt to give the written notice required by this Article. If the CONTRACTOR or Surety cannot be contacted or neither complies with the City's requirements for correction within a reasonable time as determined by the City, the City may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the CONTRACTOR and Surety. Such action by the City will not relieve the CONTRACTOR and Surety of the guarantees provided in this Article or elsewhere in the Project Documents.
- F. This Article does not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. CONTRACTOR shall furnish to City all appropriate guarantee or warranty certificates upon completion of the Project or upon request by the City.
- G. All guarantees required under this Article shall be in writing on a Guarantee form approved by the City.
- H. CONTRACTOR shall provide to the City instruction manuals for all items which require same.

- I. Nothing herein shall limit any other rights or remedies available to the City, and any and all written/express guarantees are in addition to rights provided under California law, including the rights granted under Code of Civil Procedure sections 337.1 and 337.15.
- J. CONTRACTOR warrants and guarantees that all Work will be in accordance with the Project Documents and will not be defective. The CONTRACTOR shall guarantee all parts of the Work against defective materials or workmanship furnished by the CONTRACTOR for a period of **1 year** from the date of final acceptance by the City.

6.26 INDEMNIFICATION

- A. To the fullest extent permitted by Laws and Regulations, the CONTRACTOR shall indemnify, defend, and hold harmless the City, the Engineer, their consultants, subconsultants, and the officers, directors, employees, and agents of each and any of them, against and from all claims and liability arising under, by reason of, related, or incidental to the Project Documents or any performance of the Work, but not from the sole negligence or willful misconduct of the City and/ or the Engineer. Such indemnification by the CONTRACTOR shall include, but not be limited to, the following:
 - 1. CONTRACTOR shall indemnify, defend, and hold harmless the City and its officers, employees and agents, from all liability or claim of liability arising by reason of injury or damage to persons (including death) and/or property (both tangible and intangible) occurring as a result of Work done pursuant to the terms of this Agreement, and name same as coinsured in any policy in the Contract Documents;
 - 2. CONTRACTOR shall further indemnify, defend and hold harmless the City and its officers, employees and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit, and updates, of the California Regional Water Quality Control Board Region 9, San Diego, which the City might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by work performed by CONTRACTOR.
 - 3. Liability or claims resulting directly or indirectly from the negligence or carelessness of the CONTRACTOR, its employees, or agents in the performance of the Work, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the CONTRACTOR, its employees, or agents;
 - 4. Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of the CONTRACTOR's, Subcontractor's, or Supplier's own employees, or agents engaged in the Work resulting in actions brought by or on behalf of such employees against the City and/ or the Engineer;
 - 5. Liability or claims arising directly or indirectly from or based on the violation of any Laws or Regulations, whether by the CONTRACTOR, its employees, or agents;

6. Liability or claims arising directly or indirectly from the use or manufacture by the CONTRACTOR, its employees, or agents in the performance of this Agreement of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance, unless otherwise specifically stipulated in this Agreement;
 7. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the City and/or Engineer or any other parties by the CONTRACTOR, its employees, or agents;
 8. Liability or claims arising directly or indirectly from the willful misconduct of the CONTRACTOR, its employees, or agents;
 9. Liability or claims arising directly or indirectly from any breach of the obligations assumed in this Agreement by the CONTRACTOR;
 10. Liability or claims arising directly or indirectly from, relating to, or resulting from a hazardous condition created by the CONTRACTOR, Subcontractors, Suppliers, or any of their employees or agents, and;
 11. Liability or claims arising directly, or indirectly, or consequentially out of any action, legal or equitable, brought against the City, the Engineer, their consultants, subconsultants, and the officers, directors, employees and agents of each or any of them, to the extent caused by the CONTRACTOR's use of any premises acquired by permits, rights of way, or easements, the Site, or any land or areas contiguous thereto or its performance of the Work thereon.
- B. The indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of insurance carried by CONTRACTOR or by the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any Subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- 6.27 **CONTRACTOR'S DAILY REPORTS.** At the close of each working day, the CONTRACTOR shall submit a daily report to the Inspector, on forms approved by the City, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, and for other services and expenditures when authorized concerning extra Work items. Extra or disputed work shall be specifically described and separated from Contract Work on the report. An attempt shall be made to reconcile the report daily, and the Inspector and the CONTRACTOR shall sign it. In the event of disagreement, pertinent notes shall be entered by each party to explain points that cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the CONTRACTOR.
- 6.28 **CONTRACTOR PAYMENTS.** To each of its subcontractors, not later than the **5th day** following each payment to CONTRACTOR by the City the respective amounts allowed CONTRACTOR on account of Work performed by the respective subcontractor's to the extent of such subcontractor's interest therein. If CONTRACTOR does not pay one or more SUBCONTRACTORS the amount (less retention) applied for and received in a payment application, CONTRACTOR shall return said amount back to the City within **5 days**.
- 6.29 **DIAL BEFORE YOU DIG.** The CONTRACTOR shall make notification to the regional notification center for utility markouts and keep a record of the inquiry identification number.

The CONTRACTOR shall follow the requirements of California Government Code Section 4216-4216.9. Refer to Article 4.3.

6.30 DOCUMENTS ON WORK. CONTRACTOR shall keep on the job site at all times one legible copy of all Project Documents, including addenda and change orders, and Title 19 of the California Code of Regulations, and all approved drawings, plans, schedules and specifications. Said documents shall be kept in good order and available to the City, Engineer, architect, and all authorities having jurisdiction. CONTRACTOR shall be acquainted with and comply with the provisions of said regulations as they relate to this Project. CONTRACTOR shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly Titles 8 and 17.

6.31 TEMPORARY UTILITIES

A. All utilities, including but not limited to electricity, water, gas, and telephone used on the Work shall be furnished and paid for by CONTRACTOR. CONTRACTOR shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to all points on the site where the utility is necessary to carry on the Work. Upon completion of the Work, CONTRACTOR shall remove all temporary distribution systems.

B. If this Contract is for a modernization, reconstruction and or an addition to existing building(s),

1. CONTRACTOR may, with written permission of the City, use the City's existing utilities by making prearranged payments to the City for utilities used by CONTRACTOR for construction.

2. CONTRACTOR shall arrange, schedule and pay for all temporary utilities to the entire facility and/or portion(s) of the facility, including but limited to electrical power, water and gas. The entire facility and/or portion of the facility shall be any area that is affected by a utility disruption and/or affects the function and use of the facility.

6.32 SANITARY FACILITIES. The CONTRACTOR shall provide sanitary temporary toilet and hand washing facilities in no fewer numbers than required by law and such additional facilities as may be directed by the Inspector for the use of all workers. The toilet facilities shall be maintained in a sanitary condition at all times and shall be left at the site until removal is directed by the Inspector. Use of toilet facilities in the Work under construction shall not be permitted.

6.33 CLEANING UP

A. For Projects located in the Right-of-Way the CONTRACTOR shall, on a continuous basis, keep Work site free from CONTRACTOR generated debris such as waste, rubbish, and excess materials, dirt, mud, dust, and non-functioning equipment caused by this Work and shall follow the Technical Specifications "TEMPORARY ENVIRONMENTAL CONTROLS & CONSTRAINTS" and "TEMPORARY ENCROACHMENT, MAINTENANCE, AND RESTORATION OF THE CITY RIGHT-OF-WAY".

B. For Building Projects, or projects that are off the street, CONTRACTOR shall at all times keep Work site free from CONTRACTOR generated debris such as waste, rubbish, and excess materials and equipment caused by this Work, at the least on a daily basis. CONTRACTOR shall not leave debris under, in, or about the Work site. Upon completion of CONTRACTOR Work, CONTRACTOR shall clean all interior and exterior materials

installed by CONTRACTOR, and in addition to, all buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected as a direct or indirect result of the CONTRACTOR Work. Such cleaning shall consist of polishing all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment. If the project consists of any street improvements (paving / gutter and/or sidewalk surfaces), drain inlets and any pipeline facilities, such Work shall also be free of any debris and sediments.

6.34 WAGE RIGHTS [Job Site Notices]

- A. Pursuant to the provisions of the Labor Code, the governing board of the City has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime Work in the locality in which this public Work is to be performed for each craft, classification or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director.") These rates are on file with the Clerk of the City's governing board and copies will be made available to any interested party on request. CONTRACTOR shall post a copy of such wage rates at the Work site.
- B. Holiday and overtime Work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification or type of worker employed.
- C. CONTRACTOR shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR or any Subcontractor and such workers.
- D. If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public Work is to be performed, such change shall not alter the wage rates in the Notice Calling for Bids or the contract subsequently awarded.
- E. Pursuant to Labor Code section 1775, CONTRACTOR and any subcontractor shall as a penalty to the City, forfeit fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public Work done under the Agreement by CONTRACTOR or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of the CONTRACTOR's or subcontractor's mistake, inadvertence or neglect in failing to pay the correct prevailing rate of per diem wage, or the previous record of the CONTRACTOR in meeting his or her prevailing rate of per diem wage obligations, or the CONTRACTOR's or subcontractor's willful failure to pay the correct prevailing rate of per diem wages. A mistake, inadvertence or neglect in failing to pay the correct prevailing rate of per diem wage is not excusable if the CONTRACTOR or subcontractor had knowledge of his or her obligations under this part. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each worker

by the CONTRACTOR or subcontractor.

- F. Any workers employed to perform Work on the Project, which Work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to Work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such persons in such craft or classification.
- G. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, and vacation pay.
- H. CONTRACTOR shall post at appropriate conspicuous points on the site of the Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

6.35 HOURS OF WORK

- A. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, **8 hours** of labor shall constitute a legal day's Work. The time of service of any worker employed at any time by the CONTRACTOR or by any Subcontractor on any subcontract under this Agreement upon the Work or upon any part of the Work contemplated by this Agreement shall be limited and restricted by the Agreement to **8 hours** per day, and **40 hours** during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of CONTRACTOR in excess of **8 hours** per day and **40 hours** during any one week, shall be permitted upon this public Work upon compensation for all hours worked in excess of **8 hours** per day at not less than one and one-half times the basic rate of pay.
- B. The CONTRACTOR shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Work or any part of the Work contemplated by this Agreement. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Standards Enforcement, Department of Industrial Relations.
- C. Pursuant to Labor Code section 1813, the CONTRACTOR or subcontractor shall pay to the City a penalty of twenty-five Dollars (\$25) for each worker employed in the execution of this Contract by the CONTRACTOR or by any Subcontractor for each calendar day during which such worker is required or permitted to Work more than **8 hours** in any one calendar day and **40 hours** in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.
- D. Any Work necessary to be performed at the Contractor's request or due to the Contractor's actions after the normal working hours of 7:00 a.m. to 4:30 p.m., Monday through Friday, or on weekends or City Holidays, shall be performed without any additional expense to the City. If Contractor seeks to Work after regular working hours, or weekends or holidays, written notice shall be given and costs for inspection, if incurred by the City, shall be reimbursed within **3 days** of presentation or the City may issue, unilaterally, a deductive Change Order crediting the same.

6.36 APPRENTICES

- A. The CONTRACTOR acknowledges and agrees that, if this Agreement involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, this Agreement is governed by the provisions of Labor Code section 1777.5. It shall be the responsibility of the CONTRACTOR to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticing occupations.
- B. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.
- C. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the Work of the craft or trade to which he or she is registered.
- D. Only apprentices, as defined in section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at section 3070), Division 3 of the Labor Code, are eligible to be employed on public works. The employment and training of each apprenticeship shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he or she is training.
- E. Pursuant to Labor Code section 1777.5, the CONTRACTOR and any Subcontractors employing workers in any apprenticeship craft or trade in performing any Work under this Agreement shall apply to the applicable joint apprenticeship committee for a certificate approving the CONTRACTOR or Subcontractor under the applicable apprenticeship standards for the employment and training of apprentices.
- F. Every CONTRACTOR and Subcontractor shall submit contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Agreement, the number of apprentices to be employed and the approximate dates the apprentices will be employed.
- G. If the CONTRACTOR or Subcontractor willfully fails to comply with Labor Code Section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:
 - 1. Be denied the right to bid on any subsequent project for one year from the date of such determination; and
 - 2. Forfeit as a penalty to the City fifty dollars (\$50) per day for each calendar day of noncompliance, which shall be withheld from any payment due or to become due under the terms of this Agreement. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council.
- H. The CONTRACTOR and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- I. CONTRACTOR shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Code of Regulations, section 200 et seq.

Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California.

6.37 **FIRST AID.** The CONTRACTOR shall maintain emergency first aid treatment for CONTRACTOR's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Sec. 651 et seq.).

6.38 **PROTECTION OF PERSONS AND PROPERTY**

- A. The CONTRACTOR, (on behalf of itself, all Subcontractors and Suppliers (of every tier), shall be responsible for all damages to persons or property (whether furnished or installed, owned or not owned) that occur as a result of its fault or negligence in connection with the prosecution of this Agreement and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the City. The CONTRACTOR shall remove all mud, water, or other elements as may be required for the proper protection and prosecution of its work, including the placement of gravel beds and gravel roads for access to and around the Work. CONTRACTOR shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions. All Work shall be solely at the CONTRACTOR's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code Section 7105.
- B. CONTRACTOR shall take, and require Subcontractors to take, all necessary precautions for the safety of workers and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to the Work site and to provide a safe and healthful place of employment. CONTRACTOR shall furnish, erect and properly maintain at all times, as directed by the City or Engineer or as required by the conditions and progress of Work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. CONTRACTOR shall designate a responsible employee, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. The name and position of the person so designated shall be reported in writing to the City by CONTRACTOR. CONTRACTOR shall correct any violations of safety laws, standards, orders, rules, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected immediately by the CONTRACTOR at CONTRACTOR's expense.
- C. In an emergency affecting safety of person or of Work or of adjoining property, CONTRACTOR, without special instruction or authorization from the City, architect or Engineer, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and CONTRACTOR shall so act if so authorized or instructed by the City, architect or Engineer. Any compensation claimed by CONTRACTOR on account of emergency Work shall be determined by written agreement with the City.
- D. CONTRACTOR shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, mailboxes (including temporary re-location) and structures (including, without limitation, protection from settlement or loss of lateral

support), and to avoid damage thereto, and repair any damage thereto caused by construction operations.

- 6.39 ACCESSIBILITY REQUIREMENTS: Construction shall be in conformance with all applicable codes per the Department of the State Architect, Title 24 Guidelines for Accessibility by Disabled Persons.

ARTICLE 7 – OTHER WORK

7.1 OTHER CONTRACTS

- A. CONTRACTOR is aware that this Project site may be split into several phases, and or separate contracts. The City reserves the right to let other contracts in connection with this Work, and it shall be the duty of the CONTRACTOR to actively schedule and coordinate its Work with the City's forces, City's Contractor(s) and or other multiple prime contracts. No extra costs or delays shall be considered as a result of any such scheduling, coordination and cooperation. CONTRACTOR shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their Work and shall properly connect and coordinate its Work with such other contractors.
- B. If any part of CONTRACTOR's Work depends for proper execution or results upon Work of any other Contractor, the CONTRACTOR shall inspect and promptly report to the City in writing any defects in such Work that render it unsuitable for such proper execution and results. CONTRACTOR will be held accountable for damages to the City for that Work which it failed to inspect or should have inspected. CONTRACTOR's failure to inspect and report shall constitute its acceptance of other CONTRACTOR's Work as fit and proper for reception of its Work, except as to defects which may develop in other CONTRACTOR's Work after execution of CONTRACTOR's Work.
- C. To ensure proper execution of its subsequent Work, CONTRACTOR shall measure and inspect Work already in place and shall at once report to the City in writing any discrepancy between executed Work and Project Documents.
- D. It is the obligation of CONTRACTOR to ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by City in prosecution of the Project to the end that CONTRACTOR may perform this Agreement in the light of such other contracts, if any.
- E. Nothing herein contained shall be interpreted as granting to CONTRACTOR exclusive occupancy at the site of the Project. CONTRACTOR shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the City shall decide which contractor shall cease Work temporarily and which contractor shall continue or whether Work can be coordinated so that contractors may proceed simultaneously.
- F. If the Project is split into phases then CONTRACTOR has made allowances for any delays or damages which may arise from coordination with contractors for other phases. If any delays should arise from a contractor working on a different phase, CONTRACTOR's sole remedy for damages, including delay damages, shall be against the contractor who caused such damage and not the City. CONTRACTOR shall provide access to contractors for other phases as necessary to prevent delays and damages to contractors working on other phases of construction.

7.2 INTEGRATION OF WORK

- A. CONTRACTOR shall perform all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, and fit it to receive or be received by Work of other contractors; including both the CONTRACTOR's and City's forces. In the event of clarifications, the CONTRACTOR shall follow all Supplemental Instructions (SI's) given by the City.
- B. All costs caused by defective or ill-timed Work shall be borne by CONTRACTOR.
- C. CONTRACTOR shall not endanger any Work by cutting, excavating, or otherwise altering Work and shall not cut or alter Work of any other CONTRACTOR without the written consent of the City. CONTRACTOR shall be solely responsible for protecting existing Work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.
- D. When modifying existing Work or installing new Work adjacent to existing Work, CONTRACTOR shall match, as closely as conditions of the site and materials will allow, the finishes, textures, and colors of the original Work, refinishing existing Work as required, at no additional cost to the City.

ARTICLE 8 – THE CITY'S RESPONSIBILITIES

- 8.1 COMMUNICATIONS. Except as may be otherwise provided in these General Conditions or the Supplementary General Conditions, the City will communicate directly with the CONTRACTOR.
- 8.2 OBSERVATIONS ON THE SITE. The City will make observations on the Site during construction to monitor the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Project Documents. Neither, the City, the Engineer, nor their representatives will be required to make exhaustive or continuous inspections to check the quality or quantity of the Work.
- 8.3 PROJECT REPRESENTATION. The City may furnish a third party or a City employee to act as Resident Project Representative to assist in observing the performance of the Work.
- 8.4 CLARIFICATIONS, REQUESTS FOR INFORMATION. The City will issue with reasonable promptness such answers to requests for information (RFI) which shall be consistent with or reasonably inferable from the overall intent of the Project Documents.
- 8.5 AUTHORIZED VARIATIONS IN WORK. The City may authorize the execution of variations in the Work from the requirements of the Project Documents complying with Articles 10, 11, and 12 of these General Conditions that cover changes in the Work, Contract Price, and Contract Times.
- 8.6 REJECTING WORK. The City has the authority to reject Work not in accordance with the Contract Documents and will also have authority to require special inspection or testing of the Work as provided in Article 13.
- 8.7 CONTRACTOR SUBMITTALS, CHANGE ORDERS, AND PAYMENTS
 - A. The City will review all CONTRACTOR submittals.
 - B. The City's responsibilities for Change Orders are set forth in Articles 10, 11, and 12.
 - C. The City's responsibilities for Applications for Payment are set forth in Article 14.

- 8.8 DECISIONS ON DISPUTES. The City will be the interpreter of the requirements of the Contract Documents and of the acceptability of the Work thereunder. Disputes, and other matters relating to the acceptability of the Work and interpretation of the requirements of the Contract Documents pertaining to the performance of the Work shall be determined by the City. Any requests from the CONTRACTOR with respect to changes in the Contract Price or Contract Times shall be resolved in accordance with the requirements set forth in Articles 10, 11, 12 and 17.
- 8.9 LIMITATION OF CITY'S RESPONSIBILITIES
- A. Neither the City's authority to act under this Article or other provisions of the Contract Documents nor any decision made by the City in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the City to the CONTRACTOR, any Subcontractor, any Supplier, any surety for any of them, or any other person or organization performing any of the Work.
- B. Whenever in the Project Documents the terms "as ordered," "as directed," "as required," "as allowed," "as reviewed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory," or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment of the City as to the Work, it is intended that such requirement, direction, review, or judgment will be solely to evaluate the Work for compliance with the requirements of the Project Documents, and conformance with the design concept of the completed Project as a functioning whole as indicated by the Project Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective shall not be effective to assign to the City any duty or authority to supervise or direct the performance of the Work.
- C. The City shall not supervise, direct or have control or authority over, nor be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. The City will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Project Documents.
- 8.10 LANDS, EASEMENTS, AND SURVEYS. The City's duties in respect of providing lands and easements and providing engineering survey data to establish reference points are set forth in Article 4
- 8.11 REPORTS AND DRAWINGS. The City will identify to the CONTRACTOR copies of reports of physical conditions at the Site and drawings of existing structures which have been utilized in preparing the Contract Documents, in the Supplementary General Conditions.
- 8.12 SUSPENSION OF Work. The City's right to stop Work or suspend Work is set forth in Article 15.
- 8.13 TERMINATION OF AGREEMENT. The City's right to terminate services of the Contractor is set forth in Article 15.
- 8.14 UNDISCLOSED HAZARDOUS ENVIRONMENTAL CONDITIONS. The City's responsibility with respect to an undisclosed hazardous environmental condition is set forth in Article 4.4.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.1 THE ENGINEER OF WORK

- A. The City may retain the Engineer of Work to assist the City with post-design services. The Engineer of Work's status during construction is addressed in the Supplemental General Conditions.
- B. The Engineer will make observations on the Site during construction to monitor the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer will not be required to make exhaustive or continuous inspections to check the quality or quantity of the Work.

ARTICLE 10 – CHANGES IN THE WORK

10.1 GENERAL

- A. CO, FO, CCD. Without invalidating the Agreement and without notice to any surety, the City may at any time or from time to time, order additions, deletions, or revisions in the Work. Such additions, deletions or revisions will be authorized by a Change Order (CO), Field Order (FO) or Construction Change Directive (CCD) as defined in Article 1. Upon receipt of any such document, notwithstanding the issuance, execution, and approval of a Change Order, CONTRACTOR shall promptly proceed to implement the additions, deletions, or revisions in the Work in accordance with the applicable conditions of the Contract Documents. A CO, FO and CCD may be issued to the CONTRACTOR at any time.
- B. UNILATERAL CHANGE ORDER If the City and CONTRACTOR fail to agree to the quantification of costs and/or time to be placed into a Bilateral Change Order, the City, at its own discretion, may issue a Unilateral Change Order for those costs and/or time impacts that is deemed appropriate for the changed Work conditions. Notwithstanding the issuance, execution, and approval of a Change Order, the CONTRACTOR shall proceed immediately with the changed Work upon receipt of a Construction Change Directive (CCD), or Field Order (FO). Should the CONTRACTOR disagree with any terms and conditions set forth in an approved Unilateral Contract Change Order, the CONTRACTOR shall submit a written protest to the City within **fifteen (15) days** after the receipt of the approved Unilateral Contract Change Order. The protest shall state the points of disagreement, and, if possible, the Contract Specification references, quantities and costs involved. If a written protest is not submitted to the City, payment will be made as set forth in the approved Unilateral Contract Change Order, and that payment shall constitute full compensation for all Work included therein or required thereby. Unprotested, approved Unilateral Contract Change Orders will be considered as executed Contract Change Orders as that term is used in Articles 10, 11, and 12.
- C. The CONTRACTOR shall not be entitled to an increase in the Contract Price nor an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified, or supplemented by Change Order, except in the case of an emergency.
- D. If notice of any change in the Work is required to be given to a surety, the giving of any such notice shall be the CONTRACTOR's responsibility. If the change in the Work affects the Contract Price, the City may require an adjustment to the amount of any applicable Bond and the amount of each applicable Bond shall be adjusted accordingly.

- E. If the City and the CONTRACTOR are unable to agree as to the extent, if any, of an increase in the Contract Price or an extension or shortening of the Contract Times that may be allowed as a result of a Field Order, the City may direct the CONTRACTOR to proceed as outlined in Article 11.2. in order to minimize the impact on and delays to the Work, and the CONTRACTOR may make a claim as provided in Articles 11, 12 and 17.
- F. The City of Escondido has the sole authority to approve or disapprove or to delegate the approval or disapproval of Contract Change Orders.

10.2 ALLOWABLE QUANTITY VARIATIONS

- A. In the event of an increase or decrease in the quantity of any bid item under a unit price contract, the total amount of Work actually done or materials or equipment furnished will be paid for according to the unit price established for such Work under the Contract Documents, wherever such unit price has been established; provided, that an adjustment in the Contract Price may be made for changes which result in an increase or decrease in excess of twenty-five percent (25%) of the estimated quantity of any unit price bid item of the Work.
- B. In the event a part of the Work is to be entirely eliminated and no lump sum or unit price is named in the Contract Documents to cover such eliminated Work, the price of the eliminated Work shall be agreed upon by the City and the CONTRACTOR by Change Order. The schedule of values submitted by CONTRACTOR shall be referred to in evaluating the price to be reduced, but shall not be determinative unless both parties agree.

ARTICLE 11 – CHANGE OF CONTRACT PRICE

11.1 GENERAL

- A. The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the Work. All duties, responsibilities, and obligations whether implied, inferred or express, assigned to or undertaken by the CONTRACTOR to complete the Work shall be at its expense without change in the Contract Price.
- B. The Contract Price may only be changed by a Change Order. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following three ways:
 - 1. **UNIT PRICES.** Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;
 - 2. **AGREED UPON LUMP SUM.** By mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Article 11.4; or
 - 3. **COST OF WORK.** On the basis of the cost of the Work, force account payment (determined as provided in Article 11.2) plus the CONTRACTOR's overhead and profit (determined as provided in Article 11.3).
- C. AGREED ENTITLEMENT. When the City is in agreement regarding entitlement due the CONTRACTOR on a particular issue that the CONTRACTOR has brought to the attention of the City with a notice, and finds that there is a clear entitlement for additional compensation, the CONTRACTOR and the City will choose a method to be used for

calculating the value of the extra Work from the three methods described in Article 11.1.B.1, 2, or 3 above.

1. CHANGE USING UNIT PRICES METHOD. When a change in Contract Price using unit prices is applied, described in Article 11.1.B.1 (UNIT PRICES), a Field Order, signed by the City, will be given to the CONTRACTOR. The increase in line item quantities shall be tracked and documented in the daily extra Work report (Article 11.4) which must identify the quantities used/consumed/handled and shall be presented to the City's on-site representative on a daily basis for review, for pertinent comments, and counter-signature. The CONTRACTOR will invoice the City for the line item quantity used for the extra Work following the conditions of Article 14, "PAYMENTS TO CONTRACTOR, RETENTION AND COMPLETION". A reconciliation Contract Change Order will be executed when the final quantities used are known. The Contract Change Order will account for the over or under amount of line item quantities.
 2. CHANGE USING AGREED UPON LUMP SUM METHOD. When the payment method described in Article 11.1.B.2 (LUMP SUM) is used, a Field Order or a Contract Change Order, signed by the City, will be given to the CONTRACTOR. The CONTRACTOR will invoice the City for the extra Work following the conditions of Article 14.
 3. CHANGE USING FORCE ACCOUNT "COST OF Work" METHOD. When no agreement can be reached on the method of payment for the extra Work, the method described in Article 11.1.B.3 (COST OF WORK), force account payment (determined as provided in Article 11.2) shall be used. A Field Order will be given to the CONTRACTOR, signed by the City, describing the Work. The City reserves the right to place a "not to exceed" amount on the Field Order based on a City cost estimate. If the approximate value of the cost of extra Work approaches the "not to exceed" value, the CONTRACTOR shall notify the City in order that a further decision may be made as to how to proceed. When the extra Work is completed a Contract Change Order for the accumulated total value of the extra Work shall be executed, should the value of the Work exceed the Field Order allowance. The extra Work shall be documented in the Daily Extra Work Report (Article 11.4).
- D. DISAGREEMENT REGARDING ENTITLEMENT. When there is no agreement between the CONTRACTOR and the City on an issue of Work that has not yet been started that the CONTRACTOR has brought to the City pursuant to Article 11.5 "CONTRACTOR SHALL PROVIDE NOTICE", and the City does not find that there is any entitlement for additional compensation due the CONTRACTOR, the Work in question may be designated "DISPUTED WORK". During the performance of any such "DISPUTED WORK" the CONTRACTOR shall:
1. Although not to be construed as proceeding under agreed-upon extra Work provisions, the CONTRACTOR shall keep and furnish records breaking down the Work as described in the following Article 11.2. Daily records shall be furnished according to Article 11.4.
 2. The CONTRACTOR shall continue with the disputed Work according to Article 2.6.

11.2 COST OF WORK - FORCE ACCOUNT (BASED ON TIME AND MATERIALS)

- A. GENERAL: The term "cost of Work" means the sum of all costs necessarily incurred and paid by the CONTRACTOR for labor, materials, and equipment in the proper performance of extra Work. Except as otherwise may be agreed to in writing by the City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall include the costs itemized in Article 11.3.D.1. to be compensated for as a part of the stipulated overhead and profit allowance.
- B. LABOR: The costs of labor will be the actual cost for wages prevailing for each craft or type of workers performing the extra Work at the time the extra Work is done, plus employer payments of payroll taxes, workers compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Labor costs for equipment operators and helpers will be paid only when such costs are not included in the invoice for equipment rental. The labor costs for foremen shall be proportioned to all of their assigned Work and only that applicable to extra Work shall be paid. Non-direct labor costs including superintendence shall be considered part of the markup set out in Article 11.3. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the CONTRACTOR to other workers operating similar equipment already on the Site, or in the absence of such labor, established by collective bargaining agreements for the type of workmen and location of the extra Work, whether or not the operator is actually covered by such an agreement.
- C. MATERIALS: The cost of materials reported shall be at invoice or lowest current price at which materials are locally available and delivered to the Site in the quantities involved, plus the cost of freight, delivery and storage, subject to the following:
1. All trade discounts and rebates shall accrue to the City, and the CONTRACTOR shall make provisions so that they may be obtained;
 2. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the City. Except for actual costs incurred in the handling of such materials, markup will not be allowed;
 3. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on extra Work items or the current wholesale price for such materials delivered to the Site, whichever price is lower; and
 4. If in the opinion of the City the cost of material is excessive, or the CONTRACTOR does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the Site less trade discount. The City reserves the right to furnish materials for the extra Work and no claim will be allowed by the CONTRACTOR for costs and profit on such materials.
- D. EQUIPMENT: The CONTRACTOR will be paid for the use of equipment at the rental rate listed for such equipment specified in the current edition of the "Labor Surcharge and Equipment Rental Rates" published by the State of California Business, Transportation & Housing Agency (CALTRANS). Such rental rate will be used to compute payments for

equipment whether the equipment is under the CONTRACTOR's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to the City for the total period of use. If it is deemed necessary by the CONTRACTOR to use equipment not listed in the publication specified, an equitable rental rate for the equipment will be established by the City. The CONTRACTOR may furnish cost data which might assist the City in the establishment of the rental rate. Payment for equipment shall be subject to the following:

1. All equipment shall, in the opinion of the City, be in good working condition and suitable for the purpose for which the equipment is to be used;
 2. Before construction equipment is used on the extra Work, the CONTRACTOR shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the City a description of the equipment with its identifying number;
 3. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer;
 4. Individual pieces of equipment or tools having a replacement value of \$250 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore.
- E. EQUIPMENT RENTAL TIME: The rental time to be paid for equipment on the Site will be the time the equipment is in productive operation on the extra Work being performed and, in addition, will include the time required to move the equipment to the location of the extra Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the extra Work, even though located at the Site of the extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the Site of the extra Work on other than the extra Work. Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time of equipment on the Work site will be computed subject to the following:
1. When hourly rates are listed, any part of an hour less than **thirty (30) minutes** of operation will be considered to be half-hour (1/2 – hour) of operation, and any part of an hour in excess of **30 minutes** will be considered **1 hour** of operation;
 2. When daily rates are listed, any part of a day less than **4 hours** operation will be considered to be **1/2 – day** of operation. When owner-operated equipment is used to perform extra Work to be paid for on a time and materials basis, the CONTRACTOR will be paid for the equipment and operator, as set forth in this Article.
 3. Payment for the equipment will be made in accordance with the provisions in Article 11.

F. SURETIES: All Work performed hereunder shall be subject to all of the provisions of the Contract Documents and the CONTRACTOR's sureties shall be bound with reference thereto as under the original Agreement. Copies of all amendments to Bonds or supplemental Bonds shall be submitted to the City for review prior to the performance of any Work hereunder.

11.3 OVERHEAD & PROFIT (O&P) PERCENTAGE SCHEDULE. The allowance for overhead and profit must not exceed the values in the Overhead & Profit Schedule table below.

- A. For Change Orders, whether additive or deductive and work classified as Extra Work, the allowance for overhead and profit must include full compensation for superintendence, insurance premiums, bond premiums, taxes, field office expense, extended overhead, home office overhead, and any other items of expense e.g., Change Order estimating and preparation cost, claims preparation cost, schedule analysis, project management, and field engineering.
- B. Extended overhead must be any and all costs incurred either in the field or at your office resulting from Extra Work excluding direct costs related to direct hourly labor, equipment, or materials necessary to complete the Extra Work.
- C. Overhead & Profit Schedule table

O & P Schedule		
Component	Overhead	Profit
Labor	10%	10%
Material	10%	5%
Equipment	10%	5%
Subcontractor Extra Work	3.5%	1.5%

- D. Work paid under Allowance Bid items for permits, governmental fees, or direct payments specified in the Contract Documents will not be subject to any markups.
- E. When all or any part of the Extra Work is performed by a Subcontractor, the allowance specified herein will be applied to the labor, materials, and equipment costs of the Subcontractor, to which you may add 5% of the Subcontractor's total cost for the Extra Work.
- F. Regardless of the number of hierarchical tiers of Subcontractors, the 5% which is your allowance 3.5% (for overhead) and 1.5% (for profit) may be applied one time only to the performing Subcontractor's total cost.
- G. You will only be reimbursed, with 6% markup, for the warranty extensions beyond the time required by the Contract Documents if requested by the City.
- H. The O&P Schedule shall be used for "Negotiated Sum" (described in Article 11.1.B.2) and/or "Time and Materials" (described in Article 11.1.B.3) Work. Unit Price Work shall not have the overhead and profit markup applied to the Work, on the basis that the Unit Price includes overhead and profit margins.

CONTRACTOR shall set up separate cost codes for each extra Work item and account for all labor, materials and equipment for each cost code. This includes using said cost codes for all labor expended on extra Work, and coding delivery tickets and P.O.'s as well. The same cost code shall appear on the daily report to account for labor, materials and

equipment devoted/used that day for each extra Work item. Failure to comply with this requirement shall be a waiver of the right to collect the same.

- E. IT IS EXPRESSLY UNDERSTOOD THAT THE VALUE OF SUCH EXTRA WORK OR CHANGES, AS DETERMINED BY ANY OF THE AFOREMENTIONED METHODS, EXPRESSLY INCLUDES ANY AND ALL OF CONTRACTOR'S COSTS AND EXPENSES, BOTH DIRECT AND INDIRECT, RESULTING FROM EFFORTS TO IDENTIFY, QUOTE AND/OR NEGOTIATE THE CHANGE(S) AS WELL AS ADDITIONAL TIME REQUIRED ON THE PROJECT, OR RESULTING FROM DELAYS TO THE PROJECT, INCLUDING BUT NOT LIMITED TO ACCELERATION, CUMULATIVE AFFECT OF THE CHANGE(S), EXPEDITING THE WORK, FRAGNETS, ETC.

NO RESERVATION OF RIGHTS, EXPRESS OR IMPLIED, WILL BE PERMITTED OR ALLOWED.

11.4 CONTRACTOR'S DAILY EXTRA WORK REPORT

- A. General. At the close of each working day, the CONTRACTOR shall submit a daily report to the Inspector, on forms approved by the City, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, and for other services and expenditures when authorized concerning extra Work items. An attempt shall be made to reconcile the report daily, and the Inspector and the CONTRACTOR shall sign it. The report shall clearly differentiate between extra or disputed Work and Contract Work. In the event of disagreement, pertinent notes shall be entered by each party to explain points that cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the CONTRACTOR. The CONTRACTOR shall organize and forward copies of the CONTRACTOR's and Inspector's reports to the City upon the completion of each "Time and Material" activity.
- B. CONTRACTOR shall maintain its records in such a manner as to provide a clear distinction between the direct costs of any extra Work and/or deductive Work and the original Contract Work. This requirement pertains to the costs for wholly or partially approved Change Order Requests (COR's), Construction Change Directives (CCD's), Change Orders (CO's), Field Orders (FO's), and Work CONTRACTOR considers to be potential Change Orders.

- 11.5 CONTRACTOR SHALL PROVIDE NOTICE. If the CONTRACTOR should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation obligates the City to pay additional compensation to CONTRACTOR or to grant an extension of time, or constitutes a waiver of any provision in the Agreement, the CONTRACTOR shall provide written "Notice" to the City **within 5 days** after sustaining of such damage, or being notified of an adverse decision, and provide within **14 days** of the event the factual basis supporting the claim (unless otherwise specified). For requests for additional compensation for alleged changed conditions, such as finding rock, notice shall be made before the condition instigating the notice is disturbed. The written "Notice" shall state the summary points for which the factual bases will support the claim and cite in detail the Project Documents (including plans and specifications) upon which the claim is to be based. CONTRACTOR's failure to notify the City within such a period shall be deemed a waiver and relinquishment of such a claim. If such notice is given within the specified time, the procedure for its consideration shall be as stated above in these General Conditions. In addition, on or before the end of the month for which the claim has been filed, the CONTRACTOR shall also file with the City the **WAIVER AND RELEASE FORMS**, for which the claim and the amount of the claim is identified. If the claim is

not indicated on the **WAIVER AND RELEASE FORMS**, CONTRACTOR's claim shall be forfeited and invalidated and it shall not be entitled to consideration for time or payment on account of any such claim.

- 11.6 **COSTS RELATING TO WEATHER/ FORCE MAJEURE.** The CONTRACTOR shall have no claims against the City for damages for any injury to Work, materials, or equipment, resulting from the action of the elements whether caused by weather, earthquakes, or other natural events. If, however, in the opinion of the City, the CONTRACTOR has made all reasonable efforts to protect the materials, equipment, and Work, the CONTRACTOR may be granted a reasonable extension of Contract Times to make proper repairs, renewals, and replacements of the Work, materials, or equipment. All costs incurred as a result of any force majeure, including abnormally or unusually severe weather, earthquakes or other natural perils shall not be compensable from the City and the risks associated therewith shall be exclusively borne by CONTRACTOR. To the extent CONTRACTOR elects to protect itself from any/all of said risks, it shall insure against the same.

ARTICLE 12 – CHANGE OF CONTRACT TIMES

12.1 GENERAL

- A. Contract times are stated in the Notice Inviting Sealed Bids, Section 00030, The Public Improvement Agreement, and the Supplemental General Conditions, Section 00800, of these Contract Documents.
- B. The Contract Times may only be changed by a Change Order. Any claim for an extension of the Contract Times shall be based on written notice delivered by the CONTRACTOR to the City promptly (but in no event later than 24 hours) after the start of the event giving rise to the claim and stating the general nature of the claim. Reference Article 11.5 "CONTRACTOR SHALL PROVIDE NOTICE". Notice of the extent of the claim with supporting data shall be delivered within **5 days** after the start of such event (unless the City allows an additional period of time for the submission of additional or more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR's written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR is entitled as a result of said event. All claims for adjustment in the Contract Times will be determined by the City. No claim for an adjustment in the Contract Times will be valid if not submitted in accordance with the requirements of this Article 12.1.B. An increase in Contract Times does not mean that the CONTRACTOR is due an increase in Contract Price. Only compensable time extensions will result in an increase in Contract Price.
- C. Extra Work executed by the CONTRACTOR in conjunction, simultaneously or concurrently with the Work does not create a compensable time extension.
- D. Extra Work executed by the CONTRACTOR during Contract Schedule Float does not create a compensable time extension.
- E. The value of time expended on extra Work is fully compensated by the markups for overhead and profit found on the table in Article 11.3.
- F. All time limits stated in the Contract Documents are of the essence of the Agreement.
- G. When CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost on the critical path of the Work due to such delay, if a claim is made therefore as provided in Article 12.1.B. Delays beyond the control of CONTRACTOR shall include, but not be limited

to, acts or neglect by the City; acts or neglect of those performing other Work as contemplated by Article 7; and fires, floods, epidemics, abnormal weather conditions, or acts of God. Delays attributable to and within the control of any Subcontractor or Supplier (of any tier) shall be deemed to be delays within the control of the CONTRACTOR.

H. In no event will the City be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for any increase in the Contract Price or other damages arising out or resulting from the following:

1. Delays caused by or within the control of CONTRACTOR;
2. Delays beyond the control of both the City and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by those performing other Work as contemplated by Article 7; or
3. City-caused/responsible delays, concurrent with items 1 and/or 2 above.

12.2 EXTENSIONS OF CONTRACT TIMES FOR DELAY DUE TO WEATHER. The CONTRACTOR's construction schedule shall anticipate delay due to seasonal weather.

12.3 OWNERSHIP OF PROJECT SCHEDULE FLOAT/EARLY COMPLETION SCHEDULE

A. Total Float is the number of days by which a part of the Work in the Construction Schedule may be delayed from its early dates without necessarily extending the Contract Time. Contract Float is the number of days between the CONTRACTOR's anticipated date for early completion of the Work, or specified part, and the corresponding Contract Time. Total float and Contract Float belong to the Project and are not for the exclusive benefit of any party. They shall be available to the City, the construction manager, their consultants, or the CONTRACTOR, to accommodate changes in the Work, or to mitigate the effects of events which may delay performance or completion. The City will monitor and optimize the use of float for the benefit of the Project.

B. IF CONTRACTOR SUBMITS A REVISED SCHEDULE SHOWING AN EARLIER COMPLETION DATE FOR THE PROJECT, THE CITY'S ACCEPTANCE OF THIS REVISED SCHEDULE SHALL NOT ENTITLE CONTRACTOR TO ANY DELAY CLAIM OR DAMAGES DUE TO ANY SUCH REVISED SCHEDULE. CONTRACTOR AND ALL SUBCONTRACTORS SHALL INCLUDE, AS DEEMED APPROPRIATE, SUFFICIENT AMOUNTS TO COVER THE HOME OFFICE AND FIELD OVERHEAD COSTS COMMENSURATE WITH THE PUBLISHED CONTRACT DURATION. FAILURE TO INCLUDE OVERHEAD COSTS IN THEIR BIDS THROUGH THE CONTRACT DURATION SHALL BE AT THE RISK OF CONTRACTOR AND ITS SUBCONTRACTORS.

12.4 EXTENSION OF TIME - LIQUIDATED DAMAGES

A. The CONTRACTOR and the City hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. CONTRACTOR shall be assessed the sum set forth in the **Agreement**, as liquidated damages for each and every day the Work required under the Project Documents remains unfinished past the time for completion, as set forth in the **Agreement**, and any extensions of time granted by the City to the CONTRACTOR under the terms of the Project Documents. The CONTRACTOR will pay to the City or the City may retain from amounts otherwise payable to the CONTRACTOR, said amount for each day after failure to meet the requirements of the contract completion as scheduled in the Agreement. For purposes of this article, the Work shall be considered "complete" in accordance with these General Conditions, except that the Work may be considered

complete without formal acceptance by the City Council so long as the City Council, at its next regularly scheduled meeting, accepts the Work.

- B. CONTRACTOR shall not be charged for liquidated damages, as set forth above, because of any delays in completion of Work which are not the fault or negligence of CONTRACTOR, including but not restricted to acts of God, as long as CONTRACTOR informs City of such events. As soon as CONTRACTOR become aware of any delay and no later than **14 days** from the commencement of the delay, CONTRACTOR shall notify the City in writing of causes of delay in accordance with the contract scheduling specifications. CONTRACTOR shall provide documentation and justification to substantiate the delay and its relation to the Project's critical path. Extension of time shall apply only to that portion of Work affected by the delay, and shall not apply to other portions of Work not so affected.

ARTICLE 13 – INSPECTIONS AND TESTS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

- 13.1 **AUTHORITY OF INSPECTOR.** Any Work performed by the CONTRACTOR upon the instructions or comments by the Inspector may be confirmed by the CONTRACTOR, at the CONTRACTOR's option, in writing by the City. Any extra Work performed without the written instruction of the City shall be at CONTRACTOR's sole cost and expense and there will be no delay damages incurred by City for such Work.
- 13.2 **INSPECTION.** No Work shall be carried on except with the knowledge of the Inspector(s). The Inspector shall have free access to any or all parts of Work at any time. CONTRACTOR shall furnish Inspector reasonable opportunities for obtaining such information as may be necessary to keep Inspector fully informed respecting progress and manner of Work and character of materials. Inspection of Work shall not relieve CONTRACTOR from any obligation to fulfill the Project Documents. Inspector shall have authority to stop Work whenever provisions of Project Documents are not being complied with and such noncompliance is discovered. CONTRACTOR shall instruct its employees accordingly.
- 13.3 **NOTICE OF DEFECTIVE Work.** Prompt notice of Defective Work known to the City will be given to the CONTRACTOR. Defective Work discovered or uncovered will be noticed to the CONTRACTOR as soon as practicable. All Defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13. Defective Work may be rejected even if approved by prior inspection.
- 13.4 **ACCESS TO WORK.** The City, Engineer, their consultants, subconsultants, other representatives and personnel of the City, independent testing laboratories, and governmental agencies with jurisdictional interests shall have access to the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access, including sheeting and shoring as may be necessary, and advise them of CONTRACTOR's Site safety procedures, and programs so that they may comply therewith as applicable.
- 13.5 **INSPECTIONS AND TESTS**
- A. The CONTRACTOR shall give the City not less than **2 working days** notice of readiness of the Work for all required general inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Specialty inspections shall be scheduled **7 days** in advance.

- B. The City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
1. For inspection, tests, or approvals covered by Articles 13.5.C. and 13.5.D. below;
 2. That costs incurred in connection with tests or inspections conducted pursuant to Article 13.5.G. shall be paid for by the CONTRACTOR.
- C. If Laws and Regulations of any public body having jurisdiction require any Work (or any part thereof) to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals; pay all costs in connection therewith; and furnish the City the required certificates of inspection or approval.
- D. The CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the City's acceptance of materials or equipment to be incorporated in the Work or acceptance of materials, mix designs, or equipment submitted for approval prior to the CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to the City.
- E. The City will make, or have made, such inspections and tests as the City deems necessary to see that the Work is being accomplished in accordance with the requirements of the Contract Documents. Unless otherwise specified in the Supplementary General Conditions, the cost of such inspection and testing will be borne by the City. In the event such inspections or tests reveal non-compliance with the requirements of the Contract Documents, the CONTRACTOR shall bear the cost of corrective measures deemed necessary by the City, as well as the cost of subsequent reinspection and retesting. Neither observations by the Engineer nor inspections, tests, or approvals by others shall relieve the CONTRACTOR from the CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.
- F. If any Work that is to be inspected, tested, or approved is covered without written concurrence of the City, it must, if requested by the City, be uncovered for observation. Such uncovering shall be at the CONTRACTOR's expense.
- G. If any Work is covered contrary to the written request of the City, it must, if requested by the City, be uncovered for the City's observation and recovered at the CONTRACTOR's expense.
- H. If the City considers it necessary or advisable that covered Work be observed by the City or inspected or tested by others, the CONTRACTOR, at the City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as the City may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is Defective Work, the CONTRACTOR shall bear all direct, indirect, and consequential costs and damages of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction, including but not limited to, fees and charges of engineers, architects, attorneys, and other professionals. However, if such Work is not found to be Defective Work, the CONTRACTOR will be allowed an increase in the Contract Price, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, the CONTRACTOR may make a request for additional compensation therefore as provided in Articles 10, 11 and 12.

- I. All initial tests shall be performed under the direction of the City. All re-testing due to failure shall be performed under the direction of the City, and the cost of all re-testing shall be borne by the CONTRACTOR. The costs and potential loss of productivity to accommodate re-testing shall be borne by the CONTRACTOR.
 - J. A City Inspector, or designee, may be required on the job site at all times Work is in progress as determined by the City. Inspection will be required by the appropriate agency for the following type of Work: trenching, special or sand bedding, laying pipe, any welding, backfill, compaction and pavement replacement. Special Work hours required by the Contract are considered normal hours.
- 13.6 THE CITY MAY STOP THE WORK. If Defective Work is identified, the City may order the CONTRACTOR to stop performance of the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the CONTRACTOR or any other party.
- 13.7 CORRECTION OR REMOVAL OF DEFECTIVE WORK. If required by the City, the CONTRACTOR shall promptly either correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the Engineer, remove it from the Site and replace it with non-defective Work. The CONTRACTOR shall bear all direct, indirect, and consequential costs and damages of such correction or removal, including but not limited to fees and charges of engineers, architects, attorneys, and other professionals made necessary thereby.
- 13.8 ACCEPTANCE OF DEFECTIVE WORK. If, instead of requiring correction or removal and replacement of Defective Work, the City prefers to accept the Defective Work, the City may do so. The CONTRACTOR shall bear all direct, indirect, and consequential costs attributable to the City's evaluation of and determination to accept such Defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the City shall be entitled to an appropriate decrease in the Contract Price.
- 13.9 THE CITY MAY CORRECT DEFECTIVE WORK
- A. If the CONTRACTOR fails within a reasonable time after written notice from the City to correct Defective Work, or to remove and replace Defective Work as required by the City in accordance with Article 13.7, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the City may, after **7 days** written notice to the CONTRACTOR, correct and remedy any such deficiency.
 - B. In exercising the rights and remedies under this paragraph, the City shall proceed with corrective and remedial action. In connection with such corrective and remedial action, the City may exclude the CONTRACTOR from all or part of the Site, take possession of all or part of the Work, and suspend the CONTRACTOR's services related thereto and incorporate in the Work all materials and equipment for which the City has paid the CONTRACTOR whether stored at the Site or elsewhere. The CONTRACTOR shall provide the City, City's representatives, Engineer, and Engineer's consultants access to the Site to enable the City to exercise the rights and remedies under this Article.
 - B. All direct, indirect, and consequential costs and damages incurred by the City in exercising the rights and remedies under this paragraph will be charged against the CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the City shall be entitled to an appropriate

decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, the City may make a claim therefore as provided in Article 11. Such claim will include, but not be limited to, all costs of repair or replacement of Work of others, destroyed or damaged by correction, removal, or replacement of CONTRACTOR's Defective Work and all direct, indirect, and consequential damages associated therewith.

- D. The CONTRACTOR shall not be allowed an extension of Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by the City of the City's rights and remedies under this paragraph.

13.10 CORRECTION PERIOD

- A. The correction period for Defective Work shall be the longer of:
 - 1. One year after the date of final acceptance;
 - 2. Such time as may be prescribed by Laws and Regulations;
 - 3. Such time as specified by the terms of any applicable special guarantee required by the Contract Documents; or
 - 4. Such time as specified by any specific provision of the Contract Documents.
- B. If, during the correction period as defined in Article 13.10A above, any Work is found to be Defective Work, the City shall have the same remedies as set forth in Articles 13.7, 13.8, and 13.9 above.
- C. Where Defective Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of **1 year** after such correction or removal and replacement has been satisfactorily completed.

ARTICLE 14 – PAYMENTS TO CONTRACTOR, RETENTION AND COMPLETION

14.1 APPLICATION FOR PROGRESS PAYMENT

- A. On the 25th of each month, the CONTRACTOR shall submit to the City for review, the Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application for Payment and accompanied by the appropriate waiver(s) and release upon "Progress Payment" and such supporting documentation as is required by the Project Documents.
- B. The Application for Payment shall identify, as a subtotal, the estimated amount of the CONTRACTOR total earnings to date; plus the value of materials stored at the Site, pursuant to Article 14.1.K, which have not yet been incorporated in the Work; and less a deductive adjustment for materials installed which were not previously incorporated in the Work, but for which payment was allowed under the provisions for payment for materials stored at the Site, but not yet incorporated in the Work.
- C. The net payment due the CONTRACTOR shall be the above-mentioned subtotal from which shall be deducted five percent (5%) retention and the total amount of all previous payments made to the CONTRACTOR. The City shall have the right to issue joint checks to CONTRACTOR and SUBCONTRACTOR and/or Suppliers.

- D. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release CONTRACTOR or Surety from any damages arising from such Work or from enforcing each and every provision of this Agreement, and the City shall have the right subsequently to correct any error made in any estimate for payment.
- E. CONTRACTOR SHALL NOT BE ENTITLED TO HAVE ANY PAYMENT ESTIMATES PROCESSED OR BE ENTITLED TO HAVE ANY PAYMENT FOR WORK PERFORMED SO LONG AS ANY LAWFUL OR PROPER DIRECTION CONCERNING WORK, OR ANY PORTION THEREOF, GIVEN BY THE CITY OR ENGINEER SHALL REMAIN UNCOMPLIED WITH BY THE CONTRACTOR.
- F. The City has discretion to require from the CONTRACTOR any of the following information with the application for payment:
1. Certified payroll covering the period of the prior application for payment;
 2. Unconditional waivers and releases from all Subcontractors/suppliers for which payment was requested under the prior application(s) for payment;
 3. Receipts or bills of sale for any items.
 4. Signature of the Inspector, confirming that the maintenance of the Record Drawings is being kept up-to-date, and that the Record Drawings are not being used as a construction set.
- G. NO PAYMENT BY THE CITY HEREUNDER SHALL BE INTERPRETED TO IMPLY THAT THE CITY HAS INSPECTED, APPROVED, OR ACCEPTED ANY PART OF THE WORK. The final payment of **5%** of the value of the Work done under this Agreement, if unencumbered, shall be made within **55 days** after the City records the Notice of Completion. ACCEPTANCE WILL BE MADE ONLY BY ACTION OF THE ESCONDIDO CITY COUNCIL.
- H. Payments for Change Order items can be included into the monthly progress payments, only after the Change Order has been fully executed and approved by the CITY and the CONTRACTOR, and only to the extent that Change Order Work has been performed.
- I. The value of materials stored at the Site shall be an amount based upon the value of all acceptable materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing; provided, each such individual item has a value of more than \$5,000 and will become a permanent part of the Work. The Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the CONTRACTOR has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the City's interest therein, all of which will be satisfactory to the City.
- J. Unless otherwise provided, on or before making request for final payment of the undisputed amount due under the Agreement, CONTRACTOR shall submit to the City, in writing a summary of all claims for compensation under or arising out of this Agreement which were timely submitted. The acceptance by CONTRACTOR of the payment of the final amount shall constitute a waiver of all claims against the City under or arising out of this Agreement, except those previously made, in a timely manner and in writing, and identified by CONTRACTOR as unsettled at the time of CONTRACTOR's final request for payment.

- K. Materials included in the progress payments shall be stored properly and protected as required to prevent damage, including but not limited to, rust, dents, scratches, and decay. Materials stored on-site and subject to payment, shall be gated and secured to prevent theft and/or vandalism. When the CONTRACTOR requests payment for materials not incorporated in the Work, the following terms and conditions shall apply:
1. For permanent materials delivered to the project site, or stored in an approved location off-site, an allowance of one-hundred percent (100%) of the material costs plus freight charges as invoiced may be made. The allowance will be based upon validated invoices or bills for such materials, including freight charges, and a copy thereof shall be made a part of the documented records for the project. All permanent materials approved for payment will have been tested by the City for compliance with the requirements of the Project Documents. Payment will only be made for permanent materials that conform to the requirements of the Project Documents.
 2. No allowance shall be made for fuels, form lumber, falsework, temporary structures or other materials of any kind that will not become an integral part of the finished contraction.
 3. All permanent materials, for which an allowance is requested, shall be stored in an approved manner where damage is not likely to occur. If any of the stored materials are lost or become damaged in any manner, CONTRACTOR shall be responsible for repairing or replacement of such damaged materials. The value of the lost or damaged materials shall be deducted from the CONTRACTOR's subsequent progress payments until replacement has been accomplished.
 4. Permanent materials, for which payment has been made, either wholly or partially, shall not be removed from the approved location until such time that it is incorporated into the Work, unless approved by the City and/or the Engineer.
 5. The following must accompany the written request for payment of stored materials:
 - a. Consent of the Surety specifying the material type and the bid items in which the material is to be used.
 - b. Validating invoices showing that payment for the material has been made.
 - c. A written statement from CONTRACTOR attesting that the invoices, as submitted do not include charges and/or fees for placing, handling, erecting or any other charges and/or markups other than the actual material cost, sales tax if applicable, and freight charges.
 - d. Bill of lading showing delivery of the material.
 - e. Inspection test reports, and certifications if required by the Contract Documents.
 - f. CONTRACTOR shall obtain a negotiable warehouse receipt, endorsed over to the City for materials and/or equipment stored in an off-site warehouse.
 - g. Certificate of insurance clearly indicating that the materials or equipment is fully insured against theft, fire, vandalism, malicious mischief, as well as other coverage required under the Project Documents.
 6. Nothing in these General Conditions shall be interpreted as requiring the City to pay for stored materials. The City shall decide on a case-by-case basis whether stored materials can be paid for. Some factors the City will consider are:

CONTRACTOR's ability to meet the Project Schedule and milestones, the effectiveness of CONTRACTOR's quality control plan, how record drawings are being maintained and kept up, the status of the material submittals, and the on-going cleanliness of the Project and the Project Site. No payment will be made for stored materials that have not been submitted and accepted.

7. If the permanent materials are stored off-site, CONTRACTOR must pay the City's representative's transportation and lodging to see the permanent materials.
8. Full title to the materials and/or equipment shall vest with the City at the time of delivery to the site, warehouse or other storage location.

14.2 UNIT PRICE BID SCHEDULE. Progress payments on account of unit price Work will be based on the number of units completed as determined by the City and/or its representative.

14.3 SCHEDULE OF VALUES (LUMP SUM PRICE BREAKDOWN)

A. CONTRACTOR shall furnish on a form approved by the City:

1. Within **10 days** of award of the contract and commensurate with the specification section entitled **CONSTRUCTION SCHEDULES**, provide a detailed preliminary estimate giving a complete breakdown of contract price for each area of the project and/or site, which shall include all Subcontractor/supplier agreements showing the dollar amounts of these agreements to justify the schedule of values, and showing separate line items for the material cost(s) and installation cost(s).
2. A periodical itemized estimate of Work done for purpose of making partial payments thereon, that is until the cost loaded CPM construction schedule has been developed (if required by the Contract).
3. Within **10 days** of a request by City, a schedule of estimated monthly payments which shall be due CONTRACTOR under the **Agreement**.

B. Values employed in making up any of these schedules are subject to the City's written approval and will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from contract price.

1. Unless otherwise agreed in writing, payment for CONTRACTOR's mobilization costs shall be cost loaded as follows:

Mobilization Payment Schedule	
Upon Mobilization	50% of Mobilization item may be billed for bonding, insurance and yard set-up costs
25%	10% of Mobilization item may be billed
50%	10% of Mobilization item may be billed
75%	10% of Mobilization item may be billed
100% (clean up completed)	20% remaining to pay for de mobilization

14.4 ALLOWANCES

A. The following costs shall be included in all allowances;

1. Cost of the product to CONTRACTOR or Subcontractor, less applicable trade discounts.
2. Delivery to the site.

3. Applicable taxes.
- B. CONTRACTOR costs included in the Contract Sum include, but are not limited to;
1. Arrangement of product(s) shipping and handling at site, including unloading, uncrating, and storage.
 2. Protection of products from the elements and from damage.
 3. Labor for installation, adjustments and finishing products.
 4. Product warranties.
 5. Scheduling changes and updates.
 6. Other expenses required to complete installation.
 7. CONTRACTOR and Subcontractor(s) overhead and profit.
- C. The adjustments in costs will be made if the net cost is more or less than the specified amount of the allowance. The net cost of the adjustment shall be the amount of the difference between the specified allowance and the actual cost of the material, with the exception of a not-to-exceed fifteen percent (15%) mark-up for overhead and profit. The Contract Sum will be adjusted by Change Order.
1. Submit any claims for anticipated additional costs, or other expenses caused by the selection of the allowance, prior to execution of the Work.
 2. Submit documentation for actual additional costs, or other expenses caused by the selection the allowance, prior to execution of the Work.
 3. Failure to submit claims within the designated time will constitute a waiver of claims for additional costs.
- D. City may separately bid the materials, subject to the specified allowances. The successful bidder will be assigned to CONTRACTOR, and shall be considered a Subcontractor to the CONTRACTOR. Upon assignment, the CONTRACTOR shall all make the necessary submittals, prepare necessary shop drawings and coordinate all related Work. CONTRACTOR shall make all necessary adjustments and revisions to the Project Schedule for such allowances and Subcontractor assignments.

14.5 WAIVER, CONDITIONAL RELEASE, RELEASE OF CLAIMS

- A. Commensurate with the statutes of Public Contract Code section 7100 et seq., provisions in public works contracts with public entities which provide that acceptance of a payment otherwise due a CONTRACTOR is a waiver of all claims against the public entity arising out of the Work performed under the contract or which condition the right to payment upon submission of a release by the CONTRACTOR of all claims against the public entity arising out of performance of the public Work are against public policy and null and void. This section shall not prohibit a public entity from placing in a public works contract and enforcing a contract provision which provides that payment of undisputed contract amounts is contingent upon the CONTRACTOR furnishing the public entity with a release of all claims against the public entity arising by virtue of the public works contract related to those amounts. The CONTRACTOR from the operation of the release may specifically exclude disputed contract claims in stated amounts.
- B. Neither the City nor original CONTRACTOR by any term of their contract, or otherwise, shall waive, affect, or impair the claims and liens of other persons whether with or without notice except by their written consent, and any term of the contract to that effect

shall be null and void. Any written consent given by any claimant pursuant to this subdivision shall be null, void, and unenforceable unless and until the claimant executes and delivers a waiver and release. Such a waiver and release shall be binding and effective to release the City, construction lender, and surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in this section and is signed by the claimant or his or her authorized agent, and, in the case of a conditional release, there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check that has been paid by the bank upon which it was drawn or by written acknowledgment of payment given by the claimant.

- C. No oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless:
 - 1. It is pursuant to a waiver and release prescribed herein, or
 - 2. The claimant had actually received payment in full for the claim.
- D. This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the, stop notice, or bond claims.
- E. The waiver and release given by any claimant hereunder shall be null, void, and unenforceable unless it follows substantially the following forms in the following circumstances. Each waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

-ARTICLE CONTINUES ON NEXT PAGE -

1. Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the form:

CONDITIONAL WAIVER AND RELEASE UPON "PROGRESS PAYMENT"

Upon receipt by the undersigned of a check from: _____
(Maker of Check)
in the sum of \$ _ payable to: _____ (Amount of Check)
(Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of

_____ located at: _____
(CITY) (Job Description)

to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to

_____ through: _____
(Your Customer) (Date)

only and does not cover any retention's retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon Work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of the document relies on it, said party should verify evidence of payment to the undersigned.

_____ (Company Name) _____ (Date)

By: _____
(Title)

Exclusions: Listing of Claims, of which Notice has been given:

1. Claim for: _____ In the amount of: \$ _____
2. Claim for: _____ In the amount of: \$ _____
3. Claim for: _____ In the amount of: \$ _____
4. Claim for: _____ In the amount of: \$ _____
5. Claim for: _____ In the amount of: \$ _____

2. Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall follow substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE UPON "PROGRESS PAYMENT"

The undersigned has been paid and has received a progress payment in the sum of \$ _____ for labor, services, equipment, or material furnished to

(Your Customer)

on the job of: _____ located at: _____
(CITY) (Job Description)

and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to

_____ through: _____
(Your Customer) (Date)

only and does not cover any retention's retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon Work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

(Company Name) (Date)

By: _____
(Title)

Exclusions: Listing of Claims, of which Notice has been given:

- 1. Claim for: _____ In the amount of: \$ _____
- 2. Claim for: _____ In the amount of: \$ _____
- 3. Claim for: _____ In the amount of: \$ _____
- 4. Claim for: _____ In the amount of: \$ _____
- 5. Claim for: _____ In the amount of: \$ _____

"NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."

3. Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the form:

CONDITIONAL WAIVER AND RELEASE UPON "FINAL PAYMENT"

Upon receipt by the undersigned of a check from _____

in the sum of \$ _____ payable to: _____

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of

_____ located at: _____
(CITY) (Job Description)

This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional Work in the amount of \$ _____

Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

(Company Name) (Date)

By: _____
(Title)

Exclusions: Listing of Claims, of which Notice has been given:

- 1. Claim for: _____ In the amount of: \$ _____
- 2. Claim for: _____ In the amount of: \$ _____
- 3. Claim for: _____ In the amount of: \$ _____
- 4. Claim for: _____ In the amount of: \$ _____
- 5. Claim for: _____ In the amount of: \$ _____

4. Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the form:

UNCONDITIONAL WAIVER AND RELEASE UPON "FINAL PAYMENT"

The undersigned has been paid in full for all labor, services, equipment or material

furnished to: _____
(Your Customer)

on the job of: _____ located at: _____
(CITY) (Job Description)

and does hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra Work in the amount of \$ _____.

(Company Name) (Date)

By: _____
(Title)

Exclusions: Listing of Claims, of which Notice has been given:

1. Claim for: _____ In the amount of: \$ _____
2. Claim for: _____ In the amount of: \$ _____
3. Claim for: _____ In the amount of: \$ _____
4. Claim for: _____ In the amount of: \$ _____
5. Claim for: _____ In the amount of: \$ _____

"NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."

14.6 RETENTION. The City shall retain 5% percent of the estimated value of the Work done as part security for the fulfillment of the CONTRACT by the CONTRACTOR.

14.7 SUBSTITUTION OF SECURITIES, ESCROW ACCOUNT

- A. Pursuant to the requirements of Public Contract Code Section 22300, upon CONTRACTOR's request, the City will make payment to CONTRACTOR of any earned retention funds withheld from payments under this Agreement if CONTRACTOR deposits with the City or in escrow with a California or federally chartered bank acceptable to the City, securities eligible for the investment pursuant to Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:
1. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.
 2. All expenses relating to the substitution of securities under Section 22300 and under this Article, including, but not limited to the City's overhead and administrative expenses, and expenses of the escrow agent shall be the responsibility of the CONTRACTOR.
 3. If CONTRACTOR shall choose to enter into an escrow agreement, such agreement form shall be provided by the City upon request, and which shall allow for the conversion to cash to provide funds to meet defaults by the CONTRACTOR including, but not limited to, termination of the CONTRACTOR's control over the Work, stop notices filed pursuant to law, assessment of liquidated damages or amounts to be kept or retained under the provisions of the Project Documents.
 4. Securities, if any, shall be returned to CONTRACTOR only upon satisfactory completion of the Agreement.
- B. To minimize the expense caused by such substitution of securities, CONTRACTOR shall, prior to or at the time CONTRACTOR requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Agreement. Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the City determines to withhold, CONTRACTOR shall immediately and at CONTRACTOR's expense deposit additional security qualifying under Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Agreement.
- C. In the alternative, under Section 22300, the CONTRACTOR may request City to make payment of earned retentions directly to the escrow agent at the expense of the CONTRACTOR. Also at the CONTRACTOR's expense, the CONTRACTOR may direct investment of the payments in securities, and the CONTRACTOR shall receive interest earned on such investment upon the same conditions as provided for securities deposited by CONTRACTOR. Upon satisfactory completion of the contract, CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by escrow agent from the City pursuant to the terms of Section 22300. If CONTRACTOR elects to receive interest on monies withheld in retention by the City, CONTRACTOR shall, at the request of any subcontractor, make that option available to the subcontractor regarding any monies withheld in retention by the CONTRACTOR from the subcontractor. If the CONTRACTOR elects to receive any interest on any monies withheld in retention by the City, then the subcontractor shall receive the identical rate of interest received by the

Contractor on any retention monies withheld from the subcontractor by the CONTRACTOR, less any actual pro rata costs associated with administering and calculating that interest. In the event the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the CONTRACTOR elects to substitute securities in lieu of retention, then, by mutual consent of the CONTRACTOR and subcontractor, the subcontractor may substitute securities in exchange for the release of monies held in retention by CONTRACTOR. This shall apply only to those subcontractors performing more than five percent (5%) of the CONTRACTOR's total bid. The CONTRACTOR shall not require any subcontractor to waive any provision of this section.

- D. If any provision of this Article shall be found to be illegal or unenforceable, then, notwithstanding, the remainder of this Article shall remain in full force and effect, and only such provision shall be deemed stricken.

14.8 CONTRACTOR'S WARRANTY OF TITLE, ASSIGNMENT OF ANTITRUST ACTIONS.

- A. Public Contract Code Section 7103.5 provides:

1. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the CONTRACTOR or Subcontractor offers and agrees to assign to the awarding body (the City) all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the CONTRACTOR, without further acknowledgment by the parties.
2. CONTRACTOR, for itself and all Subcontractors, agrees to assign to the City all rights, title, and interest in and to all such causes of action CONTRACTOR and all Subcontractors may have under the Agreement. This assignment shall become effective at the time the City tenders final payment to the CONTRACTOR, and CONTRACTOR shall require assignments from all Subcontractors to comply herewith.

14.9 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

- A. The City's designee will, within **7 days** after receipt of each Application for Payment, either indicate approval by counter-signature on the application for progress payment, or return the application to the CONTRACTOR indicating in writing the City's reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application. **30 days** after presentation of the Application for Payment with the City's recommendation, the amount recommended will become due and when due, will be paid by the City to the CONTRACTOR.
- B. The City may withhold a sufficient amount or amounts of any payment or payments otherwise due to CONTRACTOR, as in its judgment may be necessary to cover:
1. Payments which may be past due and payable for just claims against CONTRACTOR or any Subcontractors, or against and about the performance of Work on the Project.
 2. The cost of defective or incomplete or damaged Work which CONTRACTOR has not remedied.

3. Liquidated damages assessed against CONTRACTOR.
4. Penalties for violation of labor laws.
5. The cost of materials ordered by the City pursuant to Article 13.
6. The cost of completion of this Agreement if there exists a reasonable doubt that this Agreement can be completed for the balance then unpaid to CONTRACTOR.
7. Damage caused by CONTRACTOR to another contractor.
8. Site clean-up provided by the City (or others on contract to the city) on behalf of the CONTRACTOR for failure of the CONTRACTOR to provide timely and adequate clean up as required by the Project Documents, in the opinion of the City.
9. Payments to indemnify, defend, or hold harmless the City.
10. Any payments due to the City including but not limited to payments for failed tests, utilities or imperfections.
11. Extra services for the Engineer, including but not limited to, services rendered in the evaluation of CONTRACTOR substitution requests, Requests For Information (RFI's), Change Order Requests (COR's) and Claims.
12. Extra services for the INSPECTOR including but not limited to re-inspection required due to CONTRACTOR's failed tests or installation of unapproved or defective materials and CONTRACTOR's requests for inspection and CONTRACTOR's failure to attend the inspection, and Work performed after regular Work hours, or during weekend and/or holidays.
13. Stop Notices/Liens have been filed in connection with the Work and the City has exercised its discretion to not accept a specific Bond intended to discharge of such Liens.
14. Claims by third party entities and/or individuals.
15. Persistent failure to comply with directions given to perform.
16. Costs and/or damages resulting from delay, termination and/or other causes which increase or which may increase the City's costs in administering the contract.
17. There are other items entitling the City to a set-off against the amount recommended.

The City must give the CONTRACTOR written notice stating the reasons for such action and pay the CONTRACTOR in the next application for progress payment, the amount so withheld, or any adjustment thereto agreed to by the City and CONTRACTOR, when CONTRACTOR corrects to the City's satisfaction the reason for such action.

- C. If the above grounds are in the opinion of the City removed by or at the expense of CONTRACTOR, payment shall be made for amounts withheld because of them.
- D. **PAYMENTS WITHHELD.** The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, the City shall make such payments on behalf of CONTRACTOR. If any payment is so made by the City, then such amount shall be considered as a payment made under contract by the City to CONTRACTOR and the City shall not be liable to CONTRACTOR for such payments

made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render CONTRACTOR an accounting of such funds disbursed on behalf of CONTRACTOR. To minimize/avoid claims of interference and/or that proposed payment was improper, the City shall endeavor to communicate to CONTRACTOR as to the CONTRACTOR's opinion regarding any proposed payment to a third party individual/entity, prior to City making the same. If CONTRACTOR fails to respond in writing detailing the reason(s) for making any such payment within two (2) working days, City shall have the right, but not the duty, to make any such payment without concern that CONTRACTOR will later claim such payment was improper and/or interfered with CONTRACTOR's relationship and/or prospective economic advantage. In such event, all such claims by CONTRACTOR shall be deemed waived.

- E. As an alternative to payment of such claims or obligations, the City, in its sole discretion, may reduce the total contract price as provided in the Article 13.

14.10 PARTIAL OCCUPATION /UTILIZATION

- A. The City reserves the right to occupy buildings and/or portions of the site at any time before completion, and such occupancy shall not constitute final acceptance of any part of Work covered by this Agreement, nor shall such occupancy extend the date specified for completion of the Work, nor shall any such occupancy affect any liquidated damages. The City shall have the right to utilize or place into service any item of equipment or other usable portion of the Work prior to completion of the Work. Whenever the City plans to exercise said right, the CONTRACTOR will be notified in writing by the City, identifying the specific portion or portions of the Work to be so utilized or otherwise placed into service.
- B. It shall be understood by the CONTRACTOR that until such written notification is issued, all responsibility for care and maintenance of all of the Work shall be borne by the CONTRACTOR. Upon issuance of said written notice of Partial Utilization, the City will accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice.
- C. The CONTRACTOR shall retain full responsibility for satisfactory completion of the Work, regardless of whether a portion thereof has been partially utilized by the City, and the CONTRACTOR's **1 year** correction period shall commence only after the date of Project Completion for the entire Work.

14.11 PROJECT COMPLETION

- A. The City shall accept completion of the Agreement and have the Notice of Completion recorded when the entire Work including CONTRACTOR's Punch List(s) and City's final review comments shall have been completed to the satisfaction of the City. The Work may only be accepted as complete by action of the Escondido City Council. Completion means final completion, and the concept of substantial completion shall not apply to this Agreement.

- B. However, the City, at its sole option, may accept completion of the Agreement and have the Notice of Completion recorded when the entire Work including individual portions of the Work shall have been completed to the satisfaction of the City, except for minor corrective items, as distinguished from incomplete items.
 - C. A final walk through of the Project to determine completion of the Agreement and to record the Notice of Completion shall occur only upon a valid claim by CONTRACTOR that the Project is complete except for minor corrective items. Any erroneous claims of completion by CONTRACTOR resulting in a premature walk through shall be at CONTRACTOR's sole cost and expense and the City shall make adjustments to the Contract Price by reducing the amount thereof to pay for any costs incurred by the City due to the erroneous claims by the CONTRACTOR that the Project is complete. Minor corrective items shall be identified in the final walk through of the Project.
 - D. If the CONTRACTOR fails to complete the minor corrective items prior to the expiration of the **35 day** period immediately following recording of the Notice of Completion, the City shall withhold from the final payment an amount equal to twice the estimated cost, as determined by the City, of each item until such time as the item is completed. At the end of such **35 day** period, if there are items remaining to be corrected, the City may elect to proceed as provided in the Article 13.
- 14.12 FINAL APPLICATION FOR PAYMENT. After the CONTRACTOR has completed all of the Work, the punch-list, and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up as-built record documents and other documents, all as required by the Project Documents, and after the Engineer and the City have indicated that the Work is acceptable, the CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective unconditional waiver releases (Reference Article 14.5) by CONTRACTOR and all SUBCONTRACTORS/suppliers that filed preliminary notices of all previous progress payments, conditional waiver and release upon "final payment", and waivers or releases of all Liens arising out of or filed in connection with the Work.
- 14.13 FINAL PAYMENT AND ACCEPTANCE
- A. If, on the basis of the City's observation of the Work during construction and final inspection, and the City's review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, the City is satisfied that the Work has been completed and the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, the City designee will recommend payment of the final application for progress payment.
 - B. After acceptance of the Work by the Escondido City Council, the City will make final disposition to the CONTRACTOR of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following items:
 - 1. Liquidated damages, as applicable; and
 - 2. Amounts withheld by the City under Article 14.9.B. which have not been released.
 - C. As a condition of final payment, the CONTRACTOR shall be required to execute a release releasing the City from any and all claims of liability for payment on the Project except for such amounts as may be specifically described and excluded from the release.

- 14.14 RELEASE OF RETENTION AND OTHER DEDUCTIONS. After recording the Notice of Completion with the San Diego County Recorder's Office to initiate the Lien period, and not more than **55 calendar days** thereafter, the City will release to the CONTRACTOR the retention funds withheld pursuant to the Agreement, less any deductions to cover pending claims against the City.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.1 CITY'S RIGHT TO TERMINATE AGREEMENT

- A. If the CONTRACTOR refuses or fails to complete the Work or any separable part thereof with such diligence as will ensure its completion within the time specified or any extension thereof, or fails to complete said Work within such time, or if the CONTRACTOR should file a petition for relief as a debtor, or should relief be ordered against CONTRACTOR as a debtor under Title 11 of the United States Code, or if CONTRACTOR should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should refuse or should fail to supply enough properly skilled workers or proper materials to complete the Work in the time specified, or if CONTRACTOR should fail to make prompt payment to Subcontractors for materials or labor, or disregard laws or ordinances or instructions of the City, or if CONTRACTOR or its Subcontractors should otherwise violate any provision of this Agreement, including, but not limited to, the performance of defective Work, disregard or violate the Laws or Regulations of any public body having jurisdiction; disregard or violate provisions of the Contract Documents or City's instructions; fail to prosecute the Work according to the approved progress schedule; fail to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Contract Documents; or disregard the authority of the City, then the City may, without prejudice to any other right or remedy, serve written notice upon CONTRACTOR and its surety of City's intention to terminate this agreement. Such notice shall contain the reasons for such intention to terminate. Unless within **seven (7) days** after the service of such notice such condition shall cease or such violation shall cease and arrangements satisfactory to the City for the correction thereof have been made, this Agreement shall cease and terminate. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished to the City's satisfaction.
- B. In the event of any such termination, the City shall immediately serve written notice thereof upon surety and CONTRACTOR, and surety shall have the duty to take over and perform this Agreement, provided, however, that if surety within **7 days** after service upon it of notice of termination does not give the City written notice of its intention to unqualifiedly by honor its duty to take over and perform this Agreement, or does not commence actual, on site performance thereof within **15 days** after service of the notice of termination by the City on surety, the City may take over the Work and prosecute it to completion by Agreement or by any other method it may deem advisable for the account and at the expense of CONTRACTOR, and CONTRACTOR and its surety shall be liable to the City for any excess cost or other damages, including the added time devised by City personnel and/or consultants, including attorneys, occasioned by the City thereby. Time is of the essence in this Agreement. If the City takes over the Work as herein above provided, the City may, without liability for so doing, take possession of and utilize in completing the Work such materials, supplies, equipment and other property belonging to the CONTRACTOR as may be on the site of the Work and necessary therefore.

- C. If the expense of finishing the Work, including compensation for additional engineering, architectural, managerial, legal, consulting, personnel, and administrative services, shall exceed the unpaid balance of the Agreement, CONTRACTOR and/or its surety shall pay the difference to the City. Expense incurred by the City as herein provided, and damage incurred through CONTRACTOR's default, shall be certified to City by the Engineer, or ARCHITECT if applicable. If the unpaid balance under the Agreement shall exceed the expense of finishing the Work, including compensation for additional architectural, managerial, legal, consulting, personnel, and administrative services, such excess shall be paid to CONTRACTOR or its creditor(s).
- D. If the CONTRACTOR fails to remedy the conditions constituting default within the time allowed, the City may then issue the notice of termination.
- E. In the event that sufficient funds are not appropriated to complete the Project or the City determines that sufficient funds are not available to complete the Project, the City may terminate or suspend the completion of the Project at any time by giving written notice to the CONTRACTOR. In the event that the City exercises this option, the City shall pay for any and all Work and materials completed or delivered onto the site, and the value of any and all Work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of Work and materials paid for shall include a factor of fifteen percent (15%) for the CONTRACTOR's overhead and profit and there shall be no other costs or expenses paid to CONTRACTOR. All Work, materials and orders paid for pursuant to this provision shall become the property of the City. The City may, without cause, order CONTRACTOR in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as the City may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspense, delay or interruption.
- F. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the City.

15.2 TERMINATION OF AGREEMENT BY THE CITY FOR CONVENIENCE

- A. Upon **7 days** written notice to the CONTRACTOR the City may, without cause and without prejudice to any other right or remedy of the City, elect to terminate the Agreement. In such case, the CONTRACTOR shall be paid (without duplication of any items):
 - 1. For completed and acceptable Work executed in accordance with the Contract Documents, prior to the effective date of termination, including fair and reasonable sums for overhead and profit of such Work;
 - 2. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. For all reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. For reasonable expenses directly attributable to termination.
- B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

ARTICLE 16 – CONSTRUCTION CLAIMS, WAIVER AND RELEASE FORMS, DISPUTES, FALSE CLAIMS ACT.

16.1 CONTRACTOR CLAIMS

- A. NOTICE. If the CONTRACTOR shall claim compensation for any damage sustained by reason of the acts of the City or its agents, or if the CONTRACTOR disagrees with the City's or Engineer's/Architect's decisions regarding a CONTRACTOR's Change Order Request (COR), the CONTRACTOR shall provide written "Notice" to the City **within 5 days** after sustaining of such damage, or being notified of an adverse decision, and provide within **14 days** of the event the factual basis supporting the claim (unless otherwise specified). The written "Notice" shall state the summary points for which the factual bases will support the claim and cite in detail the Project Documents (including plans and specifications) upon which the claim is to be based. CONTRACTOR's failure to notify the City within such a period shall be deemed a waiver and relinquishment of such a claim. If such notice is given within the specified time, the procedure for its consideration shall be as stated above in these General Conditions.
- B. WAIVER AND RELEASE FORMS. In addition, on or before the end of the month for which the claim has been filed, the CONTRACTOR shall also file with the City the **WAIVER AND RELEASE FORMS**, for which the claim and the amount of the claim is identified. If the claim is not indicated on the **WAIVER AND RELEASE FORMS**, CONTRACTOR's claim shall be forfeited and invalidated and it shall not be entitled to consideration for time or payment on account of any such claim.
- C. REQUIRED DOCUMENTATION FOR CLAIMS FOR TIME: Fragnet – Sometimes known as a "Sub-network". A Fragnet will be required for time impact analysis and time extensions. CONTRACTOR's failure to provide a "Notice of Delay" within **24 hours**, and submit a Fragnet for time impact analysis and time extension(s) on or within **14 days** of the delaying event, shall forfeit and invalidate all considerations for time and/or payment. The costs to prepare Fragnets and schedule updates resulting from approved Fragnets are part of the Work, regardless of number and difficulty. The City will provide a response to the Fragnet on or within **14 days** from the completed submission.
- D. Except for tort claims, all claims by the CONTRACTOR for a time extension, payment of money or damages arising from Work done by, or on behalf of, the CONTRACTOR pursuant to the Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or as to the amount of payment which is disputed by the City of \$375,000 or less, is subject to the settlement and arbitration provisions procedures set forth in Public Contract Code Section 20104, et seq. The text of those provisions are provided in full in Article 17.
- E. All of the following claims by the CONTRACTOR are subject to the claim resolution procedures set forth in Public Contract Code Section 9204. The text of that section is provided in full in Article 17.
1. A time extension;
 2. Payment of money or damages arising from Work done by, or on behalf of, the CONTRACTOR pursuant to the Agreement and payment of which is not otherwise expressly provided for, or CONTRACTOR is not otherwise entitled to; and
 3. Payment of an amount that is disputed by the City.

- F. Any claim must be a separate demand sent by registered mail or certified mail with return receipt requested. The CONTRACTOR shall furnish reasonable documentation to support the claim, which shall include all of the materials described in Section 16.1.
- G. The City shall conduct a reasonable review of the claim within **45 days** and shall provide the CONTRACTOR a written statement identifying what portion of the claim is disputed and what portion is undisputed. The City and the CONTRACTOR may, by mutual agreement, extend the time period for response. Any payment due on an undisputed portion of the claim shall be processed and made within **60 days** after the City issues its written statement.
- H. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim because of privity of contract does not exist, the CONTRACTOR may present a claim to the City on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing that the CONTRACTOR present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the City shall furnish reasonable documentation to support the claim, which shall include all of the materials described in Section 16.1. Within **45 days** of receipt of this written request, the CONTRACTOR shall notify the subcontractor in writing as to whether the CONTRACTOR presented the claim to the City. If the CONTRACTOR did not present the claim, the CONTRACTOR must provide the subcontractor with a statement of the reasons for not presenting the claim to the City.

16.2 DISPUTES –THE CITY'S AND ENGINEER'S DECISIONS

- A. If the CONTRACTOR disputes the City's written response to the claim, or if the City does not respond to the claim within the time prescribed, the CONTRACTOR may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. The CONTRACTOR must send the demand by registered mail or certified mail, return receipt requested. Upon receipt, the City shall schedule a meet and confer conference within **30 days** for settlement of the dispute.
- B. If any portion of the claim remains in dispute after the meet and confer conference, the City shall provide the CONTRACTOR a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed within **10 business days** following the conclusion of the conference. Any payment due on an undisputed portion of the claim shall be processed and made within **60 days** after the City issues its written statement. Any disputed portion of the claim, as identified by the CONTRACTOR in writing, shall be submitted to nonbinding mediation. The City shall conduct a reasonable review of the claim within **45 days** and shall provide the CONTRACTOR a written statement identifying what portion of the claim is disputed and what portion is undisputed. The City and the CONTRACTOR may, by mutual agreement, extend the time period for response. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement.
- C. The City and CONTRACTOR shall mutually agree to a mediator within **10 business days** after the disputed portion of the claim has been identified in writing. The City and the CONTRACTOR shall share the associated costs of mediation equally. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside Section 9204. The mediation

conducted shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

D. Failure by the City to respond to a claim from the CONTRACTOR within the time periods described above or to otherwise meet the time requirements described above shall result in the claim being deemed rejected in its entirety.

E. Amounts not paid in a timely manner as outlined above will bear interest at 7% per year.

16.3 FALSE CLAIMS ACT CERTIFICATION. All claims submitted by the CONTRACTOR shall be accompanied by a notarized certificate containing the following language:

Under penalty perjury and with specific reference to the California False Claims Act, Government Code Section 12650 et. seq., the undersigned,

(name) _____ of
(title) _____
(company) _____

hereby certifies that the claim for the additional compensation and time, if any, made herein for the Work on this Contract is a true statement of the actual costs incurred or estimated future costs, and time sought, and is fully documented and supported under the Agreement.

Dated _____

/s/ _____

Subscribed and sworn before me this _____ day

of _____

Notary Public
My Commission Expires _____

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

ARTICLE 17 – MISCELLANEOUS

17.1 GIVING NOTICE

A. Any notice from one party to the other or otherwise under the Agreement shall be in writing and shall be dated and signed by party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners, and copied to the City:

1. If notice is given to the City, by personal delivery thereof to the City or by deposit in the United States mail, enclosed in a sealed envelope addressed to the City, and sent by registered or certified mail with postage prepaid;
2. If notice is given to CONTRACTOR, by personal delivery thereof to said CONTRACTOR or to CONTRACTOR's superintendent at the site of the Project,

or by deposit in the United States mail, enclosed in a sealed envelope addressed to said CONTRACTOR at its regular place of business or at such address as may have been established for the conduct of Work under this Agreement, and sent by registered or certified mail with postage prepaid;

3. If notice is given to the surety or other persons, by personal delivery to such surety or other person or by deposit in the United States mail, enclosed in a sealed envelope, addressed to such surety or person at the address of such surety or person last communicated by the surety or other person to the party giving notice, and sent by registered or certified mail with postage prepaid.

- 17.2 **TITLE TO MATERIALS FOUND ON THE WORK.** The City reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from excavations and other operations connected with the Work. Unless otherwise specified in the Contract Documents, neither the CONTRACTOR nor any Subcontractor shall have any right, title, or interest in or to any such materials. The CONTRACTOR will be permitted to use in the Work, without charge, any such materials which meet the requirements of the Contract Documents.
- 17.3 **RIGHT TO AUDIT.** If the CONTRACTOR submits a claim to the City for additional compensation, the City shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the CONTRACTOR's Documents and books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the CONTRACTOR's plant, or such parts thereof, as may be or have been engaged in the performance of the Work. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the City deems desirable during the CONTRACTOR's normal business hours at the office of the CONTRACTOR. The CONTRACTOR shall make available to the City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the City.
- 17.4 **SURVIVAL OF OBLIGATIONS.** All representations, indemnifications, warranties, and guaranties made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work or termination or completion of the Agreement.
- 17.5 **CONTROLLING LAW.** This Agreement is to be governed by the law of the state of California, in which the Project is located, with venue in North San Diego County.
- 17.6 **SEVERABILITY.** If any term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, the remaining terms and provisions of the Agreement shall not be affected thereby and shall remain in full force and effect.
- 17.7 **WAIVER.** The waiver by the City of any breach or violation of any term, covenant or condition of this Agreement or of any Agreement provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the City which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by CONTRACTOR or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

- 17.8 PROHIBITED INTERESTS. No official of the City who is authorized in such capacity and on behalf of the City to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in this Project or in any part thereof. No officer, employee, Engineer, attorney, architect or inspector of or for City who is authorized in such capacity and on behalf of the City to exercise any executive, supervisory or other similar functions in connection with construction of Project shall become directly or indirectly interested financially in this Project or in any part thereof. CONTRACTOR shall receive no compensation and shall repay the City for any compensation received by or from CONTRACTOR hereunder, should CONTRACTOR aid, abet or knowingly participate in violation of this Article.
- 17.9 California Public Contract Code § 9204. Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process.
- (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
 - (b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
 - (c) For purposes of this section:
 - (1) “Claim” means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - A. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
 - B. Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
 - C. Payment of an amount that is disputed by the public entity.
 - (2) “Contractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
 - (3) A. “Public entity” means, without limitation, except as provided in subparagraph B., a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.
 - B. “Public entity” shall not include the following:
 - (i) The Department of Water Resources as to any project under the jurisdiction of that department.
 - (ii) The Department of Transportation as to any project under the jurisdiction of that department.
 - (iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

- (iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.
 - (v) The Military Department as to any project under the jurisdiction of that department.
 - (vi) The Department of General Services as to all other projects.
 - (vii) The High-Speed Rail Authority.
- (4) “Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.
- (5) “Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.
- (d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.
- (B) The claimant shall furnish reasonable documentation to support the claim.
- (C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.
- (D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.
- (2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection

with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

- (C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
 - (D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
 - (E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.
- (3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
- (4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
- (5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.
- (e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.
 - (f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.
 - (g) This section applies to contracts entered into on or after January 1, 2017.
 - (h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.
 - (i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

17.10 California Public Contract Code § 20104. Application of article; provisions included in plans and specifications.

- (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
- (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.
- (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.
- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
- (d) This article applies only to contracts entered into on or after January 1, 1991.

17.11 California Public Contract Code § 20104.2. Claims; requirements; tort claims excluded.

For any claim subject to this article, the following requirements apply:

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
- (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
- (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- (c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
- (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
- (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- (d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local

agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

- (e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- (f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

17.12 California Public Contract Code § 20104.4. Civil action procedures; mediation and arbitration; trial de novo; witnesses.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

- (a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
- (b)
 - (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
 - (2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
 - (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
- (c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

17.13 California Public Contract Code § 20104.6. Payment on undisputed portion of claim; interest on arbitration awards or judgments.

- (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
- (b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

CITY COUNCIL STAFF REPORT

Consent Item No. 12

April 4, 2018

File No. 0680-70

SUBJECT: Request for Authorization to Support Filing of *Amicus Curiae* Brief on Behalf of City of Escondido in *United States v. State of California* Lawsuit

DEPARTMENT: City Attorney's Office

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2018-52 authorizing the filing of a Motion for Leave to File *Amicus Curiae* Brief and *Amicus* Brief on behalf of the City of Escondido in support of the United States in the action *United States of America v. State of California*, United States District Court Case No. 2:18-cv-00490-JAM (KJN).

FISCAL ANALYSIS:

This matter will have no fiscal impact on the City.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Council Action Plan regarding Public Safety.

PREVIOUS ACTION:

On April 5, 2017, the City Council passed Resolution No. 2017-55 expressing opposition to the passage of California Senate Bill (SB) 54 titled the "California Values Act."

BACKGROUND:

New California Laws Affecting Law Enforcement.

In 2017, the State of California passed three laws explicitly aimed at providing protections for persons residing in California without the permission of the United States.

AB 450, the "Immigrant Worker Protection Act," passed by the legislature on October 5, 2017, and signed into law by Governor Brown, prohibits public and private employers in California from voluntarily cooperating with federal officials who seek information relevant to immigration enforcement that occurs in places of employment. The law, in fact, prohibits all employers from allowing immigration enforcement agents into non-public workspaces without a judicially signed warrant. As written, the law effectively prohibits the Escondido Police Department or any city official from holding

Request for Authorization to Support Filing of *Amicus Curiae* Brief on Behalf of City of Escondido in
United States v. State of California Lawsuit

April 4, 2018

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a meeting in an internal (non-public) conference room with an immigration agent unless the federal official had a warrant. The law allows for penalties up to \$10,000 per violation.

AB 103 creates an inspection and review scheme that requires the California Attorney General to investigate the immigration enforcement efforts of federal agents. The bill also prohibits cities and counties from entering into contracts with the federal government or any federal agency to house or detain adult and minor noncitizens in a locked detention facility for purposes of civil immigration custody. The bill does not prohibit contracts for temporary housing of minors in “less restrictive settings.”

SB 54, also known as the “California Values Act,” enacted by the legislature in October 2017, and signed by Governor Brown, became effective January 1, 2018. This law limits the ability of state, county and local law enforcement officers from providing the United States with basic information about individuals who are in their custody and subject to federal immigration custody. The law also strictly limits assisting in the transfer of these individuals to federal immigration custody. Although there are certain circumstances where a local law enforcement official may communicate with federal immigration agents under the law, those opportunities are strictly limited to individuals with certain criminal convictions.

Many law enforcement officials and agencies believe that these recent enactments have negatively affected their ability to perform their responsibilities. In particular, law enforcement has expressed the concern that the constraints on communicating with federal immigration officials regarding the known whereabouts of deportable and dangerous criminals is a danger to overall community safety.

In light of the enactment of SB 54, the Escondido Police Department was required to re-write its Department Instructions relating to communicating with federal officials about individuals in its custody. At this time, all Escondido police officers and officials are prohibited from communicating with immigration enforcement agents unless specifically permitted by SB 54.

Federal Government Lawsuit against the State of California.

On March 6, 2018, the United States of America filed a civil Complaint against the State of California, Governor Brown, and Xavier Becerra, the State Attorney General, in *United States v. State of California*, U.S. District Court Case No. 2:18-cv-00490 JAM (KJN), in the United States District Court, Eastern District of California.

The Complaint seeks declaratory judgments that these new state laws violate the Supremacy Clause of the United States Constitution and are therefore invalid and unenforceable. Specifically, the United States contends that California is intentionally obstructing the enforcement of federal immigration law and that it does not have the authority to prohibit a citizen’s voluntary cooperation with the United States. The United States further alleges that “[w]hen states release these criminals back onto the

Request for Authorization to Support Filing of *Amicus Curiae* Brief on Behalf of City of Escondido in
United States v. State of California Lawsuit

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streets – rather than notifying DHS of the release and transferring custody – they intentionally subvert the careful balancing of state and federal interest that Congress established in the Immigration and Nationality Act (“INA”).” The Complaint further prays that the Court issue preliminary and permanent injunctions prohibiting enforcement of these laws. No trial date has been set in the case.

City of Escondido Interests.

The City of Escondido is a general law city required to comply with properly enacted state laws. As such, the City and its police officers and officials, are severely limited in their communications and cooperation with federal immigration agents. This limitation exists even in circumstances where they have clear evidence that a person in their custody is in this community without the permission of the United States government and may present a danger to the residents of this City.

Generally, as a municipal entity, the City is obligated to ensure that all constitutional liberties guaranteed by both the U.S. Constitution and the California Constitution are observed by all government agencies, including the State of California. This obligation runs to its constituents and officials, including private employers in this jurisdiction. Because the City has an inherent right to exercise its lawful police powers, but is not allowed to enforce immigration laws, and because it employs numerous sworn police officers charged with protecting the citizens of Escondido, the City of Escondido has a direct interest in the outcome of the United States litigation.

The City has serious and legitimate concerns about the lawfulness of the challenged state laws, not only as a matter of preemption by existing federal law, but also in light of federal statutes prohibiting the concealment, harboring, or shielding from detection of illegal aliens. Apart from the issues of preemption and criminal obstruction, the State laws also raise troubling issues under the First Amendment by unreasonably restricting the voluntary communications and contacts between citizens and United States government regarding matters of substantial public concern.

The City’s interest in the consequences of this legislation has been long standing. On April 5, 2017, the City Council passed Resolution 2017-55, by a vote of 4-1, expressing opposition to the passage of SB 54. The Council found that SB 54 did not “provide protection for local communities because it expressly prohibits local law enforcement, who are most likely to come into contact with violent offenders unlawfully in the United States, from communicating effectively with federal authorities who are the only agencies who have the authority to remove these individuals from the country.”

Opportunity for *Amicus Curiae* Brief Filing.

In appellate practice, it is common in matters of statewide or national importance for interested persons and organizations, who are not parties to litigation, to seek leave of court to file *amicus*

Request for Authorization to Support Filing of *Amicus Curiae* Brief on Behalf of City of Escondido in
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curiae (“*amicus*”) briefs. The purpose of the *amicus* brief is to provide additional perspective and legal arguments to the court by entities who may be collaterally effected by, or have other identifiable interest in, the outcome of a pending lawsuit and judicial ruling.

Generally, *amicus* briefs are not filed in cases at the trial court level. However, District Court Judge John A. Mendez, the presiding judge in the *United States* case, issued a Minute Order on March 26, 2018, permitting interested persons to file motions for leave to file *amicus* briefs in support of the United States on or before April 6, 2018. The Court has warned prospective *amici* that it would only “consider briefing that helps the Court beyond the help the lawyers for the parties are able to provide; duplicative or cumulative arguments will not be considered.”

On March 26, 2018, several states filed a Motion for Leave to file an *amicus* brief in support of the United States. Among the movants are the States of Nevada, Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana, Michigan, Missouri, Nebraska, Ohio, Oklahoma, South Carolina, Texas, and West Virginia. At this time, the Court has not granted or denied that motion.

If the City Council desires to participate as an *amicus* in the United States lawsuit, it is recommended that the Council approve Resolution No. 2018-52 and authorize the City Attorney to prepare, participate in the preparation of, or engage special counsel to prepare and file all necessary motions and briefs on behalf of the City to accomplish the purpose of this Resolution.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Michael R. McGuinness, City Attorney
3/29/2018 10:30 a.m.

ATTACHMENTS:

1. Resolution No. 2018-52

RESOLUTION NO. 2018-52

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO TO AUTHORIZE
THE FILING OF AN *AMICUS CURIAE* BRIEF
ON BEHALF OF THE CITY OF ESCONDIDO IN
SUPPORT OF THE UNITED STATES IN THE
LAWSUIT *UNITED STATES OF AMERICA V.
CALIFORNIA*

WHEREAS, in 2017, the State of California passed three laws explicitly aimed at providing protections for persons residing in California without the permission of the United States; and

WHEREAS, AB 450, the “Immigrant Worker Protection Act,” prohibits public and private employers in California from voluntarily cooperating with federal officials who seek information relevant to immigration enforcement that occurs in places of employment. The law prohibits all employers from allowing immigration enforcement agents into non-public workspaces without a judicially signed warrant. The law allows for penalties up to \$10,000 per violation; and

WHEREAS, AB 103 creates an inspection and review scheme that requires the California Attorney General to investigate the immigration enforcement efforts of federal agents. The bill also prohibits cities and counties from entering into contracts with the federal government or any federal agency to house or detain adult and minor noncitizens in a locked detention facility for purposes of civil immigration custody; and

WHEREAS, SB 54, also known as the “California Values Act,” prohibits state, county and local law enforcement officers from providing the United States with basic information about individuals who are in their custody and are subject to federal

immigration custody, or to assist in the transfer of these individuals to federal immigration custody; and

WHEREAS, law enforcement officials and agencies believe that these recent enactments have negatively affected their ability to perform their responsibilities which includes the ability to deport known dangerous criminals; and

WHEREAS, the Escondido Police Department was required to re-write its Department Instructions to prohibit its officers from communicating with immigration enforcement agents unless specifically permitted by SB 54; and

WHEREAS, on March 6, 2018, the United States of America filed a civil Complaint against the State of California, Governor Brown, and Xavier Becerra, the State Attorney General, in *United States v. State of California*, U.S. District Court Case No. 2:18-cv-00490 JAM (KJN) (“Lawsuit”), in the United States District Court, Eastern District of California. The Complaint seeks declaratory judgments that these new state laws violate the Supremacy Clause of the United States Constitution and are therefore invalid and unenforceable. The Complaint further prays that the Court issue preliminary and permanent injunctions prohibiting enforcement of these laws; and

WHEREAS, the City of Escondido is a general law city required to comply with properly enacted state laws. The City’s police officers must now severely limit their communications and cooperation with federal immigration agents. This limitation exists even in circumstances where they have clear evidence that a person in their custody is in this community without the permission of the United States government and may present a danger to the residents of this City; and

WHEREAS, the City of Escondido has a direct interest in the outcome of the United States litigation because as a municipal entity, the City is obligated to ensure that all constitutional liberties guaranteed by both the U.S. Constitution and the California Constitution are observed by all government agencies, including the State of California; and

WHEREAS, the City believes these new State laws have the effect of obstructing the United States government's ability to enforce its immigration laws to the detriment of the City of Escondido and all cities and counties in the State of California; and

WHEREAS, the Lawsuit raises serious and legitimate concerns about the legality of the new State laws including issues of preemption; allowing for the criminal concealment, harboring, and shielding of undocumented persons prohibited by federal law; and violations of the First Amendment by unreasonably restricting the voluntary communications and contacts between citizens and the United States government regarding matters of substantial public concern; and

WHEREAS, on April 5, 2017, the City Council passed Resolution 2017-55 expressing opposition to the passage of SB 54; and

WHEREAS, District Court Judge John A. Mendez, the presiding judge in the *United States* case, issued a Minute Order on March 26, 2018, permitting interested persons to file motions for leave to file *amicus curiae* briefs in support of the United States on or before April 6, 2018; and

WHEREAS, The City Council of the City of Escondido desires to participate in the Lawsuit as an *amicus curiae* to allow the court to consider additional arguments in support of the United States of America.

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 finds and declares that new State laws explicitly aimed at protecting persons in the State without the permission of the United States government from duly enacted immigration laws are a public safety detriment to the City and its residents.
3. That the City of Escondido wishes to participate in the Lawsuit filed by the United States of America as an *amicus curiae* in support of the United States and authorizes the City Attorney to prepare, participate in the preparation of, or engage special counsel to prepare and file all necessary motions and briefs on behalf of the City to accomplish the purpose of this Resolution.

ORDINANCE NO. 2018-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING CHAPTER 22 OF THE ESCONDIDO MUNICIPAL CODE TO UPDATE WASTEWATER, STORMWATER, AND INDUSTRIAL PRETREATMENT REQUIREMENTS AS WELL AS TO CLARIFY REQUIREMENTS FOR INTERAGENCY SEWER EXCHANGES

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

SECTION 1. That the definition of “Authorized Representative” in Section 22-1, Article 1, Chapter 22 of the Escondido Municipal Code is hereby amended and replaced as follows:

Authorized representative shall mean the following:

(1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy or decision making functions, if the discharger is a corporation;

(2) The manager of one (1) or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000.00) (in second-quarter 1980 dollars), if the discharger is a corporation, and authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

ORDINANCE NO. 2018-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA; ADOPTING THE SOUTH CENTRE CITY SPECIFIC PLAN, ADOPTING AN AMENDMENT TO THE CITYWIDE ZONING MAP TO CHANGE THE DESIGNATION OF ALL PROPERTIES WITHIN THE PLANNING AREA TO SPECIFIC PLAN, REPEALING THE SOUTH ESCONDIDO BOULEVARD AREA PLAN, AND ADOPTING ZONING CODE AMENDMENTS TO ARTICLES 44 AND 65 TO SUPPORT THE IMPLEMENTATION OF THE SOUTH CENTRE CITY SPECIFIC PLAN

APPLICANT: City of Escondido
CASE NOS.: SUB 15-0003 / ENV 17-0005

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

SECTION 1. The City Council makes the following findings:

a) The City of Escondido has undertaken the development of a specific plan for the South Centre City planning area to provide a key land use and planning policy document to guide decision-making in the coming years for an area of the City comprising of approximately 420 acres, which extends 2.25 miles along Centre City Parkway and Escondido Boulevard. A verified application was submitted to, and processed by, the Planning Division of the Community Development Department as Planning Case Nos. PHG 15-0003 and ENV 17-0005 and seeks approval of a Specific Plan and Rezone, among other things, relating to all properties within the planning area; and

b) Said application was processed in accordance with the rules and regulations of the Escondido Municipal and Zoning Codes, and the applicable

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

ORDINANCE NO. 2018-05

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING THE ESCONDIDO ZONING CODE
ARTICLE 37, PERTAINING TO PUBLIC ART
COMMISSION MEMBERSHIP

File No: AZ 18-0001

WHEREAS, Zoning Code Article 37 pertains to public art and establishes a seven-member Public Art Commission with eligibility requirements that appointed members must either reside or own a business within the City's general plan, and

WHEREAS, the City Council desires to promote more effective administration of the Commission in order to facilitate better attendance, quorums and recruiting, and

WHEREAS, the City Council desires to amend the membership of the Public Art Commission from seven (7) members to five (5) members, and to amend the commission eligibility requirements to allow up to two (2) members who work in Escondido and who do not either reside or own a business in the community.

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

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

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

CITY COUNCIL STAFF REPORT

Public Hearing Item No. 16

April 4, 2018

File No. 0810-20, 0680-50

SUBJECT: Annual Code Clean-Up and Amendments to the Municipal and Zoning Codes (AZ 16-0008)

DEPARTMENT: Community Development Department, Planning Division

RECOMMENDATION:

It is requested that the City Council introduce Ordinance No. 2018-07, which amends Chapter 32 (Subdivisions) of the Municipal Code and Articles 1, 3, 6, 16, 25, 26, 34, 39, 40, 43, 45, 46, 47, 48, 56, 57, 58, 61, 65, 68, 69, 70, 73, and 75 of the Escondido Zoning Code to address changes in state laws, correct errors, and improve existing regulations

PROJECT DESCRIPTION:

The Project involves an annual review and update of various City codes and regulations to ensure that they stay current and up-to-date. The City proposes to amend the Municipal Code and Zoning Code to correct minor errors in the text, incorporate code interpretations, and improve existing regulations to eliminate uncertainty for staff, customers, and the public.

PLANNING COMMISSION ACTION:

The Planning Commission makes recommendations to the City Council as authorized by the Escondido Municipal Code (Chapter 20) for potential amendments to the Zoning Code (Chapter 33). On February 13, 2018, the Planning Commission adopted Planning Commission Resolution No. 6114, recommending that the City Council approve the proposed Zoning Code Amendment, by a 7-0 vote. The February 13, 2018, Planning Commission staff report and meeting minutes are included for reference as Attachment 1 and Attachment 2 to this report, respectively. The Planning Commission did not review the proposed amendment to Chapter 32 (Subdivisions) because the amendment is not within their purview.

ENVIRONMENTAL REVIEW

The proposed Zoning Code Amendments are exempt from environmental review in conformance with California Environmental Quality Act Guidelines ("CEQA" and "CEQA Guidelines") Section 15061(b)(3) since there would be no possibility of a significant effect on the environment because the amendments will not directly result in development. Any future project or development as defined by CEQA that may occur as a result of the amended language would be subject to CEQA review and analysis. The scope of the changes being considered through this action includes corrective clerical errors or clarification of ambiguities.

BACKGROUND:

The Planning Division of the Community Development Department initiated a process and schedule for maintaining City codes and regulations through an annual omnibus code clean-up. The proposed amendments affect many different sections of the Municipal Code and Zoning Code. The annual omnibus code clean-up is not intended to be a comprehensive update to the codes or to be utilized to change land use designations or zoning districts. Instead, the annual code clean-up process is meant to focus on relatively minor changes to the codes and regulations to make it easier for the public to understand and for staff to administer.

A number of code clean-up amendments have been combined into a single clean-up batch proposal, which helps promote organizational streamlining and efficiency to facilitate customer-based services.

ANALYSIS:

For this year's cycle of the code clean-up, the suggested amendment list includes amendments to various articles of the Municipal Code and Zoning Code. Many of the proposed changes are self-explanatory consisting of grammar and punctuation corrections or simple updates to position titles to reflect those currently used by the City. The explanation for the proposed changes that require further explanation can be found below.

Article 1, Section 8.

This amendment adds definitions for “carports” and “multi-family housing development” to the Zoning Code. This amendment is necessary to establish parameters to understanding the code, as words that have common meanings in everyday usage may have different definitions in terms of zoning regulation.

Article 6, Section 33-102.

This amendment revises regulations for accessory structures within side yard setbacks in residential zones. Currently, there are no restrictions in accessory building height; however, the proposed change limits accessory buildings to one (1) story and 16 feet in height within a side yard setback. This amendment is important because the relationship between a setback and building height helps address structural and aesthetic issues, and would help ensure that yards are provided more open space and adequate light and air.

Article 6, Section 33-103.

This amendment revises regulations for accessory structures within rear yard setbacks in residential zones. Currently, accessory buildings must comply with the setback requirements of the underlying zone for the primary structure, which can be up to 20 feet in some cases. This has been shown to limit reasonable property use and the proposal will rectify an unintended change that was implemented last year. The proposed amendment revises the regulations for accessory structures so that the accessory buildings may be located closer to the property line, provided that a portion of the rear yard remains open. The amendment also would limit accessory buildings to one (1) story and 16 feet in height within a rear yard setback. This portion of the amendment is important because the relationship between a setback and building height helps address structural and aesthetic issues, and would help ensure that yards are provided more open space and adequate light and air.

Article 6, Section 33-104.

This amendment provides for a setback for ground-mounted mechanical equipment in residential zones, which is necessary to establish standards for their placement.

Article 16, Section 33-341.

This amendment addresses minor clarifications regarding the standards for drive-through facilities, which include drive-through banks and fast food restaurants, among other things. This amendment also includes minor changes to the regulations to reflect administrative practice, clarify existing interpretations, and make adjustments to the existing regulations to ensure that entering and exiting vehicles do not disrupt vehicle or pedestrian circulation patterns. Also, a new minimum separation requirement of 200 feet is proposed to reduce the side-by-side proliferation of fast-food restaurants in neighborhood centers. Multiple drive-through facilities within one shopping center may still occur, but the amendment proposes spatial considerations over their location within each center. This amendment is necessary to provide for the maximum

ease and convenience in ingress and egress to private property, as well as the safety and the least interference to the traffic flow on private property, relative to the size of the property served.

Article 61, Section 33-1319 and Chapter 32 of the Municipal Code.

This amendment delegates tentative map extension requests to be reviewed and considered by the City's Zoning Administrator, rather than the Planning Commission or City Council. This type of procedure-authority change would help streamline the development review process so applicants can obtain building permits more quickly. Please note that in order to effectuate this particular policy change, amendments to Section 33-1319 of the Escondido Zoning Code and Chapter 32 (Subdivisions) of the Escondido Municipal Code are needed to ensure our local code has internally consistent references to the Zoning Administrator as the approval body or decision-maker, rather than the original decision-maker.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Bill Martín, Director of Community Development
3/28/2018 4:18 p.m.

Mike Strong, Assistant Director of Planning
3/29/2018 8:57 a.m.

ATTACHMENTS:

1. Attachment 1 – February 13, 2018 Planning Commission staff report
2. Attachment 2 – February 13, 2018 Planning Commission Meeting Minutes
3. Ordinance No. 2018-07
4. Ordinance No. 2018-07 – Exhibits “A” and “B”

ATTACHMENT 1

FEBRUARY 13, 2018 PLANNING COMMISSION STAFF REPORT

Due to the number of pages of Attachment 1, a link has been provided to review the document electronically.

<https://www.escondido.org/Data/Sites/1/media/agendas/PC/2018/PCAgendaPacket02.13.18Mtg.pdf>

A hardcopy of the Attachment is available for review in the Office of the City Clerk during normal business hours. To obtain a copy, please the City Clerk at (760) 839-4617. For City Council members, a copy is available in the City Council reading file.

3. ZONING CODE AMENDMENT – AZ 16-0008:

REQUEST: A series of Escondido Zoning Code Amendments to address changes in state laws, correct errors, and improve existing regulations. The proposal involves minor amendments to Articles 1, 3, 6, 16, 25, 26, 34, 39, 40, 43, 45, 46, 47, 48, 56, 57, 58, 61, 65, 68, 69, 70, 73, and 75 of the Escondido Zoning Code. The proposal also includes the adoption of the environmental determination prepared for the project.

PROPERTY SIZE AND LOCATION: Citywide

Mike Strong, Assistant Planning Director, referenced the staff report and noted staff recommended approval of the proposed Zoning Code Amendment for the following reasons: 1) The batch of amendments relate to organizational effectiveness and efficiency and are considered a housekeeping measure; and 2) The proposed Zoning Code changes would make the code more internally consistent and easier to understand and apply. The amendments make corrections, clarifications, and updates to improve the application process or how the codes are administered.

Commissioner Spann referenced a 20th century term that needed updating in the existing zoning code language.

Commissioner McNair and staff discussed the reasons for eliminating Section 33-1109 Item (d) 2 and 3 as outlined in the staff report.

Chairman Weber and Mr. Strong discussed the setback requirements for accessory units as well as height limitations for accessory dwelling units.

ACTION:

Moved by Commissioner Spann, seconded by Commissioner Cohen, to approve staff's recommendation. Motion carried unanimously. (7-0)

ORDINANCE NO. 2018-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING CHAPTER 32 OF THE ESCONDIDO MUNICIPAL CODE; AND AMENDING ARTICLES 1, 3, 6, 16, 25, 26, 34, 39, 40, 43, 45, 46, 47, 48, 56, 57, 58, 61, 65, 68, 69, 70, 73, AND 75 OF THE ESCONDIDO ZONING CODE TO ADDRESS CHANGES IN STATE LAWS, CORRECT ERRORS, AND IMPROVE EXISTING REGULATIONS.

APPLICANT: City of Escondido
PLANNING CASE NO.: AZ 16-0008

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

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

SECTION 2. The Planning Commission conducted a public hearing on February 13, 2018, to discuss and consider proposed amendments to the Zoning Code, considered public testimony, and made a recommendation to the City Council.

SECTION 3. The City Council has duly reviewed and considered all evidence submitted at said hearings, including, without limitation:

- a. Written information;
- b. Oral testimony from City staff, interested parties, and the public;
- c. The staff report, dated April 4, 2018, which along with its attachments is incorporated herein by this reference as though fully set forth herein; and
- d. Additional information submitted during the Public Hearing.

SECTION 4. The City Council finds that the City's Municipal Code, Zoning Code, and Specific Plans need to be reviewed and amended periodically to address changes in

State law, correct errors, and improve regulations. At this time, the City Council of the City Escondido desires to amend the Escondido Municipal Code and Escondido Zoning Code to correct minor errors in the text, incorporate code interpretations, and improve existing regulations to eliminate uncertainty for staff, customers, and the public.

SECTION 5. This action is exempt from environmental review pursuant to California Environmental Quality Act Guidelines (“CEQA” and “CEQA Guidelines”) Section 15061(b)(3) since there would be no possibility of a significant effect on the environment because the amendments will not directly result in development. Any future project or development as defined by the CEQA that may occur as a result of the amended language would be subject to CEQA review and analysis.

SECTION 6. That upon consideration of the staff report, Planning Commission recommendation, Planning Commission staff report, all public testimony presented at the hearing held on this project, and the “Findings of Fact,” attached as Exhibit “A” to this Ordinance and incorporated herein by this reference as though fully set forth herein, this City Council finds the Municipal Code and Zoning Code Amendments are consistent with the General Plan and all applicable specific plans of the City of Escondido.

SECTION 7. That the specified sections of the Escondido Municipal Code and Escondido Zoning Code are amended as set forth in Exhibit “B” to this Ordinance and incorporated herein by this reference as though fully set forth herein

SECTION 8. 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 9. That as of the effective date of this Ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 10. That the City Clerk is hereby directed to certify to the passage of this Ordinance and to cause the same or a summary to be prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

EXHIBIT "A"

FACTORS TO BE CONSIDERED / FINDINGS OF FACT

Municipal Code and Zoning Code Amendment(s) Determinations:

1. Over the years, staff and customers have found certain sections of the Municipal Code and Zoning Code are vague, unclear, or conflicting, which results in confusion and disagreement in code interpretation. It is important that the City of Escondido review policies and procedures on an on-going basis to ensure a customer-focused government through transparent services and positive organizational culture.

The Planning Division maintains a regular process and schedule for maintaining the City's codes and regulations. Those issues that have been identified are being addressed as part of this clean-up effort, whereby all code amendments have been combined in a single batch, called an annual omnibus.

Additional items to correct or improve the Municipal Code or Zoning Code may be considered in the next annual omnibus code clean-up cycle.

2. The public health, safety, and welfare would not be adversely affected by the proposed batch of Municipal Code or Zoning Code Amendments because they correct internal inconsistencies, improve readability, update references to other code sections or regulatory documents, codify prior interpretations, and make the code consistent with changing state or federal regulations.
3. The proposed batch of Municipal Code or Zoning Code Amendments would be consistent with the goals and policies of the General Plan because they address changes in state laws, correct errors, and improve existing regulations to eliminate uncertainty for staff, customers, and the public. This effort is not intended to be a comprehensive update to the local code or change land use densities or intensities.
4. The proposed Zoning Code amendment does not conflict with any specific plan.

EXHIBIT "B"

PROPOSED MUNICIPAL CODE AND ZONING CODE AMENDMENTS

AZ 16-0008

SECTION 1.

Amend the Chapter 32 of the Escondido Municipal Code to read as specified below. The changes are listed in order by section number, with ~~strikeout~~ typeface illustrating deletions and underline typeface illustrating new text.

32.210.02. Extension of Time.

- A. Extensions of time will be considered upon submittal of a written request, justification statement, and all required fees, to the Planning Division prior to and within four (4) months of the expiration date of the tentative map. Extensions of time may be granted or denied by the ~~original approval body~~Zoning Administrator. A public hearing and/or public notice may be required if the ~~Director of Planning and Building~~Director of Community Development determines that it is warranted.
- B. If an extension of time is approved, an applicant must comply with the provisions of Chapter 3, Article 2 of the Map Act and all provisions and findings of this ordinance applicable to the initial filing of tentative maps pursuant to Article 2 of this chapter. In order to assure this compliance, the conditions of initial approval of the tentative map may be modified or deleted and new conditions may be added when the extension of time is approved.
- C. Multiple extensions of time may be granted, provided that the total of incremental extensions of time does not exceed five (5) years from the original expiration date.

SECTION 2.

Amend the various Zoning Code sections to read as specified below. The changes are listed in order by section number, with ~~strikeout~~ typeface illustrating deletions and underline typeface illustrating new text.

Article 1, Section 33-8. Definitions:

Carport means a permanently covered motor vehicle shelter, consisting of a roof and supporting members such as columns or beams, which are affixed to a permanent foundation per applicable building codes. A carport must be open on two (2) or more sides except for structural supports. Carports as used in this chapter do not include temporary shelters or canopies. Any structure

designed or used for the storage of motor vehicles which does not meet this definition must comply with all regulations relating to a garage.

Multi-family housing development means a building designed for multiple dwelling unit occupancy in a multiple-residential zoning district (R-2, R-3, R-4, and R-5) or mixed-use zoning district. Units in multi-family housing developments are not classified as single-unit attached structures.

Article 1, Section 33-13. Determination of permitted uses:

The lists of uses included in various articles of this chapter are typical of permitted and conditionally permitted uses in their respective zones.

The ~~director~~Director of Community Development may determine that uses similar to the listed uses are permitted, or conditionally permitted, uses within the various zones. Such determinations will thereafter be uniformly applied and the ~~director~~Director shall keep a record of all such determinations.

Article 3, Section 33-42. Permitted accessory uses and structures:

Accessory uses and structures are permitted in open space zones, provided they are incidental to, and do not substantially alter the operating character of the permitted principal use or structure as determined by the ~~director of planning and building~~Director of Community Development.

Article 3, Section 33-44. Plan approval required:

Park plans and park master plans may be referred to the planning commission upon the determination of the ~~director of planning and building~~Director of Community Development.

Article 6, Section 33-102. Accessory buildings side setback and building requirements:

(e) An accessory building that is seventy (70) feet or more from the front property line in single- and multi-family zones, or fifty (50) feet in the R-T zone, but which does not meet the requirements of subsection (b) above, may not be located closer than five (5) feet from the interior side property line in single- and multi-family zones, or three (3) feet in the R-T zone (unless superseded by Title 25). Awnings, cornices, eaves, belt courses, sills, buttresses or other similar architectural features may project into an accessory building setback area by no more than two (2) feet.

(f) In the R-A and R-E zones, setbacks for accessory structures do not apply to animal enclosures.

(g) Accessory buildings located within a required side yard setback area for the primary structure shall be limited to one (1) story and 16 feet in height.

(h) A minimum of five (5) feet is maintained for clear access between the detached accessory building and any other building or structure.

(i) Accessory dwelling units, shall conform to the setback requirements of the underlying residential zone for the primary structure, unless otherwise permitted by Article 70.

Article 6, Section 33-103. Accessory buildings rear setback and building requirements:

(b) An accessory building may be located on the rear property line in all residential zones (except the R-T zone) if, and only if, all the following conditions are met:

(2) Has facilities for the discharge of all roof drainage onto the subject lot or parcel of land.

(c) For accessory buildings that do not meet the conditions listed in section 33-103(b), accessory building(s) may be located within a required rear yard setback area in all residential zones, but only in the following circumstances:

(1) In the R-A and R-E zone districts, detached accessory building(s) may be located within a required rear yard setback area provided that such building(s) are located no closer than ten (10) feet to a rear lot line, and shall not cover more than 50 percent of the width of the rear setback area.

(2) In all other single-family and multi-family zones (except the R-T zone), detached accessory building(s) may be located within the rear yard setback provided that a minimum of five (5) feet is maintained, and shall not cover more than 50 percent of the width of the rear setback area. Additional usable open space requirements may apply on the premises, depending on the requirements of the underlying zoning district.

(3) Awnings, cornices, eaves, belt courses, sills, buttresses or other similar architectural features may project into an accessory building setback area by no more than two (2) feet.

(4) Accessory buildings located within a required rear yard setback area for the primary structure shall be limited to one (1) story and 16 feet in height.

~~(e)~~(d) An accessory building having direct vehicular access from an alley shall be located not less than twenty-five (25) feet from the edge of the alley farthest from the building.

~~(d)~~(e) On a reverse corner lot the rear property line of which is also the side property line of the contiguous property, an accessory building shall be located not less than five (5) feet from the rear property line.

~~(e)~~(f) In the R-A and R-E zones, setbacks for accessory structures do not apply to animal enclosures.

~~(f)~~(g) Accessory dwelling units, shall conform to the aforementioned rear yard setback requirements of the underlying residential zone for the primary structureaccessory building, unless otherwise permitted by Article 70.

Article 6, Section 33-104. Projections into setbacks (single- and multi-family zones, excluding R-T zone):

(a) The following structures may be erected or projected into any required setback in all residential zones (excluding the R-T zone):

- (1) Fences and walls in accordance with codes or ordinances;
- (2) Landscape elements, including trees, shrubs and other plants, except that no hedge shall be grown or maintained at a height or location other than that permitted by city codes or ordinances;
- (3) Necessary appurtenances for utility services;
- (4) Ground-mounted mechanical equipment, including heating and air conditioning units, provided the auxiliary structure is at least three (3) feet to interior side and rear lot lines.
- (5) Pools and pool equipment, subject to Article 57.

Article 16, Section 33-341. Commercial drive-through facilities requirements:

(b) Development Standards. The following development standards shall apply to all drive-through commercial facilities to ensure that such developments do not have negative impacts on traffic, safety, air quality and visual character of the area in which they are located:

- (1) Pedestrian walkways that intersect the drive-through drive aisles, shall have clear visibility, and be emphasized by enriched paving or striping.
- (2) Drive-through aisles shall have a minimum twelve (12) foot width on curves and a minimum eleven (11) foot width on straight sections.
- (3) The drive-through stacking lane shall be situated so that any overflow from the stacking lane shall not spill out onto public streets or major aisles of any parking lot. Sufficient vehicle stacking room shall be provided on-site behind the speaker area where orders are taken to accommodate a minimum of six (6) vehicles or greater if determined necessary by the Director of Community Development. The drive-through stacking lane shall be separated physically from the user's parking lot and shall have a capacity of twenty (20) linear feet per vehicle.
- (4) Drive-through aisles shall be constructed with (PCC) concrete.
- (5) Drive-through aisles and associated structures should be oriented away from public streets and surrounding land uses unless significant screening is provided to the satisfaction of the ~~director~~Director of Community Development by means of heavy landscaping, decorative walls, and sound attenuating devices.
- (6) No ingress and egress points shall conflict with turning movements at nearby street intersections.
- (7) Buildings with drive-through facilities shall be located with a minimum separation of 200 feet from any other structure containing a drive-through facility. Certain types of drive-through services may require less separation if substantiated by acceptable data.

Article 25, Section 33-554. Development standards:

(a) Rear Yards. A recreational vehicle may be parked in the rear yard, subject to all of the following:

- (1) A minimum separation of three (3) feet shall be provided between the recreational vehicle and any wall along habitable portions of the existing structure on the same property containing windows and doors, as determined by the ~~director of planning and building~~Director of Community Development;

Article 25, Section 33-554. Development standards:

(c) Front Yards. A recreational vehicle may be parked in the front yard only on properties where access to feasible parking in the side or rear yard is unavailable, in accordance with all of the following:

(2) Parking Not in Driveway. RV parking in the front yard other than the driveway may be permitted only if conforming driveway parking is not available. In addition to standards required in subdivision (1) of this subsection, all of the following standards shall be required:

(E): On properties where the recreational vehicle cannot be parked in the driveway or in a perpendicular manner in accordance with the development standards, the recreational vehicle may be parked parallel to the street which provides driveway access in the R-1-6, R-1-7 and R-1-8 zones only, subject to approval of an administrative permit approved by the ~~director of planning and building~~ Director of Community Development. The administrative permit shall include conditions requiring a three-foot-high wall or fence and/or vision-obscuring landscaping provided along the street side parallel to and along the entire length of the recreational vehicle; additionally, the sight visibility setback may be reduced by up to twenty (20) percent upon approval by the city engineer.

Article 26, Section 33-569. Development standards:

Off-street loading; Number of docks	Building over 10,000 SF shall provide minimum of one (1) loading space for each additional 10,000 SF of gross floor area or fraction thereof, unless fewer loading docks are determined to be required for the use of the <u>Director of Planning and Building</u> <u>Community Development</u>	Building over 10,000 SF shall provide minimum of one (1) loading space for each additional 10,000 SF of gross floor area or fraction thereof, unless fewer loading docks are determined to be required for the use of the <u>Director of Planning and Building</u> <u>Community Development</u>	Building under 30,000 SF - one (1) loading dock. Building over 30,000 SF - two (2) loading dock/first 30,000 SF, plus one (1) loading dock for each additional 20,000 SF (or fraction thereof) located to the rear of the buildings so that the door	A maximum of one (1) off-street or alley loading space
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			does not face toward a public street or adjoining residential property	
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Article 34, Section 33-702. Definitions:

Camouflaged or Stealthy means a personal wireless service facility that is disguised, hidden, integrated into the architecture of an existing or proposed structure or placed within an existing or proposed structure, and designed to be compatible with the existing scale and pattern of development and/or characteristics of the site, as determined by the ~~director of planning and building~~ Director of Community Development.

Article 34, Section 33-704. Personal wireless service facilities—Development and operating standards:

(b): Screening. All personal wireless utility equipment (i.e., antennas, support structures, mounts, equipment, etc.) shall be screened from view of adjacent properties or public rights-of-way to the maximum extent possible. Screening may include integrating architectural elements, color and texture of the antenna structure, fencing, landscaping, or other method appropriate to the specific situation. Screening may be waived by the ~~director of planning and building~~ Director of Community Development if the available methods of screening create a greater visual impact, or call greater attention to the facility than if otherwise left unscreened.

(f): Noise. Noise levels generated by wireless equipment shall not exceed the noise level limits of the underlying zone and receiving land use, whichever is less. Appropriate siting and building measures shall be incorporated into the facility to comply with the city’s noise requirements. An acoustical study may be required, as determined by the ~~director of planning and building~~ Director of Community Development.

(k) Public Right-of-Way. All requirements of this article shall apply to the placement, construction, modification or reconstruction of any personal wireless service facilities proposed within the public right-of-way, except to the extent precluded by state or federal law. The following general requirements also shall apply:

(3) All personal wireless service facilities in the right-of-way shall be sited in order to minimize potential visual and compatibility impacts with adjacent properties. ~~In residential areas, placing~~ Placing wireless facilities along non-classified residential streets and/or along the front yard of single-family residential properties should be avoided. Wireless facilities must be designed to be visually unobtrusive with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses. The equipment must be painted or textured to match the color or surface of the structure on which they are attached, or otherwise screened to reduce their visibility.

Article 34, Section 33-705. Personal wireless service facilities—Application requirements:

(a) The following shall be included with an application for all personal wireless service facilities

(3) Existing before photographs and after visual simulations. A sight line representation drawn to scale) may also be required (as determined by the ~~director of planning and building~~ Director of Community Development) which shall be drawn from adjacent public roads and the adjacent properties (viewpoint) to the highest point (visible point) of the personal wireless service facility. Each sight line shall be depicted in profile and show all intervening trees and buildings, and be accompanied by photographs of what currently can be seen from the specific site and a visual simulation of the proposed facility. An on-site mock-up or balloon simulation also might be required for highly visible or sensitive sites to adequately assess the potential visual impact of the proposed facility.

Article 39, Section 33-765. Parking spaces required:

Pushcart food sales	No parking shall be required for pushcart food sales facilities except as required on a case-by-case basis as determined by the director of planning and building <u>Director of Community Development</u> as part of plot plan review procedure.
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Article 39, Section 33-774. Common facilities:

Common parking facilities may be provided in lieu of the individual requirements contained herein provided an agreement establishing the permanent preservation of said facilities be submitted and approved by the ~~community development director~~ Director of Community Development, and that the total of such off-street parking spaces, when used together, shall not be less than the sum of the various uses computed separately, unless otherwise specified in this article

Article 40, Section 33-790. Purpose and definitions:

(b) Definitions. Whenever the following terms are used in this article, they shall have the meaning established by this section.

(5) *Certificate of appropriateness* means a certificate issued by the ~~director of planning and building~~ Director of Community Development approving alteration, restoration, construction, removal, relocation in whole or in part, of or to a property on the local register or to an improvement within an historical district.

Article 40, Section 33-802. Procedure for obtaining an emergency demolition permit.

(b) Review. On a case-by-case evaluation and upon consultation with a minimum of two (2) historic preservation commissioners and an architect or engineer, the ~~director of planning and building~~ Director of Community Development may, without a public hearing, issue a permit for a complete or partial demolition of an historical resource if it is determined that the catastrophic event has rendered said resource immediately hazardous and dangerous and/or detrimental to the public health and/or safety as defined in the latest adopted California Building Code or California Housing Law.

(c) Considerations for demolition. In determining the appropriateness of demolishing a resource under this emergency provision, the ~~director of planning and building~~ Director of Community Development shall give consideration to demolishing only those portions of a resource that are immediately hazardous, thereby allowing for the preservation/reconstruction of non-hazardous portions. The ~~director~~ Director shall also consider whether the damage to the resource is so substantial that it alters the historic character of the resource.

Article 40. Section 33-803. Procedure and findings for obtaining a nonemergency demolition permit:

(b) Review. The HPC and city council shall each hold a duly noticed public hearing prior to the demolition of a significant historic resource. The applicant shall provide, at a minimum, the following items to the satisfaction of the ~~community development director~~ Director of Community Development or his or her designee.

Article 40. Section 33-805. Historic street markings:

(a) In order to preserve the integrity of historic street markings throughout the City of Escondido, the following procedures shall be followed:

(3) Efforts shall be made to preserve a marking in its original location. However, if the ~~director of planning and building~~ Director of Community Development concurs that no other alternative exists but to relocate the marking, the applicant shall:

Article 43. Section 33-832. Abatement of nuisance—Initiation, service and posting:

Upon discovery of conditions indicating that a service station may have been abandoned, the ~~community development director~~ Director of Community Development shall cause a notice to be served personally or by mail on the owner of the real property on which the service station is located at his address as disclosed on the last equalized assessment roll on file in the assessor's office of San Diego County or as known to the ~~community development director~~ Director of Community Development, and on the person, if any, occupying or otherwise in real or apparent charge and control of the service station. The ~~community development director~~ Director of Community Development also shall cause the notice to be posted on the service station.

Article 43. Section 33-833. Abatement of nuisance—Additional service:

The ~~community development director~~Director of Community Development also shall cause the notice to be served on each of the following persons: The holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or interest of record in or to the service station or the real property on which such service station is located. The failure of the ~~community development director~~Director of Community Development to make or attempt service to any person who is required to be served pursuant to the provisions of this subsection shall not invalidate any proceedings hereunder as to any other person duly served.

Article 43. Section 33-834. Time of service and posting:

The ~~community development director~~Director of Community Development shall cause the notice to be served and posted pursuant to the provisions of this section at least fifteen (15) days before the date of any hearing as set in such notice.

Article 43. Section 33-836. Contents of notice:

The notice shall contain the following:

(b) A statement that the ~~community development director~~Director of Community Development has discovered conditions, and a description of such conditions, indicating that the service station may have been abandoned.

Article 43. Section 33-840. Enforcement of order:

(a) If the public nuisance is not abated pursuant to the planning commission's decision and order, in addition to any other lawful procedure authorized by this code, the ~~community development director~~Director of Community Development shall enforce such decision and order in the following manner.

(b) The ~~community development director~~Director of Community Development shall issue an order to the ~~public works director~~Director of Public Works to accomplish the following work: removal of all buildings or structures, safeguarding or removing of any flammable or combustible liquid storage tanks, and cleaning of the site, all pursuant to applicable provisions of this code.

(e) The ~~public works director~~Director of Public Works shall keep an itemized account of the net expense incurred by the city in the work to abate the nuisance of an abandoned service station. Upon completion of such work, the ~~public works director~~Director of Public Works shall prepare and file with the city clerk a report specifying the work done, the itemized net cost of the work, a description of the real property upon which the service station is or was located, the names and addresses of the persons entitled to notice pursuant to section 33-831 of this article and the amount of the assessment against each lot or parcel of land proposed to be levied to pay the cost

of the work. Any such report may include or on any number of buildings or structures on any number of parcels of property, whether or not contiguous to each other.

(f) Upon receipt of the report of the ~~public works director~~Director of Public Works, the clerk shall fix time and place, when and where the council will hear and pass upon the report. The clerk shall cause notice of the proposed assessment, as shown in the report, to be given in the manner and to the persons specified in section 33-832 of this article. Such notice shall contain a description of the property sufficient to enable the persons served to identify it, and shall specify the day, hour, and place when the council will hear and pass upon the report, together with any objections or protests, if any, which may be raised by any property owner liable to be assessed for the cost of such work, and any other interested persons. Such notice of the hearing shall be so given not less than fifteen (15) days prior to the time fixed by the clerk for the hearing, and shall also be published one (1) time, at least fifteen (15) days prior to the date of hearing, in a daily newspaper published and circulated in the city.

(g) Any interested person may file a written protest with the city clerk at any time prior to the time set for the hearing on the report of the ~~public works director~~Director of Public Works. Each such protest shall contain a description of the property in which the person signing the protest is interested and the grounds of such protest. The city clerk shall endorse on every such protest the date and time of filing and shall present such protest to the council at the time set for the hearing.

(h) Upon the day and hour fixed for the hearing the council shall consider the report of the ~~public works director~~Director of Public Works, together with any protests which have been filed with the city clerk as hereinabove provided. The council may make such revision, correction or modification in the report as it may deem just, and when the council is satisfied with the correctness of the assessment, the report and proposed assessment, as submitted or as revised, corrected or modified, shall be confirmed. The decision of the council on the report and the assessment and on all protests shall be final and conclusive. The council may adjourn the hearing from time to time.

(j) Immediately upon the confirmation of the assessment by the council, ~~community development director~~Director of Community Development shall file in the office of the county recorder of San Diego County a certificate in substantially the following form:

NOTICE OF LIEN

Pursuant to the authority vested in the ~~community development director~~Director of Community Development by the provisions of ~~Article XLIII~~ of the Escondido Zoning Code, the ~~community development director~~Director of Community Development did on or about the day of _____, 2019, cause on the property hereinafter described the removal of all buildings or structures, the safeguarding or removal of any flammable or combustible liquid storage tanks, and the cleaning up of the site, in order to abate a nuisance on such real property; and the Council of the City of Escondido did on the day of _____, 2019, assess the cost of such upon the real property hereinafter described, and the same has not been paid nor any part thereof, and the said City of Escondido does hereby claim a lien on said real property for the net expense of the doing of such work in the amount of such assessment, to wit: the sum of \$ _____, and the same shall be a lien upon said real property until the sum has been paid in full and discharged of record.

The real property hereinabove mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Escondido, California, County of San Diego, State of California, and particularly described as follows:

(Description)

DATED: This _____ day of _____, 2019 __.

~~COMMUNITY DEVELOPMENT~~

~~DIRECTOR~~DIRECTOR OF COMMUNITY DEVELOPMENT

Article 45, Section 33-865. Yard requirements:

(a) Adjustments to the following requirements of up to twenty-five (25) percent may be approved or conditionally approved by the ~~community development director~~Director of Community Development upon demonstration that the proposed adjustment will be compatible with and will not prove detrimental to adjacent property or improvements. The applicant for an adjustment shall pay a fee to the city in an amount to be established by resolution of the city council.

(b) The ~~community development director~~Director of Community Development shall give notice of his intended decision using the procedures outlined in section 33-1300 of Article ~~LX161~~61 of this chapter.

Article 45, Section 33-872. Other requirements:

(a) Adjustments to the following requirements of up to twenty-five (25) percent may be approved or conditionally approved by the ~~community development director~~Director of Community Development upon demonstration that the proposed adjustment will be compatible with and will not prove detrimental to adjacent property or improvements. The applicant for an adjustment shall pay a fee to the city in an amount to be established by resolution of the city council.

(b) The ~~community development director~~Director of Community Development shall give notice of his intended decision using the procedures outlined in section 33-1300 of ~~Art.~~Article 61.

Article 45, Section 33-874. Landscaping:

The following landscaping provisions shall apply to all mobilehome parks:

(b) For all new development, the ~~director of planning and building~~Director of Community Development shall require a minimum of one (1) street tree for every thirty (30) linear feet of street frontage within or adjacent to the development.

Article 45, Section 33-875. Trash storage:

(a) Containers for trash storage shall be of a size, type and quantity approved by the ~~director of planning and building~~ Director of Community Development. They shall be placed so as to be concealed from the street and shall be maintained.

Article 45, Section 33-883. Enforcement:

Should the ~~building official or the planning director~~ Director of Community Development determine that there has been a violation of the provisions of this article or of any conditional use permit issued pursuant thereto, he shall notify, in writing, the owner or manager of the mobilehome park, specifying the particular violation or violations and shall make demand that such violations be corrected within sixty (60) days after receipt of said notice.

Article 46, Section 33-897. Yard requirements:

(b) Adjustments to the following requirements of up to twenty-five (25) percent may be approved or conditionally approved by the ~~community development director~~ Director of Community Development upon demonstration that the proposed adjustment will be compatible with and will not prove detrimental to adjacent property or improvements. The applicant for an adjustment shall pay a fee to the city in an amount to be established by resolution of the city council.

(c) The ~~community development director~~ Director of Community Development shall give notice of his intended decision using the procedures outlined in section 33-1300 of Article 61 of this chapter.

Article 46, Section 33-913. Enforcement:

Should the ~~building official or the planning director~~ Director of Community Development determine that there has been a violation of the provisions of this article or of any conditional use permit issued pursuant thereto, he shall notify, in writing, the owner or manager of the travel trailer park, specifying the particular violation or violations and shall make demand that such violations be corrected within sixty (60) days after receipt of said notice.

Article 47, Section 33-925. City responsibility for environmental documentations and determinations:

(b) The city, at its sole discretion, may decide to utilize the services of a private consulting firm to prepare or review all studies, reports and other documents required or permitted by the guidelines, including those submitted by the proponent or any other party. In all cases, the consultant shall enter into a contract with and shall be responsible directly to the city. All services shall be performed to the satisfaction of the ~~director of planning and building~~ Director of Community Development, or designee.

Article 48, Section 33-931. Approval:

No person shall place, move on, or affix to the land in any manner any building which was formerly located in another site, unless written approval of the ~~community development director~~Director of Community Development has first been obtained. The term "building" as used herein, means any structure designed, built or occupied as a shelter or roofed enclosure for persons, animals or property, and used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes. An accessory structure having a floor area of less than one hundred (100) square feet, and being less than eight (8) feet high shall not fall within this definition. The provisions herein shall not prohibit the installation of new prefabricated houses in accordance with applicable regulations.

Article 48, Section 33-932. Application:

A person seeking approval hereunder shall file an application for such approval with the ~~community development director~~Director of Community Development.

(a) Form. The application shall be made in writing upon forms provided by the ~~community development director~~Director of Community Development, and shall be filed in the office of the ~~community development director~~Director of Community Development.

(b) Contents. The application shall set forth and contain:

(5) Photographs of the building or such elevations as the ~~community development director~~Director of Community Development may direct.

(6) Any additional information which the ~~community development director~~Director of Community Development may find necessary to a fair determination of whether the application should be approved.

Article 48, Section 33-934. Standards and criteria for relocated buildings:

Before approving an application hereunder, the ~~community development director~~Director of Community Development shall determine that all the following conditions are satisfied:

Article 48, Section 33-935. Conditional approval:

The ~~community development director~~Director of Community Development may approve a proposed relocation subject to such conditions as the ~~director~~Director may deem warranted by the circumstances. Said conditions may include specified landscaping and exterior finishing, dedication and improvement of streets and alleys adjoining the property, and time for completion of the work and improvements required. Such conditional approval shall not become effective, nor shall any action be taken thereon, unless and until security is furnished as required by section 33-937 of this article.

Article 48, Section 33-936. Expiration:

Unless otherwise specified in the action approving the building relocation, if a building which has been approved for relocation is not relocated with twelve (12) months of the date of the approval, such approval shall become null and void. However, an extension of time, not to exceed an additional twelve (12) months, may be granted by the ~~community development director~~Director of Community Development.

Article 48, Section 33-937. Security:

If approval is granted subject to performance of conditions by the applicant, a cash deposit, a cashier's check or a certified check payable to the City of Escondido shall be furnished by the applicant. Such cash deposit or check shall be in the amount of the cost of performance of the conditions as estimated by the ~~community development director~~Director of Community Development or and shall be conditional upon and shall guarantee the performance of the conditions enumerated by the ~~community development director~~Director of Community Development and any work ordered done by the ~~community development director~~Director of Community Development pursuant to section 33-938 of this article.

Article 48, Section 33-938. Inspection of work:

The cash deposit or check shall not be released or the bond shall not be exonerated as the case may be, nor shall the removed building be occupied until the ~~community development director~~Director of Community Development certifies that all work and improvements specified by the ~~community development director~~Director of Community Development have been satisfactorily completed. The ~~community development director~~Director of Community Development shall cause an inspection of the building at its new location to be made upon request therefor by the owner or applicant, or at the expiration of the time designated by the ~~community development director~~Director of Community Development for completion of the work. The ~~community development director~~Director of Community Development may require any minor items of work to be done, such as an exterior trim, painting where needed or clean-up which in his judgment is required to meet the purpose and intent of this article.

Article 48, Section 33-939. Appeal:

The applicant shall have the right to appeal any decision of the ~~community development director~~Director of Community Development to the planning commission. Any decision of the planning commission may be appealed to the city council, whose determination thereon shall be final.

Sec. 33-940. Moving permit also required:

Approval or conditional approval of the ~~community development director~~Director of Community Development or city council hereunder is not a building moving permit, and such approval shall not relieve the applicant from compliance with the provisions of the building code or from any other requirement of law.

Article 48, Section 33-941. Violations:

Any person, firm or corporation violating any of the provisions of this article, or disregarding any condition or term imposed by the ~~community development director~~Director of Community Development or city council hereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding five hundred dollars (\$500.00) or imprisonment in the County Jail for a period not exceeding six (6) months, or by both such fine and imprisonment.

Article 55, Section 33-1052. Definitions:

Director shall refer to the ~~director of community development~~Director of Community Development.
Professional shall refer to a qualified botanist, certified arborist, or other qualified professional acceptable to the ~~director of planning and building~~Director of Community Development.

Article 56, Section 33-1075. Permitted structures in excess of height limit:

Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, fire or parapet walls, skylights, towers, church steeples, flagpoles, chimneys, smokestacks, silos, water tanks, windmills, windbreaks, wireless masts or other similar structures (subject to the provisions of Article 34 (Communication Antennas)) may be erected above the height limits established for the various zones provided that no portion of the structure in excess of the allowable building height shall be used for sleeping or eating quarters, nor shall such portion of the structures in excess of the allowable building height be used for the purpose of providing additional habitable floor space or be deemed as an excessive or unreasonable use of space that creates an unnecessary aesthetic impact on surrounding properties (as determined by the ~~director of planning and building~~Director of Community Development).

Article 56, Section 33-1080. Fences, walls and hedges:

- (a) Single-family residential zones:
 - (1) Front and street side setbacks: Fences, walls or hedges not exceeding three (3) feet in height may be located anywhere on the lot or parcel.

Fences, walls or hedges not exceeding six (6) feet in height may be located anywhere on a lot or parcel of ten (10) acres or greater where horticulture specialties, orchards or vineyards

occur pursuant to section 33-161 and subject to the design criteria under section 33-1081(b) through (e) and subject to approval by the ~~director of planning and building~~Director of Community Development.

Fences, walls or hedges not exceeding three and one-half (3 1/2) feet in height, if constructed of materials which are fifty percent (50%) open, may be located anywhere on the lot or parcel.

Fences, walls or hedges not exceeding six (6) feet in height may be constructed at the setback lines for principal structures.

(2) Interior side and rear setbacks: Fences, walls or hedges not exceeding six (6) feet in height may be located anywhere within the interior side and rear yard setbacks.

Fences, walls or hedges not exceeding eight (8) feet in height may be located anywhere within the rear and the interior side setbacks when abutting a public facility, and/or multi-family, commercial and industrial zones pursuant to the design criteria under section 33-1081(a) and (b) subject to approval by the ~~director of planning and building~~Director of Community Development. (See Figure 33-1081.2)

(3) Play fields: Fences up to fifteen (15) feet in height in conjunction with play fields associated with schools and youth organizations may be approved as conditional uses in specified residential zones subject to planning commission approval upon consideration of the design criteria under section 33-1081(f) and (g).

(b) Multi-family residential zones:

(1) Front and street side setbacks: Same as in section 33-1080(a)(1), except that fences, walls or hedges not exceeding six (6) feet in height may be located anywhere within the street side and front yard setbacks pursuant to the design criteria under section 33-1081(a) through (e) subject to approval by the ~~director of planning and building~~Director of Community Development. (See Figure 33-1081.1)

(2) Interior side and rear setbacks: Same as in section 33-1080(a)(2), except that fences, walls or hedges not exceeding eight (8) feet in height may be located anywhere within the rear and the interior side setbacks (except when adjacent to single-family zones) pursuant to the design criteria under section 33-1081(a) through (e) subject to approval by the director of planning and building. (See Figure 33-1081.2)

(3) Play fields: Fences up to fifteen (15) feet in height in conjunction with play fields associated with schools and youth organizations may be approved as conditional uses in specified residential zones subject to planning commission approval upon consideration of the design criteria under section 33-1081(f) and (g).

(c) Commercial/industrial zones:

(1) Front and street side setbacks: Same as in section 33-1080(a)(1), except that fences or walls not exceeding eight (8) feet in height may be constructed in any location allowed for principal structures.

Adequate sight distance pursuant to section 33-1081(b) shall be provided for all fences.

(2) Interior side and rear setbacks: Fences or walls not exceeding eight (8) feet in height may be constructed in any location allowed for principal structures.

(3) Play fields: Fences up to fifteen (15) feet in height in conjunction with play fields associated with schools and youth organizations may be approved as conditional uses in

specified residential zones subject to planning commission approval upon consideration of the design criteria under section 33-1081(f-g).

Article 57, Section 33-1109. Swimming pools:

(b) Front, Side and Rear Yards.

(1) All swimming pools constructed after the effective date of the ordinance codified in this article shall be subject to the front yard and side yard setback requirements as set forth in the applicable zoning regulation, but in no case shall a swimming pool be located closer than five (5) feet from any property line;

(2) Tanks, heating, filtering and pumping equipment shall be subject to the front yard and side yard setback requirements of the applicable zone, except that such accessories may be located within such required yards if installed entirely below the finished grade of the site and covered with a permanent protective cover. In the rear yard, tanks, filtering and pumping equipment must provide at least a five (5) foot separation to the rear lot lines.

(d) Variances and Exemptions.

(1) The building inspector may waive the fencing requirements of this section upon an adequate showing that an alternative safeguard against unauthorized entry to the swimming pool exists or will be provided, and that the physical conditions of the site make the erection of a fence or wall impractical;

~~(2) The provisions of this section shall not apply to swimming pools used or maintained by a hotel, motel or trailer park consisting of ten (10) or more units where someone is on duty twenty four (24) hours a day;~~

~~(3) All swimming pools which are in the R-A or R-E-40 zones shall be exempt from the provisions of the swimming pool fence requirements.~~

Article 57, Section 33-1110. Subdivision sales office:

A subdivision sales office may be established within the boundaries of a new subdivision, in residential zones in which subdivision sales activities are a permitted use, subject to the following conditions:

(b) That such subdivision sales office shall not be operated or maintained for a period exceeding eighteen (18) months, or until all the lots in the subdivision have been sold, whichever occurs first. The ~~planning director~~ Director of Community Development may, for good cause, grant an extension of said period up to one (1) additional year.

Article 57, Section 33-1114. Motor vehicle, aircraft, marine craft, trailer and camper, motorcycle, equipment rental and leasing dealerships:

The city council shall, after recommendation by the city planning commission, adopt a resolution setting forth site development standards for motor vehicle, aircraft, marine craft, trailer and camper, motorcycle, equipment rental and leasing dealerships (~~SLUC use numbers 5504, 5590 and 6394 respectively~~) in the industrial zones.

The standards and criteria established by said resolution shall be applied as conditions for approval of all plot plans falling within the above categories of uses unless specific findings are made and enumerated by the ~~community development director~~Director of Community Development stating unique circumstances and undue hardship which would require a modification of the standards and criteria.

Article 57, Section 33-1119. Arts and crafts shows.

Arts and crafts shows (as defined in section 33-8 of Article 1 of this chapter) shall conform to all standards for the zone in which they are held, and may be held only upon issuance of an administrative permit issued by the ~~director of planning and building~~Director of Community Development pursuant to the criteria described in this section. No person shall advertise, announce, conduct, operate or sponsor an arts and crafts show within a residentially zoned neighborhood in conflict with the requirements of this section. Proposals which, in the opinion of the ~~director of planning and building~~Director of Community Development, do not readily conform to the criteria for administratively approving an arts and crafts show, will be required to obtain approval of a minor conditional use permit issued by the planning commission at a noticed public hearing.

(a) Application Procedures. An administrative permit for an arts and crafts show may be issued in accordance with the following procedure:

(2) Notice of Intended Decision. Not less than fifteen (15) days prior to the date on which the decision will be made on the application, the ~~director of planning and building~~Director of Community Development shall give notice of the proposed use by mail or delivery to all owners shown on the last equalized assessment roll as owning real property within a five hundred (500) foot radius of the exterior boundaries of the residence which is the proposed location for the arts and crafts show. In addition, if the proposed show is within a cul-de-sac street, the residents of the entire cul-de-sac shall receive notice.

(3) Appeal. The applicant or other affected person may appeal the administrative decision of the ~~director of planning and building~~Director of Community Development to the planning commission which will review the case at a noticed public hearing in accordance with the provision of section 33-1303 of Article 61 of this chapter. The cost of the appeal, if any, shall be borne by the appellant.

(4) Approval of Show and Subsequent Events. Once final approval of the arts and crafts show has been given, the city will send the applicant a letter of approval. The applicant will be required to post the letter of approval in a visible location for display to any city official which may inspect the property during the event.

Prior to conducting subsequent shows the applicant will be required to notify the planning division in writing sixty (60) days prior to advertising of the event. No new application form or fee will be required. If the ~~director of planning and building~~Director of Community Development determines that significant modifications are proposed, a new application, fee, and approval process will be required. Problems associated with an operation (i.e., parking, nuisance, violation of conditions of approval) will be considered in the approval of future events.

(b) Approval Criteria/Findings. The ~~director of planning and building~~Director of Community Development shall approve an arts and crafts permit based upon the following findings:

(3) Parking and Access.

(A) At least a twenty (20) foot clear access for emergency vehicles and surrounding residents must be maintained at all times to the satisfaction of the city engineer, the fire department and the ~~director of planning and building~~Director of Community Development. Factors which will be examined will include, but are not limited to, street width, street configuration, condition of the street and parking availability in the surrounding area.

(B) Adequate on-street parking, within reasonable proximity to the proposed site/residence, must be available in the surrounding area to accommodate the arts and crafts show. The amount of on-street parking available must be commensurate with the size of the property and scale of the proposed show, such that the anticipated parking demand will not result in an adverse parking impact to the surrounding neighborhood. Applicants may choose to identify an off-site parking area from which patrons may walk (without impeding vehicular traffic), and/or be shuttled to the subject residence. The ~~director of planning and building~~Director of Community Development may approve alternative parking plans which include, but are not limited to: (i) off-site parking and shuttle service, and (ii) parking agreements to utilize nearby parking lots.

(7) Inspection of Site and Property. During all reasonable hours and in any reasonable manner, the ~~director of planning and building~~Director of Community Development (or designee), business license officer, code enforcement officer, or any law enforcement officer, may inspect the site at which an arts and crafts show is being advertised, or the personal property which may be displayed or offered for sale, for the purpose of assuring compliance with the provisions of this chapter.

(8) Findings. In order for the ~~director of planning and building~~Director of Community Development or the planning commission to grant approval of an arts and crafts permit, the following findings must be made:

Article 57, Section 33-1122. Electric generating facilities:

(b) Permit Requirements. Except where the city's land-use-permit authority is preempted by state law, the land use permit required is determined by the type of facility, as follows:

(1) A conditional use permit is required for commercial electric generating facilities proposed for the primary purpose of providing electricity to the power grid. Solar-energy systems are exempt from this requirement and design review unless the building official determines the solar-energy system would have a specific, adverse impact upon the public health and safety and there is no feasible method to avoid the specific adverse impact. Decisions of the building official

may be appealed to the planning commission by filing a written request with any required fee, with the department of community development not more than ten (10) days following the final decision of the building official. The appeal shall state the reasons why the determination is contested and which findings, the appellant believes, were made in error. Decisions of the planning commission may be appealed to the city council pursuant to Article 61, Division 6 of the Zoning Code. Facilities shall conform to the following criteria:

(H) Facilities shall meet the provisions for reducing NOx in section 33-1122(d)(7);

(h) Photovoltaic Generating Facilities for Residential and Commercial Sites.

(D) Tower access. Towers shall be constructed to provide one of the following means of access control, or other appropriate method approved by the ~~planning director~~Director of Community Development:

(H) Distance from structures. Horizontal axis wind turbines shall be placed at a distance of at least two (2) times the total tower height from any occupied structure. Vertical axis wind turbines shall be placed at a distance of at least ten (10) blade diameters from any structure or tree. A modification may be granted by the ~~director of planning and building~~Director of Community Development for good cause shown, however, in no case shall the turbine be located closer than three (3) blade diameters to any occupied structure.

Article 58, Section 33-1131. Forms and information:

(a) Except as otherwise provided in this chapter, the ~~community development director~~Director of Community Development shall prescribe the form for each application, notice and document provided for or required under this article for the preparation and implementation of development agreements.

(b) The ~~community development director~~Director of Community Development may require an applicant to submit such information and supporting data as the city development director considers necessary to process the application.

Article 58, Section 33-1132. Fees:

(a) A fee or fee deposit established by city council resolution shall be paid by the applicant at the time of filing the application.

(b) Nothing in this chapter shall relieve the applicant from the obligation to pay any other fee for a city approval, permit or entitlement required by this chapter.

Article 58, Section 33-1133. Qualification as an applicant:

Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement. The term "applicant" includes authorized agent. The ~~city development director~~Community Development Director shall require an applicant to submit proof

of his interest in the real property and of the authority of the agent to act for the applicant. Before processing the application, the ~~community development director~~Director of Community Development shall obtain the opinion of the city attorney as to the sufficiency of the applicant's interest in the real property to enter into the agreement.

Article 58, Section 33-1135. Review of application:

(a) The ~~community development director~~Director of Community Development shall review the application and may reject it if it is incomplete or inaccurate for processing. If he or she finds that the application is complete, he or she shall accept it for filing.

(b) The ~~community development director~~Director of Community Development shall review the application and proposed agreement and shall prepare a report and recommendation to the planning commission on the agreement.

(c) The ~~community development director~~Director of Community Development shall forward a copy of the application and agreement to the city attorney for review. The city attorney shall prepare a report and recommendation to the planning commission on the agreement.

Article 58, Section 33-1136. Transmittal to planning commission:

The ~~community development director~~Director of Community Development shall transmit the application to the planning commission for a public hearing when all the necessary reports and recommendations are completed. Notice of the public hearing shall be given as provided in this chapter. The application for a development agreement may be considered concurrently with other discretionary permits for the project.

Article 58, Section 33-1137. Planning commission report:

After a public hearing, the planning commission shall consider the application and prepare a report and recommendation for the city council. The report and recommendation shall include findings on the matters ~~stated in Section 21.70.050(b)~~substantially set to the same form as set forth in Section 33-1138(b) of this article. This report and recommendation shall be forwarded to the city clerk who shall set the matter for public hearing before the city council.

Article 58, Section 33-1138. Decision by city council:

(b) The city council shall not approve the development agreement unless it finds that the agreement:

(2) Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located and all other provisions of ~~Title 21 of this Code~~Chapter 33 of this Code;

Article 58, Section 33-1140. Required notice:

(a) Notice of public hearing required by this chapter shall be given as provided in section 33-1300 of ~~Article LXI of this chapter~~ Article 61.

Article 58, Section 33-1144. Periodic review:

(a) The city council shall review the development agreement every twelve (12) months from the date the agreement is entered into.

(b) The time for review may be shortened either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the ~~city development director~~ Director of Community Development;

(2) Resolution of intention by the planning commission;

(3) Resolution of intention of the city council.

(c) The ~~community development director~~ Director of Community Development shall begin the review proceeding by giving written notice that the city council intends to undertake a periodic review of the development agreement to the property owner. He or she shall give the notice at least ten (10) days in advance of the time at which the matter will be considered by the council.

Article 58, Section 33-1145. Procedure for periodic review:

(a) The city council or the planning commission, if the matter has been referred pursuant to subsection (d) of section ~~33-1144~~ 33-1144 of this article, shall conduct a public review hearing at which the property owner must demonstrate good faith compliance with the terms of the agreement. The burden of proof on this issue is upon the property owner.

Article 61, Section 33-1319. Powers and duties and procedure.

(a) The zoning administrator is authorized to consider and approve, disapprove or modify applications and/or issue use permits, for requests that include, but are not limited to:

(1) Minor conditional use permits as defined in Division 1 of this article;

(2) Minor conditional use permits for non-residential parking pursuant to section 33-764 of Article 39;

(3) Variances as defined in Division 2 of this article;

(4) Reasonable accommodation as provided in Division 5 of this article;

(5) Grading exemptions not associated with a discretionary project pursuant to section 33-1066(d) of Article 55;

(6) Proposed modifications to an approved precise development plan pursuant to section 33-411 of Article 19.

(7) Time extensions for maps and permits upon submittal of a written request for an extension request, justification statement, and payment of all required application fees.

Article 64, Section 33-1358. Design review process:

The design review process shall be as follows:

(d) For administrative projects that require planning division review, the planning division staff shall submit recommendations to the ~~director~~ Director of Community Development,

Article 65, Section 33-1376. Property development standards:

(c) Lot dimensions for newly created parcels may vary from the underlying zone standard in order to facilitate the relocation of a historic single-family residence, provided the lot maintains the minimum square footage established for the zone and the relocated residence meets all other criteria established by the city to the satisfaction of the ~~community development director~~ Director of Community Development.

Article 68, Section 33-1435. Implementation of facilities and improvements requirements.

The ~~director of building and planning~~ Director of Community Development shall monitor the citywide development activity. An annual report should be prepared which includes a development activity analysis, a facilities and improvements adequacy analysis, a facility revenue/expenditure analysis, and any necessary amendments to the citywide facilities plan, if necessary.

Article 69, Section 33.1455. Processing of development applications:

(b) An application shall be submitted in accordance with the requirements of the planning and building divisions. An application determined to be complete and in compliance with the requirements of the California Environmental Quality Act by the ~~director of planning~~ Director of Community Development shall be submitted to the council economic development subcommittee in the case of projects for which no public hearing is required, or the city council in the case of projects for which a public hearing is required.

Article 69, Section 33-1457. Administrative adjustments:

Those standards set forth in sections 33-335 and 33-336 of Article 16, section 33-569 of Article 26, section 33-765 of Article 39, sections 33-1326, 33-1327, 33-1328, and 33-1333 of Article 62, in Chapter 5 of the South Centre City Specific Plan, and Figure 11-2 of the ~~downtown specific plan~~ Downtown Specific Plan shall be eligible for administrative adjustments. Adjustments of up to twenty-five (25) percent may be approved or conditionally approved by the ~~director of planning~~ Director of Community Development upon demonstration that the proposed adjustment will be compatible with and will not prove detrimental to, adjacent property or improvements. The ~~community development director~~ Director of Community Development shall give prior notice of an intended decision to provide an administrative adjustment pursuant to Article 61 of this chapter. Any applicant for an administrative adjustment shall pay a fee for such adjustment in an amount to be established by resolution of the city council.

Article 70, Section 33-1474. Development standards:

Accessory dwelling units shall be subject to all development standards of the zone in which the property is located, except as modified below:

(i) Parking requirements. Off-street parking for the primary dwelling shall conform to the current parking standards, as required in Article 39 of the Escondido Zoning Code and:

(1) One additional off street parking space, covered or uncovered, shall be provided for an accessory dwelling unit. Parking provisions may be provided as tandem parking on an existing driveway or permitted within a setback area in accordance with Sections 28-300 and 33-110 of the Escondido Zoning Code, in locations determined to be satisfactory by the ~~director of community development~~Director of Community Development, unless the ~~director~~Director determines that parking in setback areas or tandem parking is not feasible based on specific site or regional topographical or fire and life safety conditions, or not permitted anywhere else in the jurisdiction.

Article 70, Section 33-1477. Application and procedure:

The ~~director of community development~~Director of Community Development shall approve a permit for an accessory dwelling unit within one hundred twenty (120) days of submission of a complete application, unless it is determined that the permit does not meet the requirements of this article or disapprove an application for an accessory dwelling unit, ministerially, within 120 days after receiving the application. The ~~director~~Director may refer any ~~unit~~application to the planning commission or historic preservation commission prior to the ~~director's~~Director's decision for conformance with the specific criteria outlined in section 33-1474.

Article 73, Section 33-1533. Permitted uses.

(a) Outdoor display.

(2) The ~~director of the planning and building department~~Director of Community Development is authorized to permit additional retail items to be displayed outdoors if it can be determined that the use is consistent with the purpose of this article.

Article 75, Sec. 33-1575. Review:

(1) All requests for building permits, plot plans, business licenses and discretionary permits must be reviewed by the ~~director of planning and building~~Director of Community Development to determine if the use is permitted by the underlying zone and the development is appropriate with the purpose and intent of the overlay zone.

CITY COUNCIL STAFF REPORT

Current Business Item No. 17

April 4, 2018

File No. 0600-10, A-3240

SUBJECT: Consulting Agreement and Budget Adjustment for Design Build Owner's Agent Services – Membrane Filtration / Reverse Osmosis Facility

DEPARTMENT: Utilities Department, Wastewater Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2018-33, authorizing the Mayor and City Clerk to execute a Consulting Agreement with Black and Veatch Corporation in the amount of \$1,236,890 for design-build owner's agent services; and approve a Budget Adjustment in the amount of \$1,000,000.

FISCAL ANALYSIS:

The value of the proposed contract is \$1,236,890. The "RW Easterly Ag Reverse Osmosis" Capital Improvement Program (CIP #801508) has an available balance of \$1,090,000 as of March 25, 2018. A budget adjustment in the amount of \$1,000,000 from the Wastewater Fund Operating, Debt, and CIP Reserve is required for this agreement.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Council's Action Plan regarding Economic Development. This project is part of the overall recycled water and drinking water expansion, which with aid ratepayers by avoiding the cost of a new land outfall, which would be greater than \$600 million. Additionally, the supply of additional, high-quality recycled water and the needed infrastructure to deliver it to Escondido's farming community will provide benefits to this important section of Escondido's economy.

PREVIOUS ACTION:

On September 24, 2014, the City Council adopted Resolution No. 2014-152, awarding a consulting Agreement with Black and Veatch Corporation in the amount of \$1,200,000 for the design of the Membrane Filtration/Reverse Osmosis (MF/RO) Facility for treatment of recycled water for agricultural irrigation.

On April 20, 2016, the City Council adopted Resolution No. 2016-47, awarding a first amendment to the consulting agreement with Black and Veatch Corporation in the amount of \$414,650 for additional engineering services to prepare construction drawings and specifications for a Membrane Filtration/Reverse Osmosis Facility with a capacity of 2 million gallons per day (MGD) at 2512 E. Washington Avenue.

On April 26, 2016, the Planning Commission denied a proposed Conditional Use Permit (CUP) to construct the City’s Membrane Filtration/Reverse Osmosis (MF/RO) facility at 2512 E. Washington Avenue. The City appealed the denial to the City Council.

On May 25, 2016, the City Council heard the City’s appeal to the Planning Commission decision to deny the project. The item was continued to a future date and staff were directed to research potential modifications to the project, including the possibility of locating the facility at a different site. Staff considered several other site locations.

On July 20, 2016, the City Council adopted Resolution No. 2016-108, awarding a Consulting Agreement with Black and Veatch Corporation in the amount of \$200,000 for the first phase of the redesign of the MF/RO Facility at a new site located at 1201 E. Washington Avenue.

On December 13, 2016, the Planning Commission approved the Conditional Use Permit for an MF/RO at 1201 E. Washington Avenue. The decision of the Planning Commission was appealed.

On January 11, 2017, the City Council adopted Resolution No. 2017-07 affirming the Planning Commission’s approval of a Conditional Use Permit for the development of a MF/RO Facility (PHG 16-0014) located at 1201 E. Washington Avenue.

BACKGROUND:

This project originally was conceived as part of the City’s Potable Water Reuse Program as identified in the Recycled Water Master Plan. The City is constructing this phase of the Reuse Program to achieve two primary goals:

- (1) to direct water away from the Escondido Land Outfall, which has insufficient capacity to meet the City’s long-term needs, and
- (2) to expedite a new, high-quality water supply that can be used by local agricultural growers, thus reducing the City’s dependence on imported water.

The Reuse Program also identified the potential for future installation of an advanced water treatment (AWT) facility at the MF/RO site which could be used to improve local water quality and to produce purified water for drinking water reuse. The new MF/RO facility site will serve as the future pilot site for demonstration and eventual regulatory approval of these advanced water treatment methods.

The location now planned for the MF/RO facility is a City-owned parcel located at the southeast corner of Washington Avenue and Ash Street. This parcel is zoned commercial and bordered by Washington Avenue to the north, Ash Street to the west, the flood control channel to the south and a three-story retirement facility to the east. Historically, the Escondido Mutual Water Company’s maintenance yard was located on this parcel.

Staff propose using a design-build process for the design and construction of the MFRO Facility, rather than the traditional design-bid-build process. The design-build process has the potential to reduce the overall project cost and shorten the schedule. Design-build is a method of project delivery in which both the design and construction of a project are procured from a single entity.

The traditional design-bid-build process uses final plans and specifications to solicit bids, and the contract must be awarded to the lowest responsive and responsible bidder. The owner holds all of the risk for any gaps in the plans and specifications. The design-build process shifts risk from the owner (in this case, the City) to the design-build team, among other advantages related to flexibility, cost, and schedule.

The City is able to use the Design-build process for procuring a contract for construction of a local water recycling facility in excess of \$1 million. The contract must be awarded by either the low bid or the best value. The design-build process requires the preparation of a request for qualifications (“RFQ”) that is sent out to the public, similar to a traditional request for bids. Potential contractors then submit a statement of qualifications based on the RFQ to be prequalified or short-listed, whom are then eligible to submit proposals. The design-build process also requires that a local agency provide a request for proposals (“RFP”) to those entities that were prequalified. The proposals are received and evaluated based on weighted criteria, such as project approach, past performance, financial capability, and price, to determine the best value proposal. A contract can then be negotiated with the selected design-build team.

The proposed Owner’s Agent Consulting agreement would assist City staff in administering the entire design-build process from the development of the initial evaluation criteria through project completion.

The agreement includes assisting the City with:

- (1) developing the RFQ, RFP, and evaluation criteria for both;
- (2) developing the agreement to be used with the design-build entity;
- (3) technical reviews of the 60%, 90% and final submittals;
- (4) participation in a value engineering session;
- (5) reviewing early subcontractor bid packages;
- (6) reviewing the Guaranteed Maximum Price and assisting with negotiations;
- (7) attending design and construction meetings;
- (8) reviewing and responding to change order requests;
- (9) periodic site visits;
- (10) reviewing milestone payment requests and construction schedules;
- (11) reviewing and confirming commissioning and acceptance testing activities and reports;

- (12) conducting final walkthrough;
- (13) confirming all warranties and guarantees;
- (14) reviewing O&M manuals;
- (15) reviewing record drawings; and
- (16) as-needed services during the first year of operation.

The City initially awarded the contract for program management of the recycled water and drinking water reuse program to Black and Veatch after seeking several proposals and determining their proposal was most advantageous to the City. There were several individual tasks associated with the proposal, and among these was the design of the MF/RO Facility. Each additional component was assigned a task number and a separate agreement was entered into based on the particular task.

Given the firm’s knowledge and experience, it is uniquely qualified to provide the design and design management services for this project. If approved by Council, the Scope of Work for the Owner’s Agent under the recommended agreement will be identified as Task 7 under that original list of Task Orders.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Christopher W. McKinney, Director of Utilities
3/29/2018 9:36 a.m.

ATTACHMENTS:

1. Budget Adjustment
2. Resolution No. 2018-33
3. Resolution No. 2018-33 - Exhibit “A” - Consulting Agreement for Design-Build Owner’s Agent Services



CITY OF ESCONDIDO
BUDGET ADJUSTMENT REQUEST

Date of Request: March 22, 2018
Department: Utilities
Division: Wastewater
Project/Budget Manager: Angela Morrow x7030
Name Extension
Council Date (if applicable): April 4, 2018
(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 RW Easterly Ag Reverse Osmosis, Wastewater Fund Operating, Debt, and CIP Reserve, Transfer in-from Operating Fund, and Transfer out- to Capital Projects Fund.

Explanation of Request:

To fund the Owner's Agent contract for design build of the Membrane Filtration Reverse Osmosis Facility.

APPROVALS

Signatures and dates for Department Head (Christopher W. McK...), Finance (Jodi...), City Manager, and City Clerk.

RESOLUTION NO. 2018-33

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE, ON BEHALF OF THE CITY, A
CONSULTING AGREEMENT WITH BLACK AND
VEATCH CORPORATION FOR DESIGN-BUILD
OWNER'S AGENT SERVICES

WHEREAS, the City of Escondido ("City") is preparing to construct the Membrane Filtration / Reverse Osmosis ("MF/RO") Facility at 1201 E. Washington Avenue, and proposes to use design-build project delivery and an owner's agent to manage the project from its beginning to final commissioning of the facility; and

WHEREAS, Black and Veatch Corporation has the knowledge, experience, and unique qualifications to serve as the owner's agent for the MF/RO project ("Project"); and

WHEREAS, the City of Escondido staff have completed negotiations with Black and Veatch Corporation for said owner's agent management services and the Director of Utilities recommends that the Consulting Agreement ("Agreement") be approved; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to approve said Agreement in an amount not to exceed \$1,236,890.

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

1. That the above recitations are true.
2. That the Mayor and City Council accepts the recommendation of the Director of Utilities to use design-build project delivery to construct the Membrane

Filtration / Reverse Osmosis (“MF/RO”) Facility at 1201 E. Washington Avenue.

3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, an Agreement with Black and Veatch Corporation. A copy of the Agreement is attached as Exhibit “A” and is incorporated by this reference.



CITY OF ESCONDIDO
CONSULTING AGREEMENT

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

Between: CITY OF ESCONDIDO
a Municipal Corporation
201 N. Broadway
Escondido, California 92025
Attn: Angela Morrow, P.E.
760-839-6290 ext. 7030
("CITY")

And: Black & Veatch Corporation
300 Rancheros Drive, Suite 250
San Marcos, CA 92069
Attn: John Bekmanis, P.E.
760-621-8421
("CONSULTANT")

Witness that whereas:

- A. It has been determined to be in the CITY's best interest to retain the professional services of a consultant for design-build owner's agent services for the MFRO Project; and
- B. The CONSULTANT is considered competent to perform the necessary professional services for CITY;

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

- 1. Services. The CONSULTANT will furnish all of the services as described in "Attachment A" which is attached and incorporated by this reference.
- 2. Compensation. The CITY will pay the CONSULTANT in accordance with the conditions specified in "Attachment A," in the sum of \$1,236,890. Any breach of this Agreement will relieve CITY from the obligation to pay CONSULTANT, if CONSULTANT has not corrected the breach after CITY provides notice and a reasonable time to correct it. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in subsequent amendment(s) shall not exceed a cumulative total of twenty-five percent (25%) of the maximum payment provided for in this Section 2.

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

Acknowledged by CONSULTANT _____

Waiver appropriate by CITY _____

- c. Each insurance policy required above must be acceptable to the City Attorney.
 - (1) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A- rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
 - (2) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
 - (3) Both the General Liability and the Automobile Liability policies must name the CITY specifically as an additional insured under the policy on a separate endorsement page. The CITY includes its officials, employees, and volunteers. The endorsement must be ISO Form CG 20 10 11 85 edition or its equivalent for General Liability endorsements and CA 20 01 for Automobile Liability endorsements.
 - (4) The General Liability policy must include coverage for bodily injury and property damage arising from CONSULTANT's work, including its on-going operations and products-completed operations hazard.
 - (5) The General Liability policy must be primary and noncontributory and any insurance maintained by CITY is excess.
 - d. In executing this Agreement, CONSULTANT agrees to have completed insurance documents on file with the CITY within fourteen (14) days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.
9. Indemnification. CONSULTANT (which in this paragraph 9 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless the CITY from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any of the following:
- a. Any claim of liability arising out of the negligence or any acts or omissions of CONSULTANT in the performance of this Agreement;
 - b. Any personal injuries, property damage or death that CONSULTANT may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or
 - c. Any injury or death which results or increases by any action taken to medically treat CONSULTANT.
10. Anti-Assignment Clause. The CONSULTANT may not assign, delegate or transfer any interest or duty under this Agreement without advance written approval of the CITY, and any attempt to do so will immediately render this entire Agreement null and void. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY'S written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
11. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.

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

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

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

CITY OF ESCONDIDO

Date: _____

Sam Abed
Mayor

Date: _____

Diane Halverson
City Clerk

(Consultant name)

Date: _____

(Consultant signature)

Title

(The above signature must be notarized)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

By: _____

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

ATTACHMENT A

This scope of work is for design-build owner's agent services for the MFRO Project.

Specific tasks associated with this project are summarized below into the following Phases:

- ▼ Phase 1 – Design Validation and Design-Build Selection/Support
 - Task 1000 – Project Management and Meetings
 - Task 2000 – 30% Design Development
 - Task 3000 – Request for Qualifications/Proposals
 - Task 4000 – Design-Build Support
 - Task 5000 – State Revolving Funds Assistance
- ▼ Phase 2 – Construction Support
 - Task 6000 – Project Management and Meetings
 - Task 7000 – Design Build Support
 - Task 8000 – Commissioning and Acceptance Testing Support
 - Task 9000 – Post-Construction Services

Detailed scope of work is presenting in the following pages.

PHASE 1 – DESIGN VALIDATION AND DESIGN BUILD SELECTION/SUPPORT

TASK 1000 – PROJECT MANAGEMENT AND MEETINGS

Tasks 1101 through 1103 – Monthly Meetings, Progress Reports and Schedule Updates

Perform project management and administrative tasks as required to facilitate completion of tasks defined within this Scope of Work. It's assumed this phase duration will be 18 months.

The project administrative tasks to be performed include:

- ▼ Provide monthly invoices with status report defining progress to date of all tasks, cost and expenditures
- ▼ Maintain a project schedule identifying major project tasks with duration and milestones. This schedule will be updated monthly and highlight critical path tasks and key milestones.
- ▼ Coordinate team members including work planning, coordination and communications
- ▼ Develop and maintain a trend register (change management)
- ▼ Development of a Project Management Plan that includes team members and contact information, roles and responsibilities, management activities, quality assurance/quality control (QA/QC) plan, key deliverables, schedule, and budget requirements

Electronic copies of all deliverables, including drawings, graphics, schedules, reports and technical memoranda, shall be provided using formats in their original software version (e.g., Word, Excel, PowerPoint, AutoCAD) in addition to a PDF version.

Deliverables for Tasks 1101 through 1103:

1. Monthly invoice including progress report, decision log, and schedule update – One (1) electronic copy (pdf) submitted via email.
2. Monthly Trend Register – One (1) electronic copy (pdf).
3. Project Management Plan – One (1) electronic copy (pdf).

Tasks 1201 through 1204 - Meetings

Black & Veatch shall schedule a Project Kick-Off meeting and allow for in-person Monthly Meetings and Bi-weekly Conference Calls with the City Project Manager and other City staff throughout the phase duration. Meetings will be used to keep the City informed of Black & Veatch's performance, budget status, scope changes, and to resolve issues relating to the Project budget, work quality, and performance.

As necessary or as directed by the City, Black & Veatch shall attend meetings with other stakeholders, including but not limited to the City Hall (Legal or City Manager) or City Council meetings when the project is on the agenda. Black & Veatch shall work with City staff to prepare presentation materials when necessary, including but not limited to: PowerPoint slides, printed materials and/or mounted graphics.

Black & Veatch's Project Manager will attend the Kickoff and Monthly Meetings in person. Additional team members may attend the meetings in person or on the phone. All Bi-Weekly Conference Calls will be via teleconference. Meeting assumptions are as follow:

- ▼ Kickoff Meeting – 1 meeting, 4-hour duration
- ▼ Monthly Meetings – 12 meetings, 1-hour duration
- ▼ By-Weekly Conference Calls – 24 meetings, ½ duration
- ▼ Shareholder Meetings – 2 meetings, 2-hour duration

Deliverables for Tasks 1201 through 1204:

1. Meeting Agenda's and Presentation Materials – One (1) electronic copy in MS Word or PowerPoint and electronic copy (pdf).
2. Monthly Meeting Minutes – One (1) electronic copy submitted electronically with 10 days of a meeting.

TASK 2000 – 30% DESIGN DEVELOPMENT

The purpose of this task is to commence the design process for the Project by developing the 30% design documents to aid in the selection of the Design-Build Entity.

Task 2100 – Conceptual Design Workshop

Prior to updating the existing design documents Black & Veatch shall conduct a Conceptual Design Workshop with City staff to discuss the previously developed design decisions and criteria, review of the previous final design documents includes building layouts, conceptual layouts for the new site, review of site renderings and architectural concepts. This meeting will be utilized to capture any other changes the City would like to incorporate into the 30% design documents including changes to the treatment systems. This meeting will be attended by the Black & Veatch's Project Manager, Senior Engineer, Process Engineer and DB Manager in person and other professionals as appropriate via teleconference. It is assumed this meeting will last 2 hours.

Deliverables for Task 2100:

1. Meeting Agenda's and Presentation Materials – One (1) electronic copy in MS Word or PowerPoint and electronic copy (pdf).
2. Meeting Minutes – One (1) electronic copy submitted electronically with 10 days of a meeting.

Tasks 2200-2300 – Drawings and Specification Development

Based upon the decisions made in Conceptual Design Workshop noted above, Black & Veatch shall update the existing drawings (process schematics and P&IDs) and specifications to incorporate any required changes. In addition, the documents will be cleaned up to distribute as part of the Request for Proposal phase as noted below. This would include removal of engineering stamps on all drawings and preparation for distribution in AutoCAD format. Specifications will be cleaned up and provided in pdf format.

Deliverables for Tasks 2200-2300:

1. Drawings – One (1) electronic copy in AutoCAD format.
2. Specifications– One (1) electronic copy in pdf format.

Task 2400– Conceptual Design Report

Under this task the previously developed Conceptual Design Report (dated September 2016) will be updated to incorporate any changes to the project identified in the subsequent tasks noted above. This would include updates to treatment philosophies and geotechnical findings and recommendations. This updated document will be issued with the Request for Proposals (Task 3200).

Deliverables for Task 2400:

1. Conceptual Design Report – One (1) electronic copy in pdf format.

Task 2500– Project Requirement Document

Under this task Black & Veatch shall capture all the site development requirements as based on City discussions with adjacent property owners. This would include buildings locations, heights, appearance and set back limitations. This document will also include a listing of all required permits that the selected design build entity will need to obtain prior to construction and overall acceptance of the new facilities. This document will be issued with the Request for Proposals (Task 3200).

Deliverables for Task 2500:

1. Project Requirement Document – One (1) electronic copy in pdf format.

Task 2600– Class 3 Opinion of Probable Construction Cost

Under this task Black & Veatch shall updated the previously developed cost estimate to reflect the major changes associated with the new site layout. Major items would include site development, architectural appearances, geotechnical site improvements, and above ground tanks versus previous below ground tanks. Cost estimates shall be prepared to a level of accuracy consistent with the standards of the American Association of Cost Engineers (AACE) Class 3.

Deliverables for Task 2600:

1. Class 3 Opinion of Probable Construction Cost – One (1) electronic copy in pdf format.

Task 2700– Preliminary Schedule

Under this task Black & Veatch shall develop a preliminary schedule showing the major milestones from design validation, through selection of the Design-Build entity, development of the Guaranteed Maximum Price, construction, commissioning, and post construction activities. The schedule will be developed in MS Project or Primavera.

Deliverables for Task 2700:

1. Preliminary Schedule – One (1) electronic copy in pdf format.

TASK 3000 – REQUEST FOR QUALIFICATIONS/PROPOSALS

Task 3100 – Request for Qualifications

As part of this task, Black & Veatch shall assist in the development of the necessary Qualification procurement documents. Activities to be considered as part of this task include the following:

Task 3101 – Prepare Request for Qualifications (RFQ)

Prepare a Request for Qualifications to pre-qualify Design-Build Entities. The RFQ will include criteria as noted below, with the RFQ developed based on industry standard documents and best practices as recommended by the Water Design Build Council.

- ▼ Experience with Progressive Design Build delivery method
- ▼ History of meeting costs and schedule
- ▼ Client references

- ▼ Proposed key personnel and team members
- ▼ Financial and bonding information
- ▼ Quality and Safety
- ▼ Claims and Litigation

Deliverables for Task 3101:

1. Request for Qualification Package – One (1) electronic copy in pdf format.

Task 3102 – Develop Design-Build Agreement

Under this task Black & Veatch shall prepare a draft design-build agreement based on a Design Build Institute of America agreement or an Engineers Joint Contract Document Committee agreement, incorporating the particulars of the project in consultation with the City. The Agreement shall be developed in conjunction with the City's legal department. A draft copy of the agreement will be presented to the City for their review and comments. The City understands and agrees that Black & Veatch is not able to and will not provide any legal, insurance or tax advice on the terms of the design-build agreement. The City is responsible for obtaining any necessary legal, insurance, or tax advice which it deems necessary. Any advice given by Black & Veatch on the design-build agreement will be on the basis of Black & Veatch's experience as a professional engineer and does not constitute and should not be considered legal advice.

Deliverables for Task 3102:

1. Meeting Agenda's and Presentation Materials – One (1) electronic copy in MS Word.

Task 3103 – RFQ/Agreement Review Workshop

Under this Task Black & Veatch shall prepare for and conduct a workshop to review the City's comments to the draft Request for Qualifications package. In addition, review of the draft Agreement as led by the City will be performed. This meeting will be attended by the Black & Veatch's Project Manager, Senior Engineer and Design-Build Manager in person and other professionals as appropriate via teleconference. It is assumed this meeting will last 4 hours. Items to be discussed in the meeting include:

- ▼ Terms and conditions review to evaluate risk that will ultimately be translated into the procurement document
- ▼ Form of draft contract and risk language to be discussed and strategy developed
- ▼ Review of draft technical documents to be included
- ▼ Identification of legal forms, affidavits and other requirements
- ▼ Finalize evaluation and scoring determination for qualifications process

From the workshop the documents shall be updated to incorporate the City's comments and finalized.

Deliverables for Task 3103:

1. Meeting Agenda's and Presentation Materials – One (1) electronic copy in MS Word or PowerPoint and electronic copy (pdf).
2. Meeting Minutes – One (1) electronic copy submitted electronically with 10 days of a meeting.

Task 3104 – Prepare and Attend Pre-Qualification Meeting

Under this task Black & Veatch shall prepare for and attend the Request for Qualifications Pre-Qualification Meeting. Items to be prepared and or presented include the following:

- ▼ Sign in Sheet
- ▼ Agenda
- ▼ Introductions
- ▼ Review of the Project
- ▼ Review of the Qualification Package including Schedule and Scoring Criteria
- ▼ Recording and Responding to Proposers Questions

Deliverables for Task 3104:

1. Sign in Sheet – One (1) electronic copy in pdf format.
2. Agenda – One (1) electronic copy in pdf format.

Task 3105 – Draft Responses to Proposers Questions

Under this task Black & Veatch shall draft responses to questions from prospective proposers and prepare addenda that provide supplementary details, clarifications, and/or revise the drawings and specifications, as needed and directed by the City. It's assumed up to two addenda will be issued.

Deliverables for Task 3105:

1. Addenda – One (1) electronic copy in pdf format.

Task 3106 – Review Qualification Packages/Meeting

Under this task Black & Veatch shall assisting the City in reviewing the qualification documents including, qualifications, guarantees, bonds and insurance certificates. Black & Veatch shall provide a written summary on its findings and conduct a review meeting with the City to finalize the top 3 qualified firms.

Deliverables for Task 3106:

1. Addenda – One (1) electronic copy in pdf format.
2. Meeting Agenda's and Presentation Materials – One (1) electronic copy in MS Word or PowerPoint and electronic copy (pdf).
3. Meeting Minutes – One (1) electronic copy submitted electronically with 10 days of a meeting.

Task 3200 – REQUEST FOR PROPOSALS

As part of this task, Black & Veatch shall assist in the development of the necessary Proposal procurement documents. Activities to be considered as part of this task include the following:

Task 3201 – Prepare Request for Proposals

Prepare a Request for Proposals to select the Design-Build Entity from the previously pre-qualified firms. Information will include:

- ▼ Background and objectives
- ▼ Procurement process and scope of services
- ▼ Process for innovative options offered by the proposers
- ▼ Draft contract including insurance and bonding
- ▼ Requirements for sole-sourcing, pre-selection or pre-qualifying suppliers
- ▼ Evaluation criteria
- ▼ Technical performance criteria

Deliverables for Task 3201:

1. Request for Qualification Package – One (1) electronic copy in pdf format.

Task 3202 – RFP Review Workshop

Under this Task Black & Veatch shall prepare for and conduct a workshop to review the City's comments to the draft Request of Proposal. This meeting will be attended by the Black & Veatch's Project Manager, Senior Engineer and Design-Build Manager in person and other professionals as appropriate via teleconference. It is assumed this meeting will last 2 hours. Items to be discussed in the meeting include:

- ▼ Terms and conditions review to evaluate risk that will ultimately be translated into the procurement document
- ▼ Form of draft contract and risk language to be discussed and strategy developed
- ▼ Review of draft technical documents to be included
- ▼ Identification of legal forms, affidavits and other requirements

- ▼ Finalize evaluation and scoring determination for qualifications process for both technical and pricing components

From the workshop the documents shall be updated to incorporate the City's comments and finalized.

Deliverables for Task 3202:

1. Meeting Agenda's and Presentation Materials – One (1) electronic copy in MS Word or PowerPoint and electronic copy (pdf).
2. Meeting Minutes – One (1) electronic copy submitted electronically with 10 days of a meeting.

Task 3203 – Prepare and Attend Pre-Proposal Meeting

Under this task Black & Veatch shall prepare for and attend the Request for Proposal Pre-Proposal Meeting. Items to be prepared and or presented include the following:

- ▼ Sign in Sheet
- ▼ Agenda
- ▼ Introductions
- ▼ Review of the Project
- ▼ Review of the Package including Schedule and Scoring Criteria
- ▼ Recording and Responding to Proposers Questions

Deliverables for Task 3203:

1. Sign in Sheet – One (1) electronic copy in pdf format.
2. Agenda – One (1) electronic copy in pdf format.

Task 3204 – Draft Responses to Proposers Questions

Under this task Black & Veatch shall draft responses to questions from prospective proposers and prepare addenda that provide supplementary details, clarifications, and/or revise the drawings and specifications, as needed and directed by the City. It's assumed up to two addenda will be issued.

Deliverables for Task 3204:

1. Addenda – One (1) electronic copy in pdf format.

Task 3205 – Review Proposal Packages/Meeting

Under this task Black & Veatch shall assisting the City in reviewing the proposal documents including any changes to the terms and conditions, legal forms, affidavits, pricing and other requirements. Black & Veatch shall provide a written summary on its findings and conduct a review meeting with the City to finalize the top entity. This review will also discuss any changes proposed by the Design-Build Entity to the proposal agreement.

Deliverables for Task 3205:

1. Addenda – One (1) electronic copy in pdf format.
2. Meeting Agenda's and Presentation Materials – One (1) electronic copy in MS Word or PowerPoint and electronic copy (pdf).
3. Meeting Minutes – One (1) electronic copy submitted electronically with 10 days of a meeting.

TASK 4000 – DESIGN-BUILD SUPPORT

As part of this task, Black & Veatch shall provide design-build support services to assist the City ensure the Design-Build Entity meets the design criteria and performance specifications set forth in the Design-Build Agreement. Activities to be considered during as part of this task include the following:

Task 4100 – Attend Design Kickoff and Pre-Construction Meetings

As part of this task, Black & Veatch shall attend a design kickoff meeting and pre-construction meeting, with the Design-Build Entity to keep the City informed on design and construction progress and issues. During the kickoff meeting the Design Build Entity budget will be established. It's imperative that the DB know what their budget is for the design and to alert the City when there is an issue. Preparation for these meetings shall include review of pertinent design and construction deliverables.

Black & Veatch's Project Manager, Senior Engineer and Design-Build Manager will attend the meetings in person. Additional team members may attend the meetings in person or on the phone. Meeting assumptions are as follow:

- ▼ Design Kickoff Meeting – 2-hour duration
- ▼ Pre-Construction Meeting –2-hour duration

Deliverables for Task 4100:

1. Meeting notes – One (1) electronic copy in pdf format.

Task 4200 – Participate in Value Engineering Sessions

Prior to the start of the Design-Build entity design packages a value engineering workshop shall be conducted based on the 30% design documents provided by the City. The intent of this meeting will be to allow the Design-Build entity to present potential cost savings/design innovation concepts to the City for consideration. Items that are acceptable by the City can be incorporated into the subsequent design packages. The Design-Build entity will take the lead conduction this meeting and generating the final Value Engineering report.

Black & Veatch's Project Manager, Senior Manager, Design-Build Manager, and Cost Estimator will attend the meetings in person which is assumed to last 3 working days, 8 hours a day. Additional team members (structural, architect, building mechanical, process engineer, electrical, and I&C engineer) will attend the meeting in person or on the phone for up to two days each as required.

Deliverables for Task 4200:

1. Meeting notes – One (1) electronic copy in pdf format.

Task 4250 – Cost Monitoring and Change Management Log

Under this task Black & Veatch shall monitor and provide feedback to the DB entity regarding how their cost model is structured and monitor the change management log that will be developed by the DB entity. The change management log will track anything being added or changed to the scope of work that can increase or decrease the costs. This task assumes attendance at 2 meetings.

Black & Veatch's Project Manager, Senior Engineer and Design-Build Manager will attend the meetings in person which is assumed to last 2 hours.

Deliverables for Task 4250:

1. Correspondence – One (1) electronic copy in pdf format.
2. Meeting notes – One (1) electronic copy in pdf format.

Task 4300 – Review 60% Design Package

Under this task Black & Veatch shall provide technical review of the Design-Build entities 60% design package including the drawing and specifications. Reviews will be conducted by each discipline including civil, geotechnical, architectural, structural, process mechanical, building mechanical (HVAC and plumbing), electrical and I&C. Reviews will focus on compliance with project requirements. Black & Veatch will not be responsible for the Design Build Entities quality control or quality assurance. Black & Veatch's review of design documents will be solely for the purpose of providing recommendations to the City. In conducting such reviews, Black & Veatch assumes no and will not have any responsibility nor liability for the project design, design requirements nor the substance of any design document. Black & Veatch's review of opinion of probable costs and of project schedules shall be made on the basis of experience and qualifications as a professional engineer. Black & Veatch does not guarantee that proposals, bids, or actual project costs

will not vary from Black & Veatch's or the Design-Builder's opinion of probable costs or that actual schedules will not vary from Black & Veatch's or the Design-Builder's projected schedules.

Black & Veatch will also perform a high-level review of the Design-Build Entities cost estimate. A review will be performed on the Design-Build entities schedule. Black & Veatch shall participate in a review workshop to present and discuss review comments with the City and Design-Build entity. Black & Veatch will consolidate written comments to the City.

Black & Veatch's Project Manager, Senior Engineer, and Design-Build Manager will attend the review workshop in person which is assumed to last 4 hours. Additional team members (structural, architect, building mechanical, process engineer, electrical, and I&C engineer) will attend the meeting in person or on the phone.

Deliverables for Task 4300:

1. Consolidated review comments – One (1) electronic copy in excel format.
2. Drawing Markup – One (1) electronic copy in pdf format.

Task 4400 – Review Early Subcontractor Bid Packages

Under this task Black & Veatch shall review the open book cost information provided by the Design-Build Entity for the early development packages which would consist of the membrane equipment and onsite geotechnical work. The review will focus on benchmarking unit pricing and productivity rates for this type of work in this area. Black & Veatch shall prepare a memorandum documenting this review and attend one meeting with the City and Design-Build entity as part of the negotiations for the GMP.

Deliverables for Task 4400:

1. Memorandum – One (1) electronic copy in excel format.

Task 4500 – Review 90% Design Package

Under this task Black & Veatch shall provide technical review of the Design-Build entities 90% design package including the drawing and specifications. Reviews will be conducted by each discipline including civil, geotechnical, architectural, structural, process mechanical, building mechanical (HVAC and plumbing), electrical and I&C. Reviews will focus on compliance with project requirements. Black & Veatch will not be responsible for the Design-Build Entities quality control or quality assurance. Black & Veatch's review of design documents will be solely for the purpose of providing recommendations to the City. In conducting such reviews, Black & Veatch assumes no and will not have any responsibility nor liability for the project design, design requirements nor the substance of any design document. Black & Veatch's review of opinion of probable costs and of project schedules shall be made on the basis of experience and qualifications as a professional engineer. Black & Veatch does not guarantee that proposals, bids, or actual project costs will not vary from Black & Veatch's or the Design-Builder's opinion of probable costs or that actual schedules will not vary from Black & Veatch's or the Design-Builder's projected schedules.

Black & Veatch will also perform a high-level review of the Design-Build Entities cost estimate. A review will be performed on the Design-Build entities schedule. Black & Veatch shall participate in a review workshop to present and discuss review comments with the City and Design-Build entity. Black & Veatch will consolidate written comments to the City. Black & Veatch shall also review responses to previous comments and verify that all previous comments have been appropriately addressed and/or incorporated into the project's design.

Black & Veatch's Project Manager, Senior Manager, and Design-Build Manager will attend the review workshop in person which is assumed to last 4 hours. Additional team members (structural, architect, building mechanical, process engineer, electrical, and I&C engineer) will attend the meeting in person or on the phone.

Deliverables for Task 4500:

1. Consolidated review comments – One (1) electronic copy in excel format.
2. Drawing Markup – One (1) electronic copy in pdf format.

Task 4600 – Review Guaranteed Maximum Price (GMP) and Assist with Negotiations

Under this task Black & Veatch shall review the open book cost information provided by the Design-Build Entity upon completion of the 90% design documents. The review will focus on benchmarking unit pricing and productivity rates for this type of work in this area. Black & Veatch shall prepare a memorandum documenting this review and attend up to two meetings with the City and Design-Build entity as part of the negotiations for the GMP.

Deliverables for Task 4600:

1. Memorandum – One (1) electronic copy in pdf format.

Task 4700 – Review Final Design Package

Under this task Black & Veatch shall provide technical review of the Design-Build entities 60% design package including the drawing and specifications. Reviews will be conducted by each discipline including civil, geotechnical, architectural, structural, process mechanical, building mechanical (HVAC and plumbing), electrical and I&C. Reviews will focus on compliance with project requirements. Black & Veatch will not be responsible for the Design Build Entities quality control or quality assurance. Black & Veatch's review of design documents will be solely for the purpose of providing recommendations to the City. In conducting such reviews, Black & Veatch assumes no and will not have any responsibility nor liability for the project design, design requirements nor the substance of any design document. Black & Veatch's review of opinion of probable costs and of project schedules shall be made on the basis of experience and qualifications as a professional engineer. Black & Veatch does not guarantee that proposals, bids, or actual project costs will not vary from Black & Veatch's or the Design-Builder's opinion of probable costs or that actual schedules will not vary from Black & Veatch's or the Design-Builder's projected schedules.

Black & Veatch will also perform a high-level review of the Design-Build Entities cost estimate. A review will be performed on the Design-Build entities schedule. Black & Veatch will consolidate written comments to the City. Black & Veatch shall also review responses to previous comments and verify that all previous comments have been appropriately addressed and/or incorporated into the project's design.

Deliverables for Task 4700:

1. Consolidated review comments – One (1) electronic copy in excel format.
2. Drawing Markup – One (1) electronic copy in pdf format.

Task 4800 – Review Subcontractor Bid Packages

Under this task Black & Veatch shall review the open book cost information provided by the Design-Build Entity for up to 6 subcontractor design packages. The review will focus on benchmarking unit pricing and productivity rates for this type of work in this area. Black & Veatch shall prepare a memorandum documenting this review and attend one meeting with the City and Design-Build entity as part of the negotiations for the GMP.

Deliverables for Task 4800:

1. Memorandum – One (1) electronic copy in excel format.

Task 4900 – Evaluate Approaches or Options Proposed by the Design-Build Entity

Under this task Black & Veatch shall evaluate technical proposals by the Design-Build Entity related to project requirements, identifying any concerns with pre-construction and construction strategies, addressing requirements for function, cost, quality, time and logistics. Evaluating approaches or options proposed by the Design-Build Entity and providing feedback to the City during such evaluation. The evaluation shall identify advantages and/or disadvantages of each approach or option about meeting technical requirements, budget, life-cycle cost and schedule. For example, Black & Veatch may be tasked with reviewing and commenting on the Design-Build Entity's approach for commissioning and acceptance testing of equipment, and identifying any concerns with such processes and methodologies. For budgeting purposes it's assumed up to 4 approaches or options will be reviewed.

Deliverables for Task 4900:

1. Memorandum – One (1) electronic copy in excel format.

Task 4910 – Review Quality Assurance / Quality Control Plan

Under this task Black & Veatch shall review the Design-Build firm’s construction quality assurance/quality control plan to confirm compliance with all aspects of the Agreement. Written comments to the QA/QC plan will be provided to the City and Design-Build entity.

Deliverables for Task 4910:

1. Memorandum – One (1) electronic copy in excel format.

TASK 5000 – STATE REVOLVING FUND ASSISTANCE

Tasks 5100 – Assist with SRF Requirements and Final SRF Documentation

Black & Veatch will provide as-needed assistance to the City to ensure project compliance with the Clean Water State Revolving Fund ("SRF") financing administered by the California State Water Resources Control Board’s Division of Financial Assistance (“SWRCB- DFA”). Services may include monthly reporting, bidding requirements, assisting the City in addressing and producing documents to respond to SRF staff requests and comments, and coordinating document reviews by SRF staff. An allocation of \$25,000 has been established for this task.

PHASE 2 – CONSTRUCTION SUPPORT

TASK 6000 – PROJECT MANAGEMENT AND MEETINGS

Task 6100 – Monthly Meetings, Progress Reports and Schedule Updates

Perform project management and administrative tasks as required to facilitate completion of tasks defined within this Scope of Work. It’s assumed that the phase duration will be 20 months.

The project administrative tasks to be performed include:

- ▼ Provide monthly invoices with status report defining progress to date of all tasks, cost and expenditures.
- ▼ Maintain a project schedule identifying major project tasks with duration and milestones. This schedule will be updated monthly and highlight critical path tasks and key milestones.
- ▼ Coordinate team members including work planning, coordination and communications.
- ▼ Develop and maintain a trend register (change management).

Deliverables for Task 6100:

1. Monthly invoice including progress report, decision log, and schedule update – One (1) electronic copy (pdf) submitted via email.
2. Monthly Trend Register – One (1) electronic copy (pdf) submitted via email.

Task 6200 - Meetings

Black & Veatch shall schedule for in-person monthly meetings and weekly teleconference calls with the City Project Manager and other City staff throughout the project's duration. Meetings will be used to keep the City informed of Black & Veatch's performance, budget status, scope changes, and to resolve issues relating to the Project budget, work quality, and performance.

As necessary or as directed by the City, Black & Veatch shall attend meetings with other stakeholders, including but not limited to the City Hall (Legal or City Manager) or City Council meetings when the project is on the agenda. Black & Veatch shall work with City staff to prepare presentation materials when necessary, including but not limited to: PowerPoint slides, printed materials and/or mounted graphics.

Black & Veatch’s Project Manager will attend the Monthly Meetings in person. Additional team members may attend the meetings in person or on the phone. All By-Weekly Conference Calls will be via teleconference. Meeting assumptions are as follow:

- ▼ Monthly Meetings – 16 meetings, 1-hour duration
- ▼ By-Weekly Conference Calls – 30 meetings, ½ duration

- ▼ Shareholder Meetings – 2 meetings, 2-hour duration

Electronic copies of all deliverables, including drawings, graphics, schedules, reports and technical memoranda, shall be provided using the City's standards and formats in their original software version (e.g., Word, Excel, PowerPoint, AutoCAD) in addition to a PDF version. Black & Veatch shall also provide printed copies of draft and final versions of key deliverables. Black & Veatch shall utilize City processes for reporting, contract management, cost tracking, and schedule and cost estimates. Black & Veatch shall also utilize City procedures and systems for document management, project submittals, and other communications.

Deliverables for Task 6200:

1. Meeting Agenda's and Presentation Materials – One (1) electronic copy in MS Word or PowerPoint and electronic copy (pdf).
2. Meeting Minutes – One (1) electronic copy submitted electronically with 10 days of a meeting.

TASK 7000 – DESIGN-BUILD SUPPORT

Task 7100 – Review Milestone Payment Request and Construction Schedules

Under this task Black & Veatch shall review milestone payment schedules, including the schedule of values prepared by the Design-Build Entity in accordance with the Agreement. Black & Veatch will provide comments to support the preparation of a final list of major milestones progress payments to the Design-Build Entity. In addition, Black & Veatch shall review construction schedules submitted by the Design-Build Entity. These reviews will include examining work sequence, durations, interim milestones and other features, including critical path, in accordance with the Agreement. Black & Veatch shall meet with the City and Design-Build Entity to resolve any discrepancies and to agree upon estimates of completion. For budgeting purposes it's assumed 20 meetings, each lasting 2 hours.

Deliverables for Task 7100:

1. Memorandum – One (1) electronic copy in excel format.

Task 7200 – Attend Construction Progress Meetings

Under this task Black & Veatch shall attend monthly construction progress meeting and report back to the City with any issue or discrepancies as it relates to the Agreement. For budgeting purposes it's assumed 20 meetings, each lasting 2 hours.

Deliverables for Task 7200:

1. Memorandum – One (1) electronic copy in excel format.

Task 7300 – Review and Respond to Charge Order Requests

Under this task Black & Veatch shall review change requests and questions regarding the Design-Build Agreement by the Design-Build Entity. The responses may require the issuance of clarifications and interpretations to the Design-Build Agreement. For budgeting purposes it's assumed up to 8 change requests will be reviewed by Black & Veatch.

Deliverables for Task 7300:

1. Memorandum – One (1) electronic copy in excel format.

Task 7400 – Periodic Site Visits to Confirm Accordance with Agreement

Under this task Black & Veatch shall provide periodic site visit to become acquainted with specific issues, to provide technical support and to confirm general compliance with the contract documents and Design-Build Agreement. Visit by technical specialist will be provided when warranted. For budgeting purposes it's assumed up to 20 site visits by two staff members at 3 hours per visit.

Deliverables for Task 7400:

1. Field Notes – One (1) electronic copy in excel format.

TASK 8000 – DESIGN-BUILD SUPPORT

Tasks 8100 and 8200 – Commissioning and Acceptance Testing

Under this task, Black & Veatch shall review and confirm Design-Build Agreement requirements related to commissioning and acceptance testing activities have been satisfied by the Design-Build Entity. These items may include: pre- and post-start-up training programs, onsite operation consultation, standard operating procedure documentation and scheduled maintenance programs. Black & Veatch shall advise the City with respect to any request to waive the Design-Build Entity's obligations prior to initiating the commissioning and acceptance testing activities related to substantial completion, final completion and acceptance. Black & Veatch shall also assist in preparing documents formalizing that the Design Build Entity's obligations have been met. These requirements include the following:

- ▼ Conducting a final construction process inspection
- ▼ Review the Design-Build Entity's monitoring plan for witnessing and reporting on commissioning and preliminary testing
- ▼ Review the Design-Build Entity's monitoring plan for witnessing and reporting on acceptance testing
- ▼ Overseeing and report on the commissioning and acceptance testing
- ▼ Reviewing and commenting on the Design-Build Entity's commissioning and acceptance test findings and reports

Deliverables for Tasks 8100 and 8200:

1. Memorandum to Design-Build Entity's Commissioning and Testing Plan- One (1) electronic copy (pdf).
2. Memorandum to Design-Build Entity's Final Commissioning and Testing Reports- One (1) electronic copy (pdf).

TASK 9000 – POST-CONSTRUCTION

Task 9100 – Conduct Final Walkthrough

Under this task Black & Veatch shall conduct a final walkthrough to identify final punch list items. Following completion of the Design-Build Entity to address the punch list items, Black & Veatch shall perform a final walk through to confirm that all punch list items have been addressed.

Deliverables for Task 9100:

1. Punch List – One (1) electronic copy in excel format.

Task 9200 – Confirm all Warranties, Guarantees, Bonds and Insurance

Under this task Black & Veatch confirm that the Design-Build Entity has provided all warranties, guarantees, bonds, insurance certificates and other items as required by the Agreement.

Deliverables for Task 9200:

1. Checklist– One (1) electronic copy in excel format.

Task 9300 – Review Manuals

Under this task Black & Veatch shall review operation and maintenance manuals, training manuals, standard operating procedures and schedule maintenance programs that the Design-Build Entity is required to submit. For budgeting purposes, a budget of \$50,000 has been established for this effort.

Deliverables for Task 9300:

1. Comments to Manuals – One (1) electronic copy in excel format.

Task 9400 – Review Record Drawings

Under this task Black & Veatch shall review the record drawings to ensure they reflect field changes noted by the

City or Design-Build Entity. For budgeting purposes, a budget of \$30,000 has been established for this effort.

Deliverables for Task 9400:

1. Comments to Record Drawings – One (1) electronic copy in excel format.

Task 9500 – As-Needed Services During First Year of Operation

Under this task Black & Veatch shall provide as-needed engineering services during the first year of operation. Services may include phone consultations, in-person meetings, and/or site visits related to warranty rights or operational issues. For budgeting purposes, a budget of \$50,000 has been established for this effort.

Deliverables for Task 9500:

1. Memorandum as Required - One (1) electronic copy in pdf format.

Assumptions:

- Construction administration and management to be performed by third party, including special inspections.
- Black & Veatch will assume no responsibility for the Design Build Entity safety plan and enforcement during construction.
- All permits will be paid for by the City or Design-Build Entity.
- The City will lead the development of the Design-Build Agreement.
- Black & Veatch may request an adjustment of up to 3% in the labor billing rates a minimum of twelve months after the effective date of the agreement. If the request is made after the twelve-month period, any subsequent request will not be considered prior to the end of the twelve-month adjustment period previously granted. Retroactive rate adjustments will not be considered.

TASK #	TASK DESCRIPTION	TOTAL COST
1000	PHASE I - PROJECT MANAGEMENT AND MEETINGS	\$67,550
2000	30% DESIGN DEVELOPMENT	\$96,850
3000	REQUEST FOR QUALIFICATIONS/PROPOSALS	\$125,160
4000	DESIGN-BUILD SUPPORT	\$523,640
5000	STATE REVOLVING FUND ASSISTANCE	\$25,000
6000	PHASE II – PROJECT MANAGEMENT AND MEETINGS	\$71,360
7000	DESIGN-BUILD SUPPORT	\$105,870
8000	COMMISSIONING AND ACCEPTANCE TESTING	\$48,900
9000	POST-CONSTRUCTION SERVICES	\$172,560
TOTAL	TOTAL T&M COST	\$1,236,890

Payment Terms:

Work will commence upon receipt of a fully executed contract.

Fee is Time and Materials not to exceed \$1,236,890

Net 30 - Consultant shall invoice City monthly as work progresses. Tasks can be fully paid only after the work for the task is completed.

Black & Veatch Corporation – Employee Schedule

Personnel	Classification
Kevin Davis	Project Director 5
John Bekmanis	Project Manager 3
Maddi Garza-Bird	Design-Build Project Director 5
David Kinchen	Design-Build Project Director 5
Chad Brown	Design-Build Project Manager 5
Marcus Simpson	Design-Build Project Manager 3
Rika Evans	Civil Engineer 5
Brad Sours	Civil Engineer 5
Crystal Dirks	Civil Engineer 5
Vasu Veerapaneni	Process Engineer 7
Jay DeCarolis	Process Engineer 5
Lee Portillo	Process Engineer 5
Ahmed Hussein	Civil Engineer 4
Osai Robinson	Civil Engineer 3
John Shafer	Civil Engineer 1
Kuntay Talay	Senior Cost Estimator
Lou Nemeth	Architect 8
Ryan Podolsky	Architect 3
Mark Lowe	Structural Engineer 6
Randy Cantrell	Mechanical Engineer 6
Raghu Kavada	Mechanical Engineer 5
Alexander Giraldo	Mechanical Engineer 2
Kirk Ivy	Electrical Engineer 7
Ryan Lorton	Electrical Engineer 3
Kevin Vandiver	I&C Engineer 5
Jon Glasgow	Engineering Tech 5
Tin Lai	Engineering Tech 5
Steve Grey	Project Controls
Carmen Haynes	Project Accountant
Jenni Falke	Project Biller
Gina Bellandi	Administration 2
Kesha Nedio Casey	Administration

CITY COUNCIL STAFF REPORT

Current Business Item No. 18

April 4, 2018

File No. 0120-10

Repeal Escondido Municipal Code Chapter 19, Article 2, Board of Review, and Amend City Personnel Rules and Regulations Rule 28, Administrative Review and Appeal to Board of Review

- No materials available at this time.



FUTURE CITY COUNCIL AGENDA ITEMS

Updated March 28, 2018

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

April 11, 2018
4:00 p.m. Town Hall Meeting

April 18, 2018
4:30 p.m.

PROCLAMATION	
	Earth Day – April 22, 2018
PRESENTATION	
	Earth Day Poster Contest Awards
CONSENT CALENDAR	
	<p>Authorize A Partnership with the County of San Diego's Live Well San Diego! Program (J. Axelrod)</p> <p><i>Live Well San Diego is a comprehensive and innovative long-term vision that strikes to make communities, cities and the count a healthier, safer and more thriving region. By partnering in this initiative the City of Escondido has the opportunity to highlight our community wellness initiatives.</i></p>
	<p>Approval of Amendment to Extend the Termination Date of the Prop 1E Grant Agreement for the Lake Wohlford Dam Replacement Project (C. McKinney)</p> <p><i>The project schedule for the Lake Wohlford Dam Replacement Project has been extended several years due to requirements from regulatory agencies for additional design elements, field work, and significant habitat mitigation.</i></p>
PUBLIC HEARINGS	
CURRENT BUSINESS	
	<p>Second Reading - Resolution of Intention to Amend the Contract Between CalPERS and the City of Escondido to Include Provisions Pursuant to GC Section 20516 "Cost-Sharing" for Sworn Police/Safety Fire CalPERS Classic Members (S. Bennett)</p> <p><i>The City adopted Resolution No. 2018-09 and 2018-10 on January 24, 2018 ratifying contracts between the City of Escondido and POA and FFA. Agreed upon in both contracts was for Classic CalPERS members to cost-share 1% each year of the three-year contract. Per CalPERS policies, an amendment will need to be executed each year of the three-year contracts. Second reading of Ordinance No. 2018-37</i></p>
FUTURE AGENDA ITEMS (D. Halverson)	

Weekly Activity Report



March 29, 2018

FEATURED THIS WEEK

City's Planning Department Wins Big!

City of Escondido has received two 1st place (Award of Excellence) awards from the San Diego Chapter of the American Planning Association (SDAPA). The first of these competitive awards came in the Implementation Award category for our CEDS Implementation. The City also won SDAPA's Outreach Award for our innovative youth outreach program developed as part of the public outreach campaign for the South Centre City Specific Plan.

Dine Out Escondido! Gives Back

Local restaurants that participated in the 2018 Dine Out Escondido! committed to donating \$1 to the North County Food Bank's FOOD 4 KIDS Backpack Program for every DOE special they sold during Restaurant Week. This year \$2,228 was collected for this program that will provide will provide food for a year to approximately 12 kids in one of our local elementary schools!



COMMUNITY DEVELOPMENT

Major Projects Update

The following major projects are being reviewed and coordinated by Planning, Engineering, Fire, Building and Utilities. The list of projects below encompasses recent project updates and/or milestones from last week. A more complete list and description of active or pending projects can be viewed [here](#).

Commercial / Office:

1. Escondido Research and Technology Center (ERTC) – West (Developer: James McCann) – A plan for a new two-story, 57,000 SF, 52-bed Palomar Rehabilitation Institute was submitted as a Plot Plan on July 31, 2017. The Plot Plan approval letter was issued on February 7, 2018. Engineering is reviewing the second plan check for grading. Planning issued comments on the grading and landscape plans two weeks ago.
2. Escondido Research and Technology Center (ERTC) – PPH (Developer: Palomar Health) 2185 Citracado Parkway – A plan for a new two-story 4,220 SF Crisis Stabilization Unit for Palomar Hospital adjacent to the western side of the hospital was submitted on March 7, 2018.

Industrial

1. Escondido Self-Storage Facility (Developer: Brandywine Homes, Inc.) 2319 Cranston Dr. – A revised grading plan was submitted on February 22, 2018. The applicant had intended to pull permits next month.
2. North American Self-Storage (Developer: Russ Colvin) 852 S. Metcalf – A revised plot plan has been approved and revised building plans were submitted into plan check on January 17, 2018. Planning, Fire and Esgil have issued comments on the building plans. Engineering has approved the grading plan for the revised project and is awaiting posting of the improvement bonds prior to authorizing issuance of the building permit.

City Projects

1. Micro-Filtration Reverse Osmosis (Developer: City of Escondido Utilities Department) SE corner Ash/Washington – The archaeological work plan was approved by the State Historic Preservation Office (SHPO) and trenching has been completed. The consultant is now compiling the analysis/report to document the findings. The City Council will consider a contractual agreement for a design-build owner's engineer on April 4, 2018. If approved, the owner's engineer would help select and manage a design-build contractor for construction of the project.
2. Lake Wohlford Replacement Dam (Developer: City of Escondido Utilities Department) – A Draft EIR was prepared and issued for a 45-day public review period that began on October 4, 2016 and closed on November 17, 2016. A field visit with staff from the state and federal wildlife agencies took place on May 11, 2017, to review biological mitigation requirements including an agency request for full mitigation for emergent vegetation at the eastern end of the lake that came into existence since the lake level was reduced for safety reasons. Staff sent a follow-up letter to the wildlife agencies on June 29, 2017, seeking clarification on the proposed biological mitigation requirements. The California Department of Fish and Wildlife responded last month reiterating their earlier comments. Additional information is being compiled by the City's biological consultants based on recent conversations with the agencies.

Institutional

1. Escondido Assisted Living (Developer: Tigg Mitchell, Mitchell Group) 1802 N. Centre City Parkway – This CUP application for a 71,300 SF three-story, assisted living and memory care facility with 90 total units was submitted on October 31, 2017. The City Council authorized review of a General Plan Amendment request on March 21, 2018, which was necessary to review the request to allow a third floor for the building. The applicant has been actively engaged with Fire, Engineering and Planning staff and has provided several revisions intended to address identified issues with the most recent project revision received on March 27, 2018.

Residential

1. Citron (formerly Stella Park) (Developer: William Lyon Homes) 63 condo units at 2516 S. Esc. Blvd. – The City Council approved the final map on December 20, 2017. The rough grading has been completed on the site. Construction of model units is underway on the western building along S. Escondido Boulevard. Building permits for the remaining buildings are pending recordation of the final map. Recordation of the final map is expected soon.
2. Wohlford (Developer: Jack Henthorne) 55 lots at 661 Bear Valley Pkwy. – Staff met with the applicant to review the draft conditions of approval for the project. Staff and the applicant have been working for some time to complete negotiations on final terms for the Development Agreement. On February 13, 2018, the Planning Commission continued the public hearing on this item at the applicant's request to allow more time to finalize negotiations.
3. Safari Highlands Ranch (SHR) (Developer: Jeb Hall, Concordia Homes) 550 lots east of Rancho San Pasqual – A Notice of Availability for the Draft EIR was issued on October 16, 2017 for public review and comment. The comment period ended on January 2, 2018. Staff transmitted all the comment letters and emails to the Draft EIR consultant for review and to prepare a response to each comment. The Draft EIR and appendices have been posted on the City's website at the following link:

<https://www.escondido.org/safari-highlands-ranch-specific-plan.aspx>
4. 18 lots at 701 San Pasqual Valley Rd (Developer: Bob Stewart) – A three-year extension of time for the previously approved ten-lot subdivision (Tract 895) was approved by the City Council on June 7, 2017. Staff comments on the revised tentative map were issued the last week of July. Staff met with the applicant several months ago regarding unresolved project design issues. The applicant has had one follow-up discussion with Utilities since then.
5. Escondido Gateway (Developer: Carolyn Hillgren, Lyon Living) 126 condo units at 700 W. Grand – Building plans have been approved by Esgil, Planning and Fire. Grading plans have been approved by Utilities, Planning and Fire. A street vacation for right-of-way frontage along Grand Avenue has been completed. Demolition is complete and construction permits are ready to be issued once title to the site transfers to the builder at the end of April 2018.

6. The Villages at Escondido Country Club (Developer: Jason Han, New Urban West, Inc.) 380 residences – The City Council voted 3-2 to approve the project on November 15, 2017. The vacant clubhouse building was destroyed by fire several days later. A lawsuit challenging the project approval was filed in Superior Court on behalf of the Escondido Country Club Homeowners (ECCHO) on December 15, 2017. The City has been working with the property owner and project applicant to demolish what's left of the clubhouse. Issuance of a demolition permit is pending APCD approval of an asbestos removal plan as well as property owner authorization. It is expected the demo permit could be issued next week.

The approved tentative subdivision map, Final EIR and appendices, Specific Plan and other related information can be accessed on the City's website at the following link:

<https://www.escondido.org/ecc.aspx>

7. North Avenue Estates (Developer: Casey Johnson) 34 lots at North Ave./Conway Dr. – The Planning Commission voted to recommend approval of the project on November 28, 2017. The City Council approved the project on January 10, 2018. The LAFCO application for annexation was submitted to LAFCO on February 20, 2018. On March 22, 2018, LAFCO staff provided a letter requesting additional information to support the annexation request. That information is being gathered now for transmittal to LAFCO.
8. Aspire (106 condo units on Municipal Lot 1) (Developer: Addison Garza, Touchstone Communities) – The proposal consists of a six-story mixed-use development on Parking Lot 1. The project was initially submitted for entitlement processing on June 23, 2017. Subsequent meetings with the applicant and staff have been on-going and a resubmittal of the project plans was received on December 12, 2017. Planning, Fire and Building sent comments on the revised project submittal on January 16, 2018. Staff design review occurred on March 15, 2018 and related comments have been provided to the applicant. Staff is awaiting submittal of the environmental documentation for review.
9. The Ivy (95 condo units at 343 E. 2nd) (Developer: Addison Garza, Touchstone Communities) - The condo project was initially submitted for entitlement processing on June 23, 2017. The applicant submitted revised project plans on December 8, 2017. The City issued a comment letter on the revised application on January 8, 2018. Staff design review occurred on March 15, 2018 and related comments have been provided to the applicant. Staff is awaiting submittal of the environmental documentation for review.
10. Grand Avenue Apartments (Developer: Norm LaCaze, Escondido Venture 99, LLC) 15 apt. units at 1316 E. Grand Ave. – A planned development application proposing 15 multi-family units in one three-story building on a vacant 0.51-acre lot was submitted for entitlement processing on September 22, 2017. A completeness review letter was sent to the applicant on October 20, 2017, indicating the application was incomplete. Several follow-up meetings with staff appear to have resolved some of the outstanding issues regarding the project design and a resubmittal is expected this week.
11. Quince Street Senior Housing (Developer: Matt Jumper, 220 Quince, L.P.) 145 apartment units at 220 N. Quince St.– The five-story affordable senior housing apartment project was submitted on November 21, 2017. Planning staff sent a letter to the applicant on December 21, 2017, indicating the application was incomplete. Two meetings with the applicant team

and multiple city departments have occurred since the project submittal to discuss project design issues.

12. Sager Ranch/Daley Ranch Resort Specific Plan (Developer: J. Whalen Associates, Inc., Sager Ranch Partners) 203 housing units and 225-room resort hotel on 1,783-acres, just north and east of Dailey Ranch – This proposed residential and resort hotel annexation and specific plan project was received on March 2, 2018 and is currently being reviewed for completeness. It is anticipated that this review will be complete in April, 2018. A project webpage containing draft documents and plans has been added to the Planning Division's website at the following link:

[Daley Ranch Resort Specific Plan - City of Escondido](#)

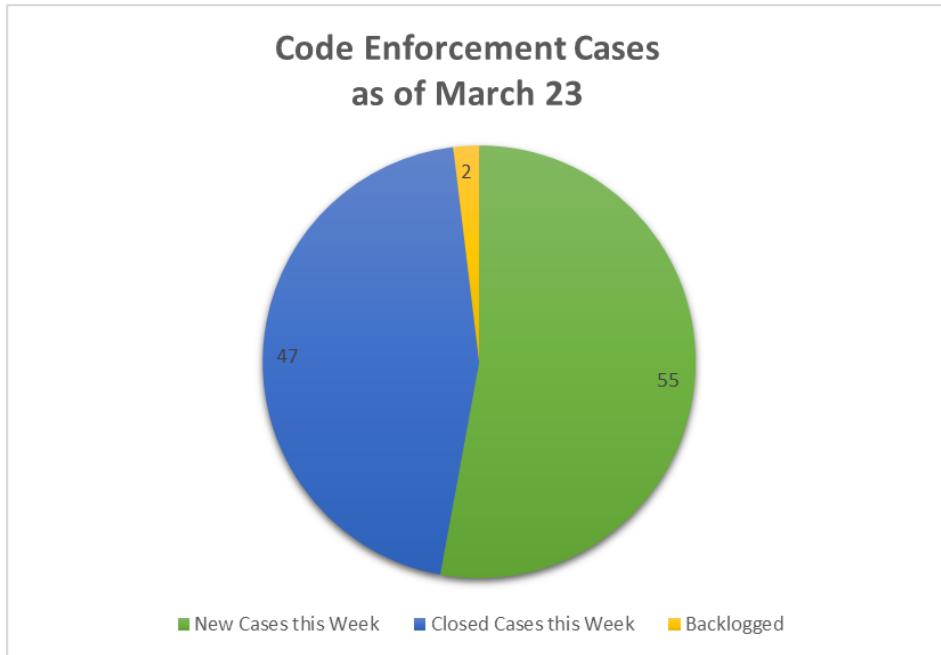
13. Accessory Dwelling Units – Planning staff is currently working on one application for an accessory dwelling unit and two more applications are anticipated. Five accessory dwelling units have been approved this year.

Building Division:

1. The Building Division issued 74 permits with a total valuation of \$2,088,117.
2. 23 solar photovoltaic permits were issued for the week. The Building Division has issued 235 solar permits for the year compared to 210 issued for 2017.
3. Our building inspectors responded to 154 inspection requests for the week. Ten inspection requests were held over on Friday.
4. The total building valuation for all issued permits through March 23rd is \$16,075,598 compared with \$13,679,006 for same time last year. Building has processed 690 projects so far in 2018 compared with 708 projects in 2017.
5. Projects nearing permit issuance are:
 - a. 917 W Lincoln, 3 new apartment buildings, 9 units.
 - b. 700 W Grand Ave Gateway project (previous police building).
 - c. 2516 S. Escondido Blvd. "Citron" a 63-unit condominium project (model building already issued).
6. The mixed use project at 300 S Escondido Blvd (City Plaza) has received an extension on their 30-day Temporary Certificate of Occupancy and residential units are now being leased out. Temporary Certificate of Occupancy expires on 4/6/18. City Engineer approval needed for final Certificate of Occupancy. *No change from the previous.*
7. The Meadowbrook three-story apartment building with underground garage at 2081 Garden Valley Glen is preparing the building for final inspection. *No change from the previous.*
8. The medical office building at 2125 Citracado Pkwy is preparing for final inspection of the tenant improvement. *No change from the previous.*

9. Seven of the eight residential buildings at the Westminster Seminary at 1725 Bear Valley Pkwy are preparing the buildings for final inspection. The eighth building is installing drywall. *No change from the previous.*
10. The Emanuel Faith Church at 639 E 17th Ave is preparing for final inspection. *No change from the previous.*
11. The Church of Resurrection at 1445 Conway is preparing for final inspection. *No change from the previous.*
12. The new Veterans Village project at 1540 S Escondido Blvd has received exterior framing and roof sheathing approval and are preparing plan revisions for city review. *No change from the previous.*
13. The new drive-thru restaurant at 720 N. Center City Pkwy and the new retail building at 730 N. Centre City Pkwy have received framing approval for the building exterior shell building. The new drive-thru restaurant at 700 N. Centre City Pkwy has received framing approval, rough gas and domestic water line approval. A building permit was issued last week for the new carwash within the same commercial center at 680 N. Centre City Parkway
14. The new market at the location of the former Toyota dealership at 151 W Lincoln has received exterior lath inspection approval and are preparing for shell building final. *No change from the previous.*
15. The Latitude 2, apartment complex at 650 N Center City Pkwy has received first floor exterior shear and floor sheathing for buildings 1-6. *No change from the previous.*
16. The new Starbucks at 121 W. Lincoln had their underground plumbing and electrical approved.
17. The new two story church sanctuary building at 1864 N Broadway has inspection approval for the 7th grout lift of the masonry walls.
18. The new Starbucks at 302 W El Norte Pkwy is preparing for final inspection. *No change from the previous.*
19. The 212,000 sf industrial shell building at 2005 Harmony Grove has received approval for all tilt-up wall panels.
20. The new 63-unit condominium project, Citron, at 2516 S Escondido Blvd has received floor sheathing inspection for the second floor on Building 1. *No change from the previous.*
21. The new Springhill Suites 105-room hotel at 200 La Terraza has received complete foundation inspection approval.

Code Enforcement

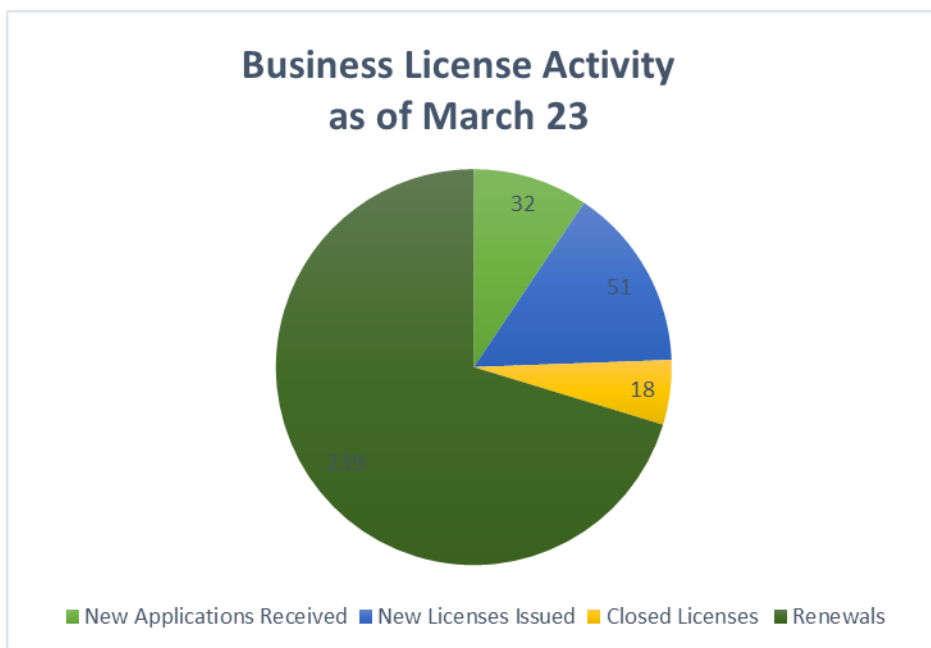


Total Open Code Cases
339

Graffiti Restitution

Collected This Week	Collected Year to Date
\$1422	\$3567.14

Business Licensing



ENGINEERING

Capital Improvements

Valley Pkwy/Valley Center Road Widening Project: Day 148

The contractor is backfilling the concrete curb and gutter along the east and west sides of Valley Center Road and East Valley Parkway in preparation of the placement of concrete sidewalk. The masonry subcontractor will resume installation of CMU blocks for the sound wall along East Valley Parkway later this week. A subcontractor for AT&T is proceeding with setting vaults behind the newly constructed curb and gutter as part of the overhead to underground utility conversion.

Neighborhood Lighting Project

No changes from that reported last week: The Neighborhood Street light project is nearing completion with street lights energized in four of the five neighborhoods on February 14th. The project features the installation of 44 new street lights with L.E.D. Luminaries in five neighborhoods: The Elms, Rustic Village, Mission Grove, Cedar-Cedar Brook, and Rose to Foxdale. Additionally, 22 existing street light fixtures were retrofit with L.E.D. The new L.E.D. Luminaries shine a clean white light on the surrounding area, in contrast with the yellow light given off by the existing fixtures. The Rose to Foxdale energization has been delayed another two weeks for further review by the utility provider.

2017 Street Rehabilitation and Maintenance Project

The striping contractor is continuing with the installation of signage and striping throughout the project limits. The prime contractor is installing a concrete median curb on Broadway at Mission Avenue and on Ash Street at Washington Avenue this week. The concrete curb installation will replace the existing rubber curb that has deteriorated beyond repair.

Corrugated Metal Storm Drain Pipe Assessment Study

The contractor has completed repairs to the storm drain pipe at 4 locations along Midway Drive between Grand Avenue and Valley Parkway. All traffic control has been removed and the roadway has been reopened for service. This project has been completed.

Transit Center Pedestrian Bridge Project

The Transit Center Pedestrian Bridge and Spruce Street Channel Improvement Project is moving forward with 100% design completion.

Missing Link Project

This project will complete the street improvements needed to link riders from the channel bike path that currently ends at Broadway, to where it re-starts at Quince. Project bids were opened on January 18th, and the contract was awarded to Eagle Paving on February 14th. Construction is anticipated to begin mid-April, with completion expected 120 working days following the Notice to Proceed. The City has received a signed contract and has scheduled the preconstruction meeting for April 16th. The City has directed the contractor to order some elements of the project which have a long lead time due to the special ordering requirement.

PRIVATE DEVELOPMENT

Centerpointe 78

The new 300' median curb extension and colored median sidewalk have been installed. The placement of the final pavement along El Norte Parkway at Escondido Boulevard was delayed due to weather. The paving has been rescheduled for Monday, April 2 with striping scheduled for the following day. Effective immediately, the median will restrict all left turn movements through the El Norte Parkway / Escondido Boulevard intersection. A new pedestrian ramp is being installed at the southeast corner of the Broadway/Lincoln intersection this week.

Centre City Shopping Center

The offsite dry utility work along Mission Avenue between Centre City Parkway and Escondido Boulevard has begun this week. A single lane of traffic is effected during the daytime operation. Electronic message boards are in place to notify that all businesses are open during construction. The project is located at 425 W. Mission Avenue.

Tract 932 - Canyon Grove Shea Homes Community

The developer has completed the water main tie in along Vista Verde Way. The main focus of construction moving forward will be the construction of new homes.

Latitude II Condominiums by a Lyon Homes Partnership: Washington Avenue @ Centre City Parkway

No changes from that reported last week: The contractor completed temporary repairs to the public improvements along Washington Avenue at Centre City Parkway. This work was associated with the water main installation that occurred last year.

Veteran's Village

The storm drain along Escondido Boulevard is now complete. The #1 north bound lane of Escondido Boulevard is being permanently repaved this week and all lanes of traffic will be reopened by weeks' end.

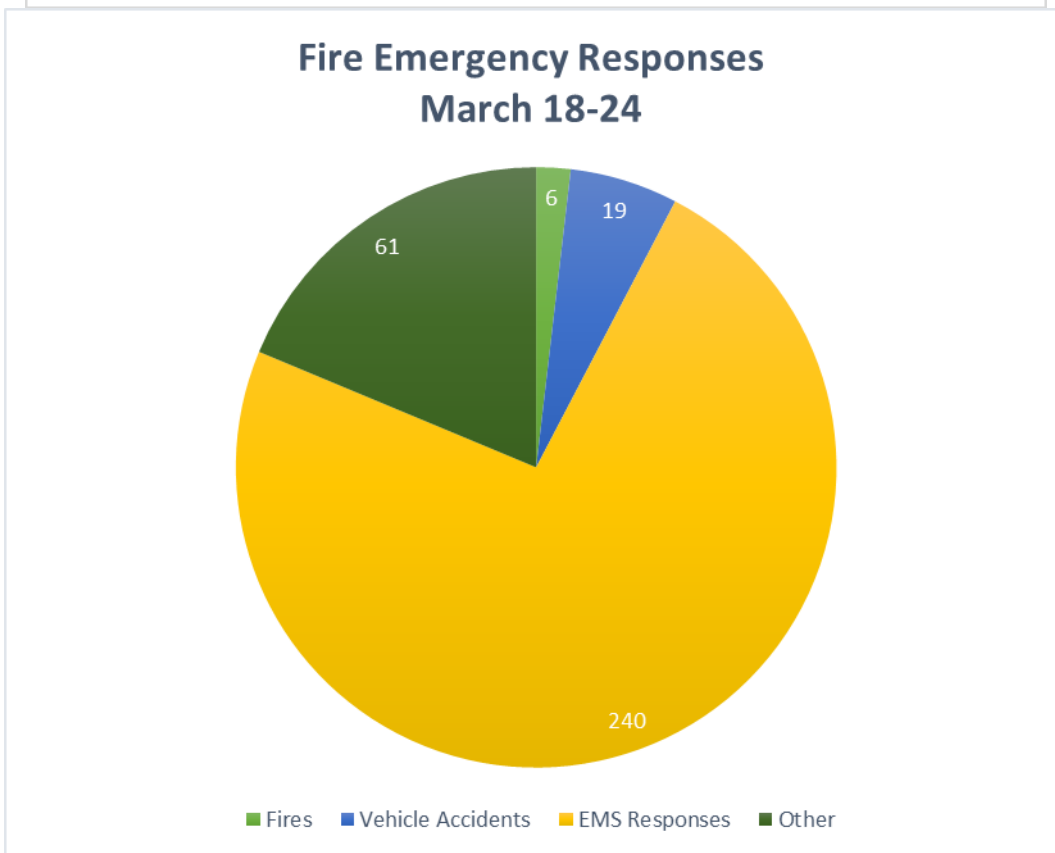
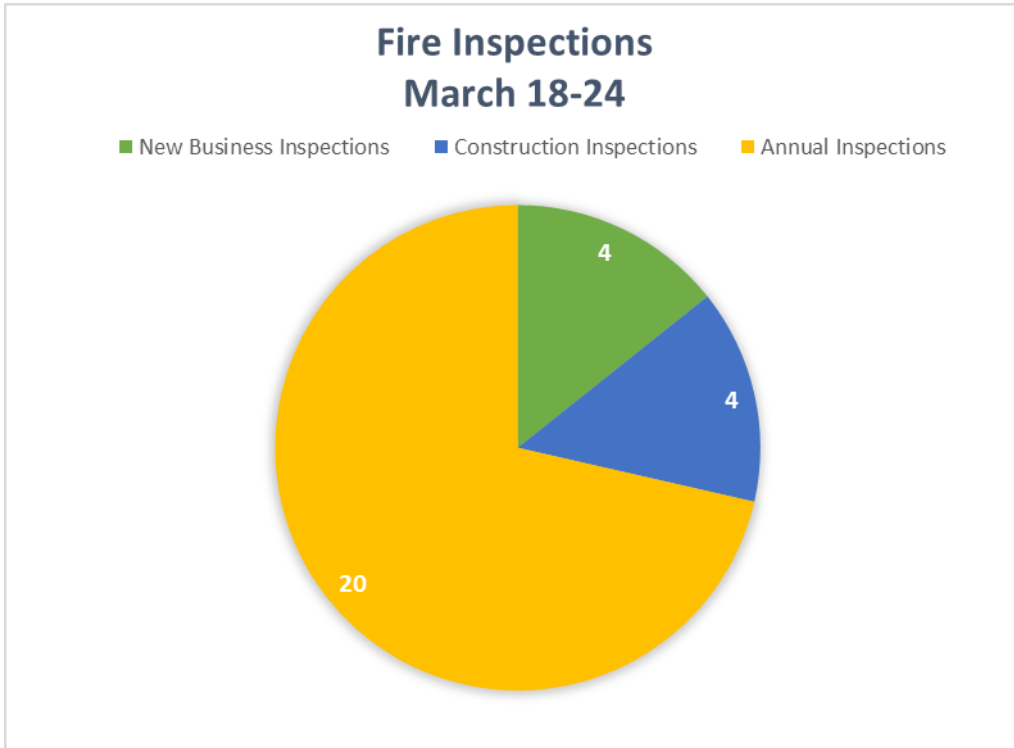
Exeter Industrial Park

No changes from that reported last week: The grading operation is continuing this week. Storm drain installation is now complete and work will shift to the construction of dry utilities onsite. The project is located at 2005 Harmony Grove Road and is 5.4 acres in size.

City Plaza

This project has entered the punch list phase. During a recent inspection, a sewer blockage was observed in the alley behind the project. The developer was required to hire a contractor to excavate the newly constructed alley improvement to facilitate the replacement of the sewer lateral to the new building. Permanent alley improvements are anticipated within the next 60 days, pending the removal of the last two utility poles.

FIRE



Total Emergency Responses (Year To Date)	3,860
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News:

- The City of Escondido Fire Department hosted their 2018 Recognition & Promotion Ceremony on Thursday, March 22, 2018 at 5:00 p.m. in the Council Chambers. All new hires and promotions since July of 2017 were recognized.



- In the early morning hours of Wednesday, March 21st, The City of Escondido Fire Department deployed Strike Team Leaders (Battalion Chief Sargis and Captain Boyer) and Brush Rig 133 (Captain Portman, Engineer Polito, FF/PM C. Smith, and FF/PM Keene) to Santa Barbara for the rain event. They returned home safely the afternoon of Friday, March 23rd.



- The Escondido Fire Department Senior Volunteers hosted their monthly meeting at the Police and Fire Headquarters on March 14th and renewed their CPR certifications.



POLICE

INCIDENTS:

- On 3-20-2018, Officer R. Martinez spotted a stolen Nissan Sentra in the area of at 2nd Ave. and Escondido Blvd. The driver of the vehicle quickly sped away and entered northbound I-15. During the pursuit, speeds reached over 100 mph. The California Highway Patrol was requested to take over the pursuit. As the pursuit continued, officers lost sight of the vehicle. The next day, Detective Havens located the stolen vehicle abandoned along the side of the road near the I-15 and Mission Rd. The vehicle was processed for evidence. The investigation is ongoing.
- On 3-22-2018, officers responded to the North Bar reference a call shots being fired into the bar. The caller gave the dispatch the suspect's vehicle description and license plate number. Within minutes after the call, Officer C. Naranjo locates the suspect inside his vehicle on Sandalwood Place. Officers detain the suspect. Inside the vehicle, officers located a spent casing, a bullet and handgun. The suspect was booked into the Vista Detention Facility for assault with a deadly weapon and shooting at an occupied building.

COPPS:

The COPPS (Community Oriented Policing and Problem-Solving) Unit is dedicated to increasing the quality of life for the residents of Escondido through pro-active responses to crime trends, quality of life issues, and addressing crime and public nuisance in Grape Day Park and at Maple Plaza.

- 3 arrests were made
- 8 citations were issued

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