



APRIL 3, 2019
CITY COUNCIL CHAMBERS
3:30 P.M. Closed Session; 4:30 P.M. Regular Session
201 N. Broadway, Escondido, CA 92025

MAYOR	Paul McNamara
DEPUTY MAYOR	Consuelo Martinez
COUNCIL MEMBERS	Olga Diaz John Masson Michael Morasco
CITY MANAGER	Jeffrey Epp
CITY CLERK	Zack Beck
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 3, 2019
3:30 P.M. Meeting**

Escondido City Council

CALL TO ORDER

ROLL CALL: Diaz, Martinez, Masson, Morasco, McNamara

ORAL COMMUNICATIONS

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

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

I. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION/SIGNIFICANT EXPOSURE (Government Code 54956.9(d)(2))

- a. City of Escondido v. General Reinsurance Corp.; Genesis Management & Insurance Services Corp.

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

- a. **Property:** 613 East Lincoln Avenue (APN 229-160-54)
City Negotiator: Jeffrey Epp, City Manager
Negotiating Parties: Escondido Community Child Development Center
Under Negotiation: Lease Terms
- b. **Property:** 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: Meridian Properties Real Estate, Inc.
Under Negotiation: Price and Terms of Agreement

- c. **Property:** 480 North Spruce Street (APN 232-091-28-00)
City Negotiator: Jeffrey Epp, City Manager
Negotiating Parties: The Broken Token, LLC
Under Negotiation: Lease Price and Terms of Agreement

- d. **Property:** 3450 East Valley Parkway (APN 225-141-34)
City Negotiator: Jeffrey Epp, City Manager
Negotiating Parties: San Diego Humane Society
Under Negotiation: Lease Terms

ADJOURNMENT



Council Meeting Agenda

**April 3, 2019
4:30 P.M. Meeting**

Escondido City Council

CALL TO ORDER

MOMENT OF REFLECTION:

FLAG SALUTE

ROLL CALL: Diaz, Martinez, Masson, Morasco, McNamara

PROCLAMATIONS: Fair Housing Month
Adult Education Week - April 8-12, 2019

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)

Request the City Council approve the City Council, Successor Agency, and Housing Successor Agency warrant numbers:

- 328623 – 328732 dated March 13, 2019
- 328733 – 329019 dated March 20, 2019

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

3. APPROVAL OF MINUTES: Special Meeting of March 13, 2019

4. RESOLUTION AUTHORIZING AN APPLICATION FOR CALIFORNIA IBANK FINANCING FOR THE LINDLEY RESERVOIR TANK REPLACEMENT PROJECT -

Request the City Council approve authorizing the Director of Utilities to submit an application to the California Infrastructure and Economic Development Bank (IBank) requesting \$15 million in financing for the Lindley Reservoir Tank Replacement Project. The resolution authorizes the Director of Utilities to submit an application for a financing agreement with IBank, declares the City's intent to reimburse IBank, and approves certain related matters to the financing application.

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

RESOLUTION NO. 2019-47

5. CONSULTING AGREEMENT FOR UPDATE OF THE PAVEMENT MANAGEMENT PROGRAM -

Request the City Council approve authorizing the Mayor and City Clerk to execute a Consulting Agreement with IMS Infrastructure Management Services, LLC in the amount of \$146,370 to update the City's Pavement Management Program database.

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

RESOLUTION NO. 2019-49

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

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

6. MASTER AND PRECISE DEVELOPMENT PLAN AND GRADING EXEMPTION FOR GRAND AVENUE APARTMENTS, 1316 EAST GRAND AVENUE (PHG 17-0019) -

Approved on March 20, 2019 with a vote of 4/0/1, Masson absent

ORDINANCE NO. 2019-02 (Second Reading and Adoption)

7. AMENDMENT TO CHAPTER 2 OF THE ESCONDIDO MUNICIPAL CODE TO MOVE THE CLOSED SESSION MEETING AND REGULAR CITY COUNCIL MEETING TIMES -

Approved on March 20, 2019 with a vote of 3/1/1, Morasco voting no, Masson absent

ORDINANCE NO. 2019-05 (Second Reading and Adoption)

CURRENT BUSINESS

8. AWARD PURCHASES AND APPROVE THE DISPOSAL OF SURPLUS VEHICLES -

Request the City Council approve authorizing the purchase of twelve (12) vehicles with a total purchase amount of \$933,630.44 and the disposal of twelve (12) vehicles being replaced by the purchase.

Staff Recommendation: **Approval (Public Works Department: Joseph Goulart)**

RESOLUTION NO. 2019-41

9. NORTH COUNTY TRANSIT DISTRICT BUS STOP MEMORANDUM OF UNDERSTANDING -

Request the City Council approve authorizing the Mayor and City Clerk to execute a Memorandum of Understanding with North County Transit District regarding the maintenance and cleaning of bus stops.

Staff Recommendation: **Approval (Engineering Services Department: Julie Procopio and Public Works Department: Joseph Goulart)**

RESOLUTION NO. 2019-35

10. AWARD OF A DESIGN BUILD AGREEMENT FOR THE DESIGN AND CONSTRUCTION OF THE MEMBRANE FILTRATION REVERSE OSMOSIS FACILITY AND BUDGET ADJUSTMENT -

Request the City Council approve authorizing the award of a Design Build Agreement for the Membrane Filtration Reverse Osmosis (MFRO) Facility in an initial amount of \$2,716,068 to Filanc+BC, a joint-venture consisting of J.R. Filanc Construction Company, Inc. and Brown and Caldwell; and approve a budget adjustment in the amount of \$3,000,000.

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

RESOLUTION NO. 2019-50

FUTURE AGENDA

11. 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: Zack Beck)**

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. This report is also available on the City's website, www.escondido.org.

- **WEEKLY ACTIVITY REPORT -**

ORAL COMMUNICATIONS

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ADJOURNMENT

UPCOMING MEETING SCHEDULE

Date	Day	Time	Meeting Type	Location
April 10	Wednesday	3:30 & 4:30 PM	Regular Meeting	Council Chambers
April 17	-	-	No Meeting	-
April 24	-	-	No Meeting	-
May 1	Wednesday	3:30 & 4:30 PM	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



CITY COUNCIL STAFF REPORT

Consent Item No. 2

April 3, 2019

File No. 0400-40

SUBJECT: Approval of Warrants

DEPARTMENT: Finance Department

RECOMMENDATION:

Request approval for City Council, Successor Agency and Housing Successor Agency warrant numbers:

328623 – 328732 dated March 13, 2019

328733 – 329019 dated March 20, 2019

FISCAL ANALYSIS:

The total amount of the warrants for the following periods are as follows:

March 7 – 13, 2019, is \$1,105,415.87

March 14 – 20, 2019, is \$867,711.73

BACKGROUND:

The Escondido Municipal Code Section 10-49 states that warrants or checks may be issued and paid prior to audit by the City Council, provided the warrants or checks are certified and approved by the Director of Finance as conforming to the current budget. These warrants or checks must then be ratified and approved by the City Council at the next regular Council meeting.

CITY OF ESCONDDIO
MARCH 13, 2019
12:00 p.m. Council & Staff Lunch
1:00 p.m. Workshop

Minutes

Special Meeting of the Escondido City Council

CALL TO ORDER

The Special Meeting of the Escondido City Council was called to order at 1:00 p.m. on Wednesday, March 13, 2019 in the Mitchell Room with Mayor McNamara presiding.

ATTENDANCE

The following members were present: Councilmember Olga Diaz, Deputy Mayor Martinez, Councilmember Michael Morasco, and Mayor Paul McNamara. Absent: Councilmember John Masson. Quorum present.

Also present were: Jeffrey Epp, City Manager; Michael McGuinness, City Attorney; Dan Singer, Special Advisor with Management Partners and facilitator of the work session; City staff and members of the public and press.

WORKSHOP

Mayor McNamara welcomed the participants to the Council Action Plan Workshop and noted that the goal for the day was to establish the work plan for the upcoming two years. Specific goals should be identified and staff will make recommendations for implementation. Due to Councilmember Masson's absence, nothing will be decided today until Councilmember Masson has had an opportunity to provide input.

City Manager Jeffrey Epp shared the value of this meeting in establishing a bridge between City Council policies and staff implementation; these policies will drive the City's budget for the next two years. Mr. Epp noted differences in this workshop compared to previous years.

Facilitator Dan Singer reviewed the history of this workshop, the theme areas identified two years ago, process issues and discussion guidelines. Co-facilitator Julie Hernandez shared comments regarding her history and experience.

The City Council discussed current priorities of economic development, fiscal management, neighborhood improvement, and public safety and discussed addition of a quality of life category. Councilmembers and staff spent the remainder of the time discussing their vision for the City of Escondido, specific priorities, and rating priorities using charts prepared by the facilitator and a dot-rating system.

The City Council discussed the importance of follow up sessions, and an annual review of Action Plan priorities and asked that staff complete assessments on current Council Action Plan items.

ORAL COMMUNICATIONS

Charles Cleveland, Escondido, shared comments regarding the City budget and requested the City Council pursue solar energy and convert City vehicles to an electric vehicle fleet.

Margaret Lyles, Escondido, expressed appreciation for professionalism of the City Council and staff; and requested the City explore options for improving the Escondido Creek.

ADJOURNMENT

Mayor McNamara adjourned the meeting at 4:43 p.m.

MAYOR

CITY CLERK

DEPUTY CITY CLERK

CITY COUNCIL STAFF REPORT

Consent Item No. 4

April 3, 2019

File No. 0800-40

SUBJECT: Resolution Authorizing Application for California IBank Financing for the Lindley Reservoir Tank Replacement Project

DEPARTMENT: Utilities Department, Construction and Engineering Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2019-47, authorizing the Director of Utilities to submit an application to the California Infrastructure and Economic Development Bank (IBank) requesting \$15 million in financing for the Lindley Reservoir Tank Replacement Project (the "Project"). The Resolution authorizes the Director of Utilities to submit an application for a financing agreement (the "Obligation") with IBank, declares the City's intent to reimburse IBank, and approves certain related matters to the financing application.

FISCAL ANALYSIS:

The FY 2018/19–2021/22 Capital Improvement Program lists the total projected cost for the Lindley Reservoir Replacement Project as \$10,434,830, with funding sources for the Project (CIP No. 704201) comprised of Customer Fees, Loan Funding, and Water Bonds. An updated estimate performed in September 2018 currently places construction costs alone for the Project at a little over \$13.7 million.

The loan requested to finance the Lindley Reservoir Tank Replacement Project would be provided through IBank's Infrastructure State Revolving Fund (ISRF) Loan Program. ISRF is a direct loan program, and loans are funded with the proceeds of tax-exempt ISRF revenue bonds. Loan terms are for the useful life of the project up to a maximum of 30 years. If the City Council authorizes submission of an application, staff anticipates that the financing agreement offered from IBank will include an annual interest rate between 2.75 and 3.00 percent.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Council's Action Plan regarding Fiscal Management. IBank funding, if awarded, is low-cost financing that will reduce long-term borrowing costs for Water ratepayers.

PREVIOUS ACTIONS:

On January 11, 2012, the City Council authorized a budget adjustment to fund the Evaluation of Alternatives for the Replacement of the Lindley Reservoir.

On August 22, 2012, the City Council authorized a consulting agreement with MWH Corporation for the Lindley Reservoir Replacement Design in the amount of \$561,623.

On September 24, 2014, the City Council adopted a Mitigated Negative Declaration (MND) prepared for the Lindley Reservoir Tank Replacement Project.

BACKGROUND:

Lindley Reservoir is at the end of its useful life and in urgent need of replacement to avoid water quality problems and potential interruptions in service. The two major elements of the Lindley Reservoir Tank Replacement Project are: 1) demolition and removal of the existing 2.0-million gallon (MG), above ground, steel water tank; and 2) construction of two, 1.5-MG, partially buried concrete water tanks and related valves, pipelines, etc. In addition to increased storage capacity (2.0 MG to 3.0 MG), two reservoir tanks will protect water quality and provide a more reliable and efficient water storage and distribution system. Reliability will be improved because one tank will remain in service while the other undergoes maintenance.

The California Infrastructure and Economic Development Bank (IBank) is the State of California's only general purpose financing authority. The Legislature created IBank in 1994 to finance public infrastructure and private development that promote a healthy climate for jobs, contribute to a strong economy, and improve the quality of life in California communities. IBank has broad authority to issue revenue bonds – both tax-exempt and taxable, to provide loans to state and local governments for public infrastructure and economic expansion projects, and to leverage State and Federal funds. It is a self-supporting governmental entity that pays for its operations from service fees and interest earnings on loans and investments. As of March 2017, IBank has financed over \$38 billion in infrastructure and economic development projects.

The benefits of financing through IBank and the ISRF Program include:

- Below-market interest rates
- Non-competitive application process; applications continuously accepted
- Technical assistance
- No matching fund requirement
- No federal overlays
- Closings are tailored to project requirements

Adoption of Resolution No. 2019-47, the action requested of the City Council today, authorizes the Director of Utilities to submit an application for a financing agreement with IBank for the Lindley Reservoir Tank Replacement Project, declares the City's intent to reimburse IBank, and approves certain related matters to the financing application. Should IBank approve the City's application, staff will return to the City Council at a later date for authorization to accept and process the financing agreement. The interest rate of the potential loan agreement is not known at the time of application, but is anticipated to be between 2.75 and 3.00 percent annually, given the Water Fund's credit rating.

The term of the loan agreement is expected to be 30 years. If the City's application for funding is approved by IBank, the final loan agreements will specify the interest rate and term, and will be brought to the City Council for approval via a separate Resolution. The Resolution under consideration with this item only authorizes application for a loan and commits to repay the loan if a future loan agreement is approved by the City Council.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Christopher W. McKinney, Director of Utilities
3/27/2019 6:54 p.m.

ATTACHMENTS:

1. Resolution No. 2019-47

RESOLUTION NO. 2019-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (“IBANK”) FOR THE FINANCING OF THE LINDLEY RESERVOIR TANK REPLACEMENT PROJECT IF IBANK APPROVES SAID APPLICATION, DECLARATION OF OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES FROM THE PROCEEDS OF TAX EXEMPT OBLIGATIONS, AND APPROVING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the California Infrastructure and Economic Development Bank (“IBank”) administers a financing program to assist local governments with the financing of eligible projects in accordance with Section 63000 *et seq.* of the California Government Code (the “Act”); and

WHEREAS, IBank created the Infrastructure State Revolving Fund Program (“ISRF Program”) pursuant to the provision of the Act; and

WHEREAS, IBank has instituted an application process for financing under its ISRF Program; and

WHEREAS, IBank’s Criteria, Priorities and Guidelines for the Selection of Projects for Financing under the ISRF Program, dated February 23, 2016, and as may thereafter be amended from time to time (the “Criteria”), establishes requirements for the financing of projects under the ISRF Program; and

WHEREAS, the City of Escondido (“Applicant”) desires to submit an application (“Financing Application”) to IBank under the ISRF Program for financing and refinancing

the costs of the Lindley Reservoir Tank Replacement Project (“Project”) in an amount not to exceed \$15 million; and

WHEREAS, the Act and the Criteria require the Applicant to make, by resolution of its governing body, certain findings prior to a project being selected for financing by IBank; and

WHEREAS, the Applicant expects to incur or pay certain expenditures in connection with the Project from its Water Enterprise Fund that are reimbursable with the proceeds of tax exempt bonds or other tax exempt securities under Federal Tax Law (defined below) prior to incurring indebtedness for the purpose of financing costs associated with the Project on a long-term basis (the “Reimbursement Expenditures”); and

WHEREAS, the Applicant reasonably expects that, if its application for financing under the ISRF Program is approved by IBank, a financing arrangement (“Obligation”) in an amount not to exceed \$15 million, which shall be memorialized by one or more financing agreements and related documents (collectively, the “Financing Agreement”), shall be presented to the City Council for consideration, and that certain proceeds of such Obligation, if approved by the City Council, will be used to reimburse the Applicant for Reimbursement Expenditures incurred or paid prior to incurring the Obligation; and

WHEREAS, the Applicant acknowledges that IBank funds the ISRF Program, in part, with the proceeds of tax exempt bonds and, as such, has certain compliance obligations that may require it to have the Applicant enter into one or more new financing agreements to replace the Financing Agreement (collectively, the “Replacement

Agreement”) on terms and conditions substantially identical to the original Financing Agreement;

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

Section 1. The City Council hereby approves confirms, ratifies, and affirms all actions of the Applicant’s representatives, employees and officers heretofore taken in connection with, or with respect to, submitting the Financing Application, and in connection therewith the City Council finds and certifies:

- a. The Project facilitates the effective and efficient use of existing and future public resources so as to promote both economic development and conservation of natural resources;
- b. The Project develops and enhances public infrastructure in a manner that will attract, create, and sustain long-term employment opportunities;
- c. The Project is consistent with the General Plan of the City of Escondido and the General Plan of the County of San Diego;
- d. The proposed financing is appropriate for the Project;
- e. The Project is consistent with the Criteria; and
- f. It has considered (i) the impact of the Project on California’s land resources and the need to preserve such resources; (ii) whether the Project is economically or socially desirable; and (iii) whether the project is consistent with, and in furtherance of the State Environmental Goals and Policy Report (as defined in the Criteria).

Section 2. The Applicant reasonably expects and hereby declares its official intent to use proceeds of the Obligation to reimburse itself for the Reimbursement Expenditures with the proceeds of tax exempt bonds or other tax exempt securities issued under the provisions of the Internal Revenue Code of 1986, as amended, and those Treasury Regulations implementing such provisions (collectively, "Federal Tax Law"). This declaration is made solely for purposes of establishing compliance with applicable requirements of Federal Tax Law and its date is controlling for purposes of reimbursement under Federal Tax Law. This declaration does not bind the Applicant to make any expenditure, incur any indebtedness, or proceed with the Project.

Section 3. The reasonably expected maximum principal amount of the Obligation that is anticipated to be used for such reimbursement is \$15 million.

Section 4. Except as described in Section 8 below, this resolution is being adopted not later than 60 days after the payment of the original expenditures ("Expenditures Date or Dates").

Section 5. Except as described in Section 8 below, the expected date of issue of the Obligation will be within 18 months of the later of: (a) the Expenditure Date or Dates; or (b) the date that the Project is placed in service; provided that the reimbursement may not be made more than three years after the Expenditure Date.

Section 6. Proceeds of the Obligation to be used to reimburse for Project costs are not expected to be used, within one year of reimbursement, directly or indirectly to pay debt service with respect to any obligation (other than to pay current debt service coming due within the next succeeding one year period on any tax exempt obligation of

the Applicant (other than the Obligation)) or to be held as a reasonably required reserve or replacement fund with respect to an obligation of the Applicant or any entity related in any manner to the Applicant, or to reimburse any expenditure that was originally paid with the proceeds of any obligation, or to replace funds that are or will be used in such manner.

Section 7. This resolution is consistent with the budgetary and financial circumstances of the Applicant as of the date hereof. Except for reserves of the Applicant's Water Fund, no moneys from sources other than the Obligation are, or are reasonably expected to be, reserved, allocated on a long-term basis or otherwise set aside by the Applicant (or any related party) pursuant to their budget or financial policies with respect to the Project costs. To the best of our knowledge, the City Council is not aware of the previous adoption of official intents by the Applicant that have been made as a matter of course for the purpose of reimbursing expenditures and for which tax exempt obligations have not been issued.

Section 8. The limitations described in Sections 4 and 5 above do not apply to: (a) costs of issuance of the Obligation; (b) an amount not in excess of the lesser of \$100,000 or five percent (5%) of the proceeds of the Obligation; or (c) any preliminary expenditures, such as architectural, engineering, surveying, soil testing, and similar costs other than land acquisition, site preparation, and similar costs incident to commencement of construction, not in excess of twenty percent (20%) of the aggregate issue price of the Obligation that finances the Project for which the preliminary expenditures were incurred.

Section 9. This resolution is adopted as official action of the Applicant in order to comply with Treasury Regulation Section 1.150-2 and any other regulations of the

Internal Revenue Service relating to the qualification for reimbursement of Applicant expenditures incurred prior to the date of issue of the Obligation, is part of the Applicant's official proceedings, and will be available for inspection by the general public at the main administrative office of the Applicant.

Section 10. The Director of Utilities and his or her designee is hereby authorized and directed to act on behalf of the Applicant in all matters pertaining to the Financing Application, and all actions previously undertaken by the Director of Utilities or other staff of the Applicant in connection with the Financing Application are hereby approved.

Section 11. If the Financing Application and the Obligation is approved by IBank, the Director of Utilities and his or her designee is authorized to negotiate financing documents and any amendments thereto, including, but not limited to the Financing Agreement and the Replacement Agreement, with IBank for the purposes of financing the Obligation.

Section 12. Once the terms of the Financing Agreement have been agreed upon by IBank and the Applicant, a subsequent and separate resolution by the City Council will be required to authorize the Director of Utilities and other staff of the Applicant to approve documents for the purpose of financing the Obligation.

Section 13. All the recitals in this resolution are true and correct and the City Council so finds, determines and represents.

Section 14. This resolution shall become effective immediately upon adoption.



CITY COUNCIL STAFF REPORT

Consent Item No. 5

April 3, 2019

File No. 0600-10, A-3293

SUBJECT: Consulting Agreement for Update of the Pavement Management Program

DEPARTMENT: Engineering Services Department

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2019-49 authorizing the Mayor and the City Clerk to execute a Consulting Agreement with IMS Infrastructure Management Services, LLC in the amount of \$146,370 to update the City's Pavement Management Program database.

FISCAL ANALYSIS:

Funding for this contract is included in the CIP budget for the City's Pavement Management Program.

BACKGROUND:

The pavement condition database is used to efficiently and proactively plan, budget, and manage the maintenance and rehabilitation of the City's 660 lane-miles. The current program was established in 2013 after a pavement condition survey was conducted on all City-maintained streets. While the City's pavement program models the deterioration of pavement over time, it is recommended that a pavement condition survey be conducted every three to five years.

Two proposals were received to update the pavement condition database in response to the City's request for proposals as follows:

IMS Infrastructure Management Services	\$146,370
Fugro Roadware, Inc.	\$174,770

IMS Infrastructure Management Services was deemed the most qualified consultant that offers the best value for services provided. IMS offers an innovative technique that uses a laser camera array to analyze and collect pavement condition data. This automated technique will provide a more consistent and accurate distress rating than previous surveys that were based on field observations. In addition, it offers an efficient way to collect location data on facilities within the right of way.

After completion of the Street Rehabilitation and Maintenance Project currently underway, IMS will perform a pavement condition survey to gather current street distress data, update the Pavement Condition Index (PCI) for each street, and update the City's street inventory. In addition, IMS will develop an inventory of traffic signs and configure a new software program, MicroPAVER that will directly link to the City's asset management system, Cityworks. The updated asset inventory will be

accessible through Cityworks for use by Public Works staff to input maintenance completed throughout the year and by engineering staff for use in preparing the scope of work for the annual Pavement Maintenance Program.

The results of this survey will allow the City to measure the progress made toward improving the City's average PCI since initiation of the Pavement Management Program. After review of collected information, staff will report back on the updated overall pavement condition index and the budget necessary to achieve the City's goal of maintaining or improving the City's overall PCI.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Julie Procopio, Director of Engineering Services
3/27/2019 4:44 p.m.

ATTACHMENTS:

1. Resolution No. 2019-49
2. Resolution No. 2019-49 - Exhibit 1 – Consulting Agreement

RESOLUTION NO. 2019-49

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 IMS INFRASTRUCTURE MANAGEMENT SERVICES, LLC TO UPDATE THE CITY'S PAVEMENT MANAGEMENT PROGRAM

WHEREAS, the City Council has allocated funding in the adopted Capital Improvement Program Budget for the Pavement Management Program; and

WHEREAS, the Engineering Services staff solicited and reviewed proposals from qualified consultants and Engineering Services staff deemed IMS Infrastructure Management Services, LLC to be the most qualified and to provide the best value for services provided; and

WHEREAS, the Director of Engineering Services recommends the execution of a Consulting Agreement ("Agreement") with IMS Infrastructure Management Services, LLC to update the Pavement Management Services; and

WHEREAS, the City Council desires at this time and deems it to be in the best public interest to approve said Consulting Agreement with IMS Infrastructure Management Services, LLC.

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

1. That the above recitations are true.
2. That the City Council accepts the recommendation of the Director of

Engineering Services/City Engineer.

3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, an Agreement with IMS Infrastructure Management Services, LLC in the amount of \$146,370 to update the City's Pavement Management Program. A copy of the Consulting Agreement is attached as Exhibit "1" and is incorporated herein by this reference as though fully set forth.



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: Marissa Padilla
760-839-4098
("CITY")

And: IMS Infrastructure Management Services, LLC
1820 W. Drake Drive, Suite 104
Tempe, AZ 85283
Attn: Jim Tourek
480-839-4347
("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 perform a pavement condition survey to gather current street distress data, update the Pavement Condition Index (PCI) and update the City's street inventory; 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 \$146,370. 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. 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.

23. Department of Industrial Relations Compliance. 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. 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. 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.
24. 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.

[SIGNATURES ON FOLLOWING PAGE]

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: _____

Paul McNamara
Mayor

Date: _____

Zack Beck
City Clerk

Date: _____

IMS Infrastructure Management Services, LLC

Signature

Name & Title (please print)

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

The scope of services for this project, and budgeted as provided for in the attached 2019 Finalized Scope of Work, includes three primary tasks:

- 1) Project Initiation -IMS will schedule a kickoff meeting with City staff to introduce key project team members from both parties, obtain required permitting, review available documentation and existing data base quality, confirm preferred delivery and format methodology for City use, confirm City boundaries and confirm the project scope of work and expected results.
- 2) Field Surveys – IMS will verify all existing roadway information such as material type, classifications, and direction with GPS coordinates, mobilize and calibrate data collecting equipment, collect pavement condition data for each City street, alley, etc., collect sign and support data, distribute collected data for quality control, and update incorrect information encountered.
- 3) Data Management - IMS will complete the quality control of collected data / information, format collected data to City standards, update the City's 'streets' inventory to add new streets (and remove if necessary) that fall within the City, upload data collected into MicroPaver software, ensure software connection and proper operation with other City applications, train City staff that will be using the system.

IMS expects to start their work in May, and complete their services over a five month period.



IMS Infrastructure Management Services
 1820 W. Drake Dr. Ste. 104. Tempe, AZ 85283
 Phone: (480) 839-4347 Fax: (480) 839-4348
www.imsanalysis.com

To: Matt Souttere, P.E., Associate Engineer **Date:** February 25, 2019
From: Jim Tourek, Manager of Client Services **Project:** Escondido, California
Subject: 2019 Finalized Scope of Work **Project No:**

Thank you for taking the time to review this quotation for pavement data management services offered by IMS Infrastructure Management Services. IMS excels at providing pavement and asset management solutions and can provide a full suite of data collection and pavement management services.

Proposed Services Finalized Budget

IMS has incorporated MicroPAVER which interfaces easily with Cityworks and added the Signs and Supports database suitable for loading into GIS. The proposed services at the request of the City are presented below is based on the IMS work plan and deliverables. It represents a realistic budget to complete the work, and we are confident we can maintain an on-time, on-budget approach to the assignment:

Escondido, CA - 2019 Pavement Management Plan Update

Task	Activity	Quant	Units	Unit Rate	Total	PWD	Asset
Project Initiation							
1	Project Initiation & Set-Up	1	LS	\$3,000.00	\$3,000.00	2000	1000
2	Network Referencing & GIS Linkage	391	T-Mi	\$10.00	\$3,910.00	2000	1910
Field Surveys							
3	RST Mobilization/Calibration	1	LS	\$3,000.00	\$3,000.00	2000	1000
4	RST Field Data Collection (w/ 2-pass Arterials & Collectors w/IRI; 1-pass Locals)	391	T-Mi	\$105.00	\$41,055.00	25000	16055
Data Management							
5	Data QA/QC, Processing, & Format	391	T-Mi	\$12.00	\$4,692.00	2500	2192
6	Roadway Length Confirmation			Included in Base Activities			
7	Roadway Width Confirmation			Included in Base Activities			
8	Exceptions Reporting			Included in Base Activities			
9	MicroPAVER v7.0.2 (2 seats) Install & Supply	1	LS	\$1,500.00	\$1,500.00	1500	0
10	MicroPAVER Pavement Condition Data Load & Configuration	1	LS	\$3,500.00	\$3,500.00	3500	0
11	MicroPAVER Training	1	DA	\$3,750.00	\$3,750.00	3750	0
12	Analysis, Budget Development & Full Report	1	LS	\$15,000.00	\$15,000.00	12500	2500
13	Link MicroPAVER data to Cityworks (Mapping Utility Link)	1	LS	\$7,500.00	\$7,500.00	7500	0
14	36" x 48" Specialty Wall Maps for Reporting (Street & Alley PCI)	3	EA	\$50.00	\$150.00	150	0
15	Project Management	1	LS	\$10,438.00	\$10,438.00	7000	3438
16	HD Video Collection & Calibration (3-Views)	391	T-MI	\$25.00	\$9,775.00	0	9775
	a. Sign & Support Database Development	391	T-MI	\$100.00	\$39,100.00	0	39100
MicroPAVER/ Cityworks Project Total:					\$146,370.00	69,400	76,970

Please note that an approximated split between Public Works and Traffic/ ROW Assets has been made in the two right-hand columns.

We will continue to strive to be an asset and extension of the Escondido staff and team. If any questions arise, please do not hesitate to contact me at (480) 462-4030 or jtourek@imsanalysis.com.

IMS Infrastructure Management Services

Jim Tourek, West Region Manager of Client Services

ORDINANCE NO. 2019-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING A MASTER AND PRECISE DEVELOPMENT PLAN FOR GRAND AVENUE APARTMENTS (A 15-UNIT APARTMENT BUILDING) AND AUTHORIZING THE FILING OF A NOTICE OF EXEMPTION

APPLICANT: Nathan Houck, Sillman Wright Architects
CASE NOS.: PHG 17-0019

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

SECTION 1. The City Council makes the following findings:

a) Nathan Houck of Sillman Wright Architects ("Applicant") submitted a verified land use development application on property located on the north side of East Grand Avenue, east of East Ohio Avenue. The Project site is approximately 0.51 acre in size and currently has an address of 1316 East Grand Avenue, Escondido CA 92027, legally described as Exhibit "D", attached to this Ordinance and incorporated herein by this reference as though fully set forth. Said verified application was submitted to, and processed by, the Planning Division of the Community Development Department as Planning Case No. PHG 17-0019 and seeks approval of a Master and Precise Development Plan and Grading Exemption relating to the Project site. A site plan for the application is attached as Exhibit "E" and incorporated herein by this reference as though fully set forth.

b) The Planning Division of the Community Development Department completed its review and scheduled a public hearing regarding the application before the Planning Commission for February 12, 2019. Following the public hearing on

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

ORDINANCE NO. 2019-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING ARTICLE 2, CHAPTER 2 OF THE ESCONDIDO MUNICIPAL CODE TO MOVE THE CLOSED SESSION MEETING TO 5:00 P.M. AND THE REGULAR CITY COUNCIL MEETING TIME TO 6:00 P.M.

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

SECTION 1. Subsection 2-21(a) of Article 2, Chapter 2 of the Escondido Municipal Code is hereby amended to read as follows:

Article 2 – City Council.

Sec. 2-21. Time, location of meetings.

(a) The regular meeting time for the Escondido City Council will be on the first four (4) Wednesdays of each month, commencing with closed session items at 5:00 p.m. and a regular public meeting at 6:00 p.m. Such meetings may be canceled from time to time depending on the number of agenda items, availability of council members or related circumstances. Unless publicly noticed otherwise, all meetings shall take place at Escondido City Hall, 201 North Broadway, Escondido, California.

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

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

CITY COUNCIL STAFF REPORT

Current Business Item No. 8

April 03, 2019

File No. 0470-25, 0470-65

SUBJECT: Award Purchases and Approve the Disposal of Surplus Vehicles

DEPARTMENT: Public Works Department, Fleet Services Division.

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2019-41, authorizing the purchase of twelve (12) vehicles with a total purchase amount of \$933,630.44 and the disposal of twelve (12) vehicles being replaced by the purchase.

FISCAL ANALYSIS:

Sufficient funds are available in Fleet Services 'Vehicle Replacement Fund' account number 5208-653-715.

BACKGROUND:

The City of Escondido ("City") has twelve (12) vehicles that have exceeded their useful life and need to be replaced. Resolution No. 2019-41 would authorize the disposal of the surplus vehicles at auction and the purchase of twelve (12) vehicles to replace the vehicles being auctioned. The vehicles proposed for disposal include the following:

1. One (1) existing 2008 Vactor Sewer Combination Truck is being replaced due to exceeding its standard service life expectancy of ten years and due to its current mechanical condition, which includes excessive mileage, engine and PTO hours, increased downtime, and frequent costly repairs.
2. One (1) existing Altec AT37G Boom Truck is being replaced due to exceeding its standard service life expectancy of ten years and due to its current mechanical condition, which includes excessive mileage, engine and PTO hours, increased downtime, and frequent costly repairs.
3. Six (6) existing Ford Crown Victoria Police Interceptors vehicles that are at, or past, the end of their established lifecycle are being replaced. Key factors that determine a vehicles' lifecycle are: age, mileage, increased out of service time, and repair or maintenance costs.
4. Four (4) existing vehicles, three (3) Ford Crown Victoria Police Interceptors, and one (1) Ford Explorer that are at, or past, the end of their established lifecycle are being replaced. Key factors that determine a vehicles' lifecycle are: age, mileage, increased out of service time, and repair or maintenance costs.

Award Purchases and Approve the Disposal of Surplus Vehicles

April 3, 2019

Page 2

The Escondido Municipal Code authorizes the City to utilize cooperative purchases with state, local and other public agencies for City purchases to capitalize on efficiencies across agencies and decrease costs. The City is utilizing several cooperative purchase agreements with other agencies for the purchase of twelve (12) vehicles that have previously been competitively bid. The vehicles proposed for purchase include the following:

1. **One (1) Gap Vax Sewer Combination Truck** from Gap Vax Inc. of Johnstown, Pennsylvania, in the amount of \$483,737.16. The purchase will take place by utilizing a Cooperative Purchasing Contract, HGAC Contract No. SC01-18.
2. **One (1) Altec AT37G Hybrid Electric Aerial Boom Truck**, in the amount of \$152,311.00, from Altec Inc. of Birmingham, Alabama, by utilizing a cooperative purchase contract through the Sourcewell (formerly known as NJPA) Cooperative Purchase Contract No. 102418-ALT. The State of California, California Air Resources Board (CARB), is offering a guaranteed rebate of \$17,000 for this purchase through the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Program (HVIP). The discount will be subtracted from the purchase price once the purchase order is issued for this purchase. The estimated final invoice for this purchase will be reduced to \$135,311.00 after the HVIP rebate.

The Altec hybrid electric system, known as the Jobsite Energy Management System (JEMS), uses an integrated 3.6KW lithium ion battery and an electric power take-off system (ePTO) to operate power take-off (PTO) boom hydraulic operations, continued illumination of exterior safety lighting, and will also allow the truck interior cab heating or air conditioning system to be operated without the truck engine running. The estimated time of operation in ePTO is four (4) hours before the engine will need to start to recharge the lithium ion battery powered JEMS system. Due to the nature and the type of work that Public Works utilizes this type of boom truck for, this type of hybrid system allows for a substantial reduction in fuel consumption with the all-electric PTO operation on the job site, and with the ability for the system to recharge the battery during transportation to and from job sites.

3. **Six (6) Ford Fusion Energi plug-in hybrid electric vehicles** will be purchased from North County Ford of Vista, California, by using the County of San Diego's RFB No. 8506. Plug-in hybrid electric vehicles offer a substantial reduction in the use of fossil fuels by having the ability to recharge the hybrid Lithium-Ion battery by plugging into a 120 or 240-volt electrical source. Additionally, there are solar and solar charged battery storage charging stations available for purchase, which offer more of a reduction in the use of traditional fossil fuels.

The Ford Fusion Energi plug-in hybrid electric vehicle is capable of driving up to 26 miles on electricity alone. With this ability, the EPA mileage estimates for the Ford Fusion Energi PHEV are 109 Miles Per Gallon Hybrid/Electric (MPGe), with an EPA combined hybrid estimate of 42 Miles Per Gallon (MPG) compared to traditional gasoline powered sedans that are estimated at 28 MPG.

4. **Four (4) Kia Niro plug-in hybrid electric vehicles** will be purchased from U.S. Fleet Source of Covina, California, by using the State of California, Department of General Services cooperative purchasing contract No. 1-18-23-10F. Plug-in hybrid electric vehicles offer a substantial reduction in the use of fossil fuels by having the ability to recharge the hybrid Lithium-Ion battery by plugging into a 120 or 240-volt electrical source. Additionally, there are solar and solar-battery storage charging stations available for purchase which offer more of a reduction in the use of traditional fossil fuels.

The Kia Niro plug-in hybrid electric vehicle is capable of driving up to 26 miles on electricity alone. With this ability, the EPA mileage estimates for the Kia Niro PHEV are 105 Miles Per Gallon Hybrid Electric (MPGe), with an EPA combined hybrid estimate of 46 Miles Per Gallon (MPG) compared to traditional gasoline powered medium sized sport utility vehicles that are estimated at 26 MPG.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Joseph Goulart, Director of Public Works
3/27/2019 4:52 p.m.

ATTACHMENTS:

1. Resolution No. 2019-41
2. Resolution No. 2019-41 – Exhibit “A” List of FY 2019/19 Surplus Vehicles

RESOLUTION NO. 2019-41

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR AND CITY
CLERK, ON BEHALF OF THE CITY, TO
AWARD PURCHASES AND APPROVE THE
DISPOSAL OF SURPLUS VEHICLES

WHEREAS, the City of Escondido (“City”) is replacing several vehicles that have exceeded their life expectancies resulting in increased downtime and costly repairs; and

WHEREAS, sufficient funds are available for the purchases in the Fleet Services Vehicle Replacement Fund in account number 5208-653-715; and

WHEREAS, the City is utilizing several cooperative purchase agreements with state and local agencies that have been previously competitively bid; and

WHEREAS, the vehicles being replaced by these purchases are deemed surplus property and are no longer required for public use; and

WHEREAS, the vehicles being replaced are listed on Exhibit “A,” which is attached to this Resolution and is incorporated by this reference; and

WHEREAS, the City Council desires at this time and deems it to be in the best Public interest to accept the recommendations of the Deputy City Manager/Administrative Services and approve the disposal of surplus vehicles via auction.

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

1. That the above recitations are true.

2. That the City Council authorizes the City to purchase the following vehicles for a total amount of \$933,630.44:

- a. Four Kia Niro Plug-in Hybrid Electric Vehicles from U.S. Fleet Source in the amount of \$114,011.86;
- b. One Gap Vax Sewer Combination Truck from Gap Vax Inc. in the amount of \$483,737.16;
- c. Six Ford Fusion Energi (PHEV's) from U.S. Fleet in the amount of \$183,570.42; and
- d. One Altec AT37G Hybrid Electric Aerial Boom Truck from Altec Inc. in the amount of \$152,311.00.

3. That the City Council authorizes the Deputy City Manager/Administrative Services to dispose of the surplus vehicles as provided in Exhibit "A" via auction with the City contracted auction company.

SURPLUS VEHICLE	TO BE REPLACED WITH
Unit 3890 - 2008 INTERNATIONAL HARVESTER 7400 VACTOR	2019 GAP VAX COMBINATION SEWER JET TRUCK
Unit 3232 - 2003 FORD F550 AERIAL	2019 ALTEC AT37G HYBRID ELECTRIC AERIAL BOOM TRUCK
Unit 3060 - 2006 FORD EXPLORER 4X2	2019 KIA NIRO PLUG-IN HYBRID ELECTRIC VEHICLE
Unit 3986 - 2009 FORD CROWN VICTORIA	2019 FORD FUSION ENERGI PLUG-IN HYBRID ELECTRIC VEHICLE
Unit 3987 - 2009 FORD CROWN VICTORIA	2019 FORD FUSION ENERGI PLUG-IN HYBRID ELECTRIC VEHICLE
Unit 3988 - 2009 FORD CROWN VICTORIA	2019 FORD FUSION ENERGI PLUG-IN HYBRID ELECTRIC VEHICLE
Unit 3989 - 2009 FORD CROWN VICTORIA	2019 FORD FUSION ENERGI PLUG-IN HYBRID ELECTRIC VEHICLE
Unit 3992 - 2009 FORD CROWN VICTORIA	2019 FORD FUSION ENERGI PLUG-IN HYBRID ELECTRIC VEHICLE
Unit 3993 - 2009 FORD CROWN VICTORIA	2019 FORD FUSION ENERGI PLUG-IN HYBRID ELECTRIC VEHICLE
Unit 3994 - 2009 FORD CROWN VICTORIA	2019 KIA NIRO PLUG-IN HYBRID ELECTRIC VEHICLE
Unit 3703 - 2010 FORD CROWN VICTORIA	2019 KIA NIRO PLUG-IN HYBRID ELECTRIC VEHICLE
Unit 3707 - 2010 FORD CROWN VICTORIA	2019 KIA NIRO PLUG-IN HYBRID ELECTRIC VEHICLE

CITY COUNCIL STAFF REPORT

Current Business Item No. 9

April 3, 2019

File No. 0600-10, A-3291

SUBJECT: North County Transit District Bus Stop Memorandum of Understanding

DEPARTMENT: Engineering Services Department and Public Works Department

RECOMMENDATION:

It is requested that the City Council adopt Resolution 2019-35 authorizing the Mayor and City Clerk to execute a Memorandum of Understanding (MOU) with North County Transit District (NCTD) regarding the maintenance and cleaning services of NCTD bus stops.

FISCAL ANALYSIS:

NCTD will reimburse the City of Escondido (City) \$16,280 per year, or 50 percent of the City's costs to maintain bus stops. In addition, NCTD will reimburse the City \$19,500, the cost to upgrade and standardize existing trash cans with auto-dump cans in order to facilitate trash removal.

BACKGROUND:

In 2004, a MOU between the City and NCTD was approved by the City Council to allow the City to provide maintenance and cleaning services to NCTD bus stops, and for NCTD to reimburse 50 percent of the City's costs. While this partnership has been beneficial, certain changes are recommended to ensure the most efficient and effective maintenance of bus stop facilities.

In an effort to both improve the appearance and to evaluate the effectiveness of bus facilities within the public right of way, NCTD and City staff conducted a thorough inventory of all bus stops. Trash cans that were not being effectively used were removed. Benches that were in disrepair and for which ridership did not meet the minimum requirements to warrant a bench, were removed. Also, NCTD has agreed to reimburse the City for the cost to upgrade remaining trash cans to standard auto-dump trash cans that will both improve their appearance and also make dumping cans more efficient. NCTD also has a capital improvement program (CIP) to replace three benches this year and will incorporate replacement of the remaining 19 non-standard benches into future CIPs.

A comprehensive evaluation of the cost to maintain bus benches, shelters and trash cans was completed. It was determined that the City can most efficiently clean bus benches and trash cans, but that shelter cleaning (power washing) could be more effectively performed by a private contractor. Because bus benches and trash cans have the potential to not just serve transit riders, but to also serve the entire community, it is recommended that the City share equally in the costs of bus bench cleaning and trash can maintenance. For bus shelters, NCTD plans to contract with a private

contractor and the City will dump trash cans. NCTD will remain responsible for preventative structural maintenance including repair and replacement of bus facilities.

The benefit of this comprehensive analysis is that there is now a clear understanding as to who will be responsible for cleaning of bus facilities that will lead to improved maintenance of the facilities. In addition, facilities will be maintained in the most cost effective manner. Lastly, the inventory has allowed identification of needed bus bench replacements for inclusion into NCTD's CIP. Staff requests approval of an updated MOU for bus stop cleaning and maintenance

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Julie Procopio, Director of Engineering Services
3/27/2019 4:36 p.m.

Joseph Goulart, Director of Public Works
3/27/2019 4:52 p.m.

ATTACHMENTS:

1. Resolution No. 2019-35
2. Resolution No. 2019-35 Exhibit "1" – Bus Stop MOU

RESOLUTION NO. 2019-35

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
MEMORANDUM OF UNDERSTANDING WITH
NCTD FOR BUS STOP MAINTENANCE

WHEREAS, North County Transit District (“NCTD”) provides public transportation within the City of Escondido’s (“City”) boundaries, owns established bus stops with varying amenities along the City’s right of way, and desires the City to provide certain maintenance and cleaning services as provided in this Memorandum of Understanding (“MOU”) to ensure the public safety and welfare of NCTD’s bus stops; and

WHEREAS, the City is agreeable to providing certain maintenance and cleaning services in the City, which also benefits the City sidewalks and parkways; and

WHEREAS, this MOU is authorized by California law; and

WHEREAS, the City and NCTD (“Parties”) wish to memorialize their agreement in this MOU to carry out the purposes set forth above.

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

1. That the above recitations are true.
2. That the Mayor and the City Clerk are authorized to execute, on behalf of the City, a Memorandum of Understanding with NCTD for bus stop maintenance in a substantially similar form to that which is attached and incorporated to this Resolution as Exhibit “1”, and subject to final approval as to form by the City Attorney.

**MEMORANDUM OF UNDERSTANDING
BETWEEN NORTH COUNTY TRANSIT DISTRICT
AND THE CITY OF ESCONDIDO
REGARDING THE REPAIRS AND MAINTENANCE OF BUS STOPS**

This Memorandum of Understanding ("MOU") is made and entered into by and between the NORTH COUNTY TRANSIT DISTRICT ("NCTD" or "District"), operating under and pursuant to Public Utilities Code Section 125000, et seq., and the City of Escondido ("City"), individually referred to as a "Party" and collectively referred to as "Parties."

RECITALS

WHEREAS, NCTD provides public transportation within the City's boundaries, owns established bus stops with varying amenities along the City's right of way and desires the City to provide certain maintenance and cleaning services as provided in this MOU to ensure the public safety and welfare of NCTD's bus stops; and

WHEREAS, the City is agreeable to providing certain maintenance and cleaning services in the City which also benefits the City sidewalks and parkways; and

WHEREAS, this MOU is authorized by California law; and

WHEREAS, the Parties wish to memorialize their agreement in this MOU to carry out the purposes set forth above.

AGREEMENT

NOW THEREFORE, in consideration of the promises and for the mutual covenants and conditions hereinafter stated, the respective Parties hereto do agree as follows:

I. PURPOSE AND INTENT

This MOU is entered into for the express purpose and intent of providing maintenance and cleaning services to ensure the cleanliness, orderly operation, and safety of bus stops and shelters within the City. This MOU shall establish the scope of the services provided by the City as well as certain obligations agreed to by the District.

II. CITY PROVIDED SERVICES

a) The City shall provide for the cleaning and graffiti abatement (collectively "Maintenance") at each bus stop listed in Exhibit A (collectively, the "Facilities"). Cleaning includes wiping down or pressure washing the Facilities, and shall be performed one time per week. Graffiti abatement includes the attempted removal or repainting of graffiti at the bus stop on an as needed basis, within 36 hours of receiving notice of the graffiti.

b) The City will provide for trash removal at the bus stops listed in Exhibits A & B. Trash removal includes the removal of trash from the trash receptacle at the bus stop on a weekly basis. The City will not charge NCTD for trash removal.

c) City agrees that the color of any new bench or shelter installed by NCTD shall be blue.

d) The rendition of such services, the standards of performance, the selection and discipline of the City's workforce employed pursuant to this MOU, and other matters incidental to the performance of such services and the control of such personnel shall remain with the City or its authorized representative(s).

III. NCTD RESPONSIBILITIES

- a) NCTD will perform preventative structural maintenance and repair, and keep in good condition all bus shelters, benches and signs, at all bus stops identified in Exhibits A and B which may be updated pursuant to Section IV herein (collectively "Structural Maintenance").
- b) NCTD will provide Maintenance (as defined in 2.a) at each bus stop identified in Exhibit B which may be updated pursuant to Section IV herein.
- c) NCTD shall reimburse the City actual costs for 50 trash cans in an amount not to exceed \$19,500 for the replacement of existing trash cans with City standard trash cans as approved by the City that can be automatically dumped. Such reimbursement shall be made after July 1, 2019 and within thirty (30) days of receipt of invoice from the City. The useful life for such trashcans shall be ten (10) years, during which time the City shall be responsible for any replacements.
- d) The rendition of such services, the standards of performance, the selection and discipline of NCTD's workforce employed pursuant to this MOU, and other matters incidental to the performance of such services and the control of such personnel shall remain with NCTD or its authorized representative(s).

IV. BOTH PARTIES AGREE

- a) NCTD will provide an updated copy of Exhibits A and B on January 1st of each year.
- b) If a bus stop or shelter listed in Exhibit A or B is relocated, removed or additional bus stops or shelters are added in the City, NCTD and the City shall amend the appropriate Exhibit to reflect any changes or added sites.
- c) The annual costs for Maintenance provided by the City shall be in accordance with Exhibit C on a per Facility basis.
- d) The shared annual Maintenance costs as provided in Exhibit C shall be updated annually to reflect any changes to Exhibit A and shall be increased every year by the San Diego-Carlsbad, CA Consumer Price Index.
- e) In the event the City's actual costs on a per Facility basis exceed the costs as provided in Exhibit C, the City and NCTD agree to review and negotiate to adjust compensation or make other adjustments to this Agreement.
- f) Any added sites as provided in subsection (b) shall increase the cost on a per Facility basis as provided in Exhibit C. Any removed sites as provided in Section (b) shall decrease the cost on a per site basis as provided in Exhibit C.

V. AGREEMENT ADMINISTRATION

- a) In the event of dispute between the Parties as to the extent of the duties and services to be rendered hereunder, or the extent of service, manner of performance or deployment of such service, the determination thereof made by the City or its authorized representative(s) shall be final and conclusive as between the Parties hereto.
- b) Both Parties hereto in the performance of this MOU will act as independent contractors and not as agents, employees, partners, joint ventures, or associates of one another.

VI. METHOD OF PAYMENT

On or about July 1st of each year, the City shall invoice the District annually for the Maintenance costs for the Facilities to be serviced based on the updated Exhibit A as provided in Exhibit C as may be adjusted. The District shall remit payment within thirty (30) days from date of invoice to the following address:

City of Escondido
Attention: Public Works Director
201 North Broadway
Escondido, California 92025

VIII. INDEMNIFICATION

Each Party agrees to protect, save, defend, and hold harmless the other and their respective Governing bodies and each member thereof; and each of their respective officers, agents, contractors and employees from any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from or connected with an act or omission of any employee, agent, invitee, or contractor or other person acting by or on behalf of a Party on or about the Facilities pursuant to this Agreement, including, but not limited to, liability, expense, and claims for bodily injury, death, personal injury, or property damage (collectively, "Claims"); provided, however, that nothing herein shall relieve any Party indemnified hereunder from liability to the extent that such liability arises from such Party's sole established negligence or willful misconduct for any and all Claims.

IX. AMENDMENTS OR MODIFICATIONS

Either Party may propose amendments or modifications to this MOU. Such changes, including any increase or decrease in the level of service which are mutually agreed upon by and between City and District, shall be effective when incorporated in written amendments to this MOU and approved by both City and District.

X. TERMS OF AGREEMENT

- a) This MOU shall become effective as of the date of full execution hereof by all Parties. The term of this MOU shall be until June 30, 2023. The MOU shall be renewed automatically on an annual basis thereafter unless either Party provides a ninety (90) day notice prior to the next renewal period.
- b) Notwithstanding section (a) above, this MOU may be terminated at any time by mutual agreement in writing to the Parties, and may be renegotiated or modified at any time by mutual agreement in writing.
- c) This writing embodies the whole of the MOU and supersedes any oral or other agreements on this subject between the Parties other than those expressed herein.
- d) No addition or variation of the terms of this MOU shall be valid unless made in writing and signed by both Parties.

XI. NOTICES

Any notice, request, demand or other communication required or permitted hereunder shall be in writing and may be personally delivered or given as of the date of mailing by depositing such notice in the United States mail, first-class postage prepaid and addressed as follows; or to such other place as each Party may designate by subsequent written notice to each other:

To North County Transit District:

Scott Loeschke
Director of Facilities and Project Management
810 Mission Avenue
Oceanside, CA 92054

and

Lori A. Winfree
General Counsel
810 Mission Avenue
Oceanside, CA 92054

To City and Department:

Joseph Goulart
Public Works Department
201 North Broadway
Escondido, CA 92025

and

Michael R. McGuinness
City Attorney
201 N. Broadway
Escondido, CA 92025

XII. EXECUTION OF AGREEMENT

This MOU may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each Party has signed one such counterpart. The Parties further agree that a facsimile copy of the executed counterparts shall have the same force and effect as an original.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed and delivered as of the last date of the Parties' signature.

NORTH COUNTY TRANSIT DISTRICT

CITY OF ESCONDIDO

By: _____
Matthew O. Tucker
Executive Director

By: _____
Paul Mac Namara
Mayor

Date

Date

By: _____
Zack Beck
City Clerk

Date

APPROVED AS TO FORM

APPROVED AS TO FORM:

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

By: _____
R. Jacob Gould
Senior Legal Counsel

BY: _____

Date

Date

EXHIBIT A

BUS STOPS MAINTAINED BY THE CITY

Route	Stop	Intersection	Intersection2	Bench	Trashcan
355	20135	Valley Pkwy / Bear Valley Pkwy	F-E/B	NCTD	NCTD
351	20352	Grand Av / Orange St	F-E/B	NCTD	NCTD
352	20514	Grand Av / Fig St	N-W/B	NCTD	NCTD
305	20731	Mission Rd / Nordahl Rd	F-W/B	NCTD	NCTD
352	20759	Grand Av / Juniper St	F-W/B	NCTD	NCTD
350	20978	Bear Valley Pkwy / Kit Carson Park	N-S/B	NCTD	NCTD
358	21233	Broadway / Village Rd	F-S/B	NCTD	NCTD
350	21249	Escondido Bl / 6th Av	F-S/B	NCTD	NCTD
350	21250	Escondido Bl / 9th Av	F-S/B	NCTD	NCTD
350	21254	Escondido Bl / 13th Av	F-S/B	NCTD	NCTD
350	21271	Bear Valley Pkwy / Las Palmas Av	F-S/B	NCTD	NCTD
359	21730	Broadway / Vista Av	F-N/B	NCTD	NCTD
350	21748	Escondido Bl / 6th Av	F-N/B	NCTD	NCTD
350	21773	Bear Valley Pkwy / Mary Ln (San Pasqual HS)	N-N/B	NCTD	NCTD
350	21774	Bear Valley Pkwy / Peet Ln	N-N/B	NCTD	NCTD
357	22703	El Norte Pkwy / Washington Av	F-E/B	NCTD	NCTD
308	22794	Valley Pkwy / Target	M-Street-E/B	NCTD	NCTD
358	20119	Park Av / Juniper St	N-E/B	NCTD	
350	20127	Sunset Dr / Royal Crest Dr	N-S/B	NCTD	
305	20329	Mission Rd / Auto Park Wy	F-E/B	NCTD	
359	20331	El Norte Pkwy / Rees Rd	F-E/B	NCTD	
357	20784	Valley Pkwy / Bear Valley Pkwy	F-W/B	NCTD	
355	21240	Broadway / El Norte Pkwy	F-S/B	NCTD	
308	21723	Valley Pkwy / Citracado Pkwy	N-E/B	NCTD	
356	21728	Morning View Dr / Lincoln Av	F-N/B	NCTD	
357	21739	Broadway / Park Av	F-N/B	NCTD	
350	21896	Sunset Dr / Royal Crest Dr	F-N/B	NCTD	
352	22697	Washington Av / Harding St	F-E/B	NCTD	
356	22714	Escondido Bl / El Norte Pkwy	F-S/B	NCTD	
356	22715	Escondido Bl / Decatur Way	N-S/B	NCTD	
357	22741	Valley Pkwy / Rose St	F-W/B	NCTD	
352	22954	Midway Dr / E Valley Pkwy	F-S/B	NCTD	
351	20354	Grand Av / Maple St	F-E/B	City	City
351	20359	Grand Av / Juniper St	F-E/B	City	City
352	20380	Valley Pkwy / Midway Dr	F-E/B	Other*	
352	20518	Grand Av / Beech St	N-W/B	Other*	
354	20962	Escondido Bl / Mission Av	F-S/B	Other*	

356	21727	Rock Springs Rd / Mission Av	F-N/B	Other*	
351	21779	Midway Dr / 460	M-Street-N/B	Other*	
351	21898	Glen Ridge Rd / Vulcan Pl	F-E/B	Other*	
356	20116	El Norte Pkwy / Las Villas Way	N-E/B	Other*	
352	20122	Washington Av / Date St	N-E/B	Other*	
352	20123	Washington Av / Beech St	N-E/B	Other*	
352	20361	Washington Av / Grape St	F-E/B	Other*	
351	20377	Grand Av / Rose St	F-W/B	Other*	
351	20517	Washington Av / Beech St	F-W/B	Other*	
351	20761	Washington Av / Grape St	N-W/B	Other*	
305	21234	Quince St / Washington Av	N-S/B	Other*	
357	21895	Valley Pkwy / Hickory St	F-W/B	Other*	
356	22025	Morning View Dr / Morning View Ter	M-Street-N/B	Other*	
356	22028	Morning View Dr / 1312	M-Street-N/B	Other*	
354	22079	Escondido Bl / Washington Av	F-S/B	Other*	
305	22385	Mission Av / Rock Springs Rd	F-W/B	Other*	
353	22407	W 9th Av / Windsor Pl	F-W/B	Other*	
308	22795	Valley Pkwy / Home Depot Center	M-Street-S/B	Other*	
359	20337	El Norte Pkwy / Nordahl Rd	F-E/B		
351	20362	Grand Av / Valley Bl	F-E/B		
352	20513	Grand Av / Valley Bl	N-W/B		
355	21830	Valley Pkwy / Heritage Park Apts	M-Street-E/B		
357	21897	Valley Pkwy / Eastwood Meadows MHP	M-Street-W/B		
352	24101	Grand Av / Broadway	F-W/B	City	City
359	20001	Broadway / Leslie Ln	F-N/B		
352	20133	Valley Pkwy / Citrus Av (Vons)	N-E/B		
359	20328	El Norte Pkwy / Country Club Ln	F-E/B		
358	20336	Country Club Ln / Nutmeg St	F-E/B		
359	20348	El Norte Pkwy / Morning View Dr	N-E/B		
358	20506	El Norte Pkwy / Morning View Dr	N-W/B		
358	20743	El Norte Pkwy / Iris Ln	F-W/B		
351	20779	Valley Pkwy / Town & Country MHP	M-Street-W/B		
352	21274	Midway Dr / Washington Av	F-S/B		
351	21286	Broadway / Pennsylvania Av	F-S/B	City	
357	21736	Broadway / Lincoln Av	F-N/B		
351	21828	Valley Pkwy / Imperial Escondido MHP	M-Street-W/B		

357	21828	Valley Pkwy / Imperial Escondido MHP	M-Street- W/B		
351	22608	Grand Av / Ash St	N-E/B		
308	22763	Valley Pkwy / W 9th Av	N-E/B		
355	20964	Broadway / Lincoln Av	N-S/B		
350	21749	Escondido Bl / 9th Av	F-N/B		
352	24934	Washington Av / Quince St	F-E/B		
357	24934	Washington Av / Quince St	F-E/B		
351	20365	Grand Av / Fig St	F-E/B		
351	20519	Washington Av / Harding St	F-W/B		
305	21445	Quince St / Washington Av	N-N/B		
355	21829	Valley Pkwy / Citrus Av (Ralphs)	F-E/B		
358	22400	Juniper St / Washington Av	N-S/B		
351	22689	Midway Dr / E Valley Pkwy	N-N/B		
357	24336	El Norte Pkwy / E Valley Pkwy	N-E/B		
359	20109	El Norte Pkwy / Bennett Av	N-E/B		
359	20110	El Norte Pkwy / Las Palmas Ln	N-E/B		
305	20111	Mission Av / Andreason Dr	F-E/B		
358	20113	Country Club Ln / Ranchwood Glen	F-E/B		
308	20115	Valley Pkwy / Tulip St	F-E/B		
358	20117	Country Club Ln / N Iris Ln	N-E/B		
354	20121	Mission Av / Cedar St	N-E/B		
352	20130	Valley Pkwy / Quarry Glen	N-E/B		
351	20134	Glenridge Rd / Mountain View Dr	N-E/B		
358	20332	Country Club Ln / La Brea St	F-E/B		
305	20333	Mission Rd / Enterprise St	F-E/B		
308	20339	Valley Pkwy / Auto Park Wy	N-N/B		
305	20340	Mission Av / Metcalf St	F-E/B		
358	20343	Country Club Ln / Village Rd	N-E/B		
359	20344	El Norte Pkwy / Iris Ln (525)	N-E/B		
356	20346	Lincoln Av / Avocado Av	F-E/B		
359	20349	El Norte Pkwy / Escondido Bl	F-E/B		
355	20353	2nd Av / Escondido Bl	F-E/B		
352	20355	Washington Av / Juniper St	F-E/B		
355	20357	2nd Av / Broadway	F-E/B		
354	20367	Lincoln Av / Harding St	F-E/B		
351	20368	Grand Av / Date St	F-E/B		
355	20372	Valley Pkwy / Ash St	F-E/B		
351	20375	Grand Av / Ash St	F-E/B		
351	20376	Grand Av / Ohio Av	F-E/B		
351	20378	Grand Av / Fernwood Av	N-E/B		
351	20379	Grand Av / Foxdale Pl	F-E/B		

388	20384	E Valley Pkwy / Hidden Trails Rd	F-E/B		
358	20499	Country Club Ln / El Norte Pkwy	F-N/B		
358	20500	El Norte Pkwy / Rees Rd	F-W/B		
351	20515	Washington Av / Date St	N-W/B		
351	20521	Washington Av / Mills St	N-W/B		
351	20522	Valley Pkwy / Midway Dr	N-W/B		
352	20524	Glen Ridge Rd / Mountain View Dr	F-W/B		
358	20732	El Norte Pkwy / Bennett Av	F-W/B		
358	20734	El Norte Pkwy / Las Palmas Ln	F-W/B		
359	20735	Country Club Ln / La Brea St	N-W/B		
353	20736	Harmony Grove Rd / Princess Kyra Pl	F-W/B		
359	20737	Country Club Ln / Nutmeg St	F-W/B		
358	20738	El Norte Pkwy / Nutmeg St	N-W/B		
308	20740	Valley Pkwy / Auto Park Wy	F-S/B		
305	20741	Mission Av / Metcalf St	F-W/B		
359	20742	Country Club Ln / Village Rd	F-W/B		
359	20744	Country Club Ln / Ranchwood Glen	F-W/B		
358	20747	El Norte Pkwy / Seven Oaks Rd	N-W/B		
359	20748	Country Club Ln / N Iris Ln	N-W/B		
358	20749	El Norte Pkwy / Escondido Bl	N-W/B		
358	20752	El Norte Pkwy / Broadway	F-W/B		
351	20756	Valley Pkwy / Broadway	M-Street- W/B		
351	20757	Washington Av / Juniper St	N-W/B		
354	20758	Mission Av / Gamble St	F-W/B		
354	20760	Mission Av / Fig St	F-W/B		
355	20768	El Norte Pkwy / Conway Dr	N-W/B		
355	20771	El Norte Pkwy / Rimrock Dr	F-W/B		
352	20775	Grand Av / Fairdale Av	F-W/B		
352	20776	Grand Av / Gayland St	F-W/B		
357	20786	Valley Pkwy / Las Brisas Dr	N-W/B		
352	20980	Citrus Av / Patterson Rd	N-S/B		
308	21227	Valley Pkwy / Arboles Pl	F-W/B		
305	21232	Quince St / Mission Av	F-S/B		
358	21236	Broadway / Vista Av	F-S/B		
358	21237	Broadway / Leslie Ln	F-S/B		
305	21238	Quince St / Norlak Av	F-S/B		
358	21239	Broadway / Bud Quade Way	F-S/B		
355	21241	Broadway / 1125	M-Street-S/B		
354	21273	Midway Dr / Mission Av	F-S/B		
352	21277	Citrus Av / Bear Valley Pkwy	F-S/B		
354	21446	Escondido Bl / Mission Av	N-N/B		

308	21724	Valley Pkwy / Vermel Av	F-N/B		
359	21731	Broadway / Brava Pl	N-N/B		
359	21732	Broadway / Sheridan Av	F-N/B		
359	21733	Broadway / El Norte Pkwy	F-N/B		
354	21734	Escondido Bl / Washington Av	F-N/B		
358	21737	Broadway / Mission Av	F-N/B		
354	21777	Midway Dr / Mission Av	N-N/B		
354	21778	Midway Dr / Washington Av	N-N/B		
351	21780	Citrus Av / Bear Valley Pkwy	F-N/B		
354	21780	Citrus Av / Bear Valley Pkwy	F-N/B		
358	21821	Country Club Ln / Capistrano Glen	N-E/B		
305	21822	Mission Rd / 1745 (Sdg&E)	M-Street-E/B		
354	21825	Mission Av / Gamble St	M-Street-E/B		
352	21831	Glen Ridge Rd / Vulcan Pl	N-W/B		
358	21893	Country Club Ln / Montego Av	F-E/B		
358	21894	Broadway / Brava Pl	F-S/B		
305	21970	Mission Rd / 1726	N-E/B		
305	21971	Mission Rd / Enterprise St (1564)	F-W/B		
359	21972	Country Club Ln / Montego Av	N-W/B		
352	21975	Midway Dr / Valley Pkwy	N-S/B		
359	22022	Country Club Ln / Lorraine Pl	F-W/B		
305	22023	Mission Rd / Andreasen (1318)	F-W/B		
308	22098	Valley Pkwy / Escondido Views MHP	M-Special_Loc		
357	22118	Broadway / 1160	M-Street-N/B		
353	22150	Hale Av / 1040	N-N/B		
308	22220	Valley Pkwy / La Terraza Bl	N-E/B		
357	22353	Valley Pkwy / Juniper St	F-W/B		
305	22384	Mission Av / Rock Springs Rd	F-E/B		
308	22404	Valley Pkwy / Avd Del Diablo	F-S/B		
353	22408	Hale Av / Casa Grande MHP	F-S/B		
354	22466	Lincoln Av / Daisy St	F-W/B		
354	22467	Lincoln Av / Rose St	F-W/B		
354	22468	Lincoln Av / Rose St	F-E/B		
354	22469	Lincoln Av / Begonia St	F-E/B		
354	22470	Lincoln Av / Goldenrod St	F-E/B		
356	22491	Morning View Dr / El Norte Pkwy	N-E/B		
353	22589	Auto Park Wy / Alpine St	N-N/B		
355	22599	Valley Pkwy / Pennsylvania Av	F-E/B		
355	22609	Broadway / Hwy 78	F-S/B		
355	22690	Valley Pkwy / James St	N-N/B		

355	22691	El Norte Pkwy / Kaile Ln	N-W/B		
355	22692	El Norte Pkwy / Justin Way	N-W/B		
351	22695	Washington Av / Midway Dr	F-W/B		
351	22696	Washington Av / Begonia St	N-W/B		
352	22698	Washington Av / Rose St	F-E/B		
352	22699	Washington Av / Begonia St	F-E/B		
357	22704	Valley Pkwy / Wanek Rd	F-S/B		
355	22706	El Norte Pkwy / Noreen Way	N-W/B		
355	22707	El Norte Pkwy / Ash St	F-W/B		
355	22708	El Norte Pkwy / Ivy St	F-W/B		
354	22710	Ash St / Montros Pl	F-N/B		
351	22711	Midway Dr / Oak Hill Dr	F-S/B		
354	22712	Lincoln Av / Awana Glen	F-W/B		
354	22713	Fig St / Lincoln Av (Kenwood Townhomes)	M-Street-S/B		
356	22716	N Escondido Bl / Lincoln Av	F-S/B		
355	22717	Valley Pkwy / Elm St	F-E/B		
355	22718	Valley Pkwy / Harding St	F-E/B		
352	22740	Midway Dr / Oak Hill Dr	F-N/B		
357	22742	Valley Pkwy / Harding St	F-W/B		
357	22743	Valley Pkwy / Elm St	F-W/B		
308	22752	Valley Pkwy / Avenida Del Diablo	N-N/B		
353	22758	Auto Park Wy / Meyers St	F-N/B		
353	22920	Auto Park Wy / Ross Dr	F-E/B		
354	22933	Midway Dr / Matthew Pl	F-N/B		
357	24025	El Norte Pkwy / Ash St	F-E/B		
357	24026	El Norte Pkwy / Conway	F-E/B		
357	24027	El Norte Pkwy / Rose St	N-E/B		
357	24028	El Norte Pkwy / Donald	F-E/B		
351	24085	Midway Dr / Grand Av	F-S/B		
352	24086	Citrus Av / E Valley Pkwy	F-S/B		
352	24092	Grand Av / Escondido Bl	F-W/B		
305	24280	Mission Rd / Barham Ln	F-E/B		
353	24362	Auto Park Way / Mission Rd	F-S/B		
350	24367	2nd Av / Centre City Pkwy	F-E/B		
351	24843	Grand Av / 1501 Grand Av	M-Street-E/B		
371	24862	Ash St / E Grand Av	F-S/B		
371	24863	Ash St / E Grand Av	M-Street-E/B		
353	24915	Citracado Pkwy / Auto Park Wy	N-W/B		
353	24916	Citracado Pkwy / 1999 (Stone)	M-Street-S/B		
353	24917	Citracado Pkwy / Makena Medical Center	M-Street-S/B		
353	24918	Andreasen Dr / 1040	M-Street-S/B		
353	24919	Andreasen Dr / 988	N-E/B		

353	24920	Harmony Grove Rd / Howard Av	F-S/B		
353	24921	Enterprise St / Borra Pl	F-N/B		
353	24922	Andreasen Dr / 1031	M-Street-N/B		
353	24923	Citracado Pkwy / Makena Medical Center	M-Street-N/B		
353	24924	Citracado Pkwy / Across from 1999 (Stone)	M-Street-N/B		
355	24926	El Norte Pkwy / Washington Av	F-W/B		
355	24927	El Norte Pkwy / Red Blush Rd	F-W/B		
355	24928	El Norte Pkwy / Lincoln Av	F-W/B		
355	24929	El Norte Pkwy / Estrada Glen	N-W/B		
355	24930	El Norte Pkwy / Midway Dr	F-W/B		
355	24931	El Norte Pkwy / Fig St	N-W/B		
355	24932	Broadway / Park Av	F-S/B		
355	24933	Washington Av / Escondido Bl	M-Street-W/B		
352	24935	Washington Av / 245	M-Street-E/B		
357	24936	El Norte Pkwy / Broadway	F-E/B		
357	24937	El Norte Pkwy / Ivy St	F-E/B		
357	24938	El Norte Pkwy / Fig St	F-E/B		
357	24939	El Norte Pkwy / Midway Dr	F-E/B		
357	24940	El Norte Pkwy / La Honda Dr	N-E/B		
357	24941	El Norte Pkwy / Lincoln Av	F-W/B		
357	24942	El Norte Pkwy / Citrus St	F-E/B		
353	24957	Citracado Parkway / Health Center Driveway North	N-S/B		
354	24960	Midway / Washington Av	F-N/B		
308	24967	Valley Parkway / Claudan St	N-W/B		
308	24968	Valley Parkway / Claudan St	F-E/B		
351	24969	Midway Dr / E. Grand Ave	F-N/B		
352	24970	E. Grand Av / Rose St	F-W/B		
354	24974	Bear Valley Pkwy / Oak Hill Dr	N-E/B		
353	25014	Andreasen Dr / Enterprise St	F-W/B		
352	92090	Washington Av / Ash St	F-E/B		
355	93235	El Norte Pkwy / Rose St	N-W/B		
354	93248	Mission Av / Broadway	F-W/B		
308	93274	Valley Pkwy / Tulip St	N-W/B		

Other* = city/private installed bench, but meets ridership standard for a bench

EXHIBIT B

BUS STOPS MAINTAINED BY NCTD

Route	Stop	Intersection	Intersection2	Trashcan
356	20345	Lincoln Av / Eden Pl	F-E/B	Yes
354	20360	Mission Av / Fig St	F-E/B	Yes
350	20754	Valley Pkwy / Escondido Bl	F-W/B	Yes
352	20767	Grand Av / Date St	N-W/B	Yes
352	20777	Grand Av / Midway Dr	F-W/B	Yes
351	20782	Valley Pkwy / Citrus Av	F-W/B	Yes
350	20971	Escondido Bl / 15th Av	F-S/B	Yes
350	20972	Escondido Bl / Felicita Av	N-S/B	Yes
351	21246	Broadway / Washington Av	F-S/B	Yes
350	21247	Escondido Bl / 2nd Av	F-S/B	Yes
359	21444	Broadway / Village Rd	F-N/B	Yes
350	21450	Escondido Bl / 2nd Av	N-N/B	Yes
350	21453	Escondido Bl / 15th Av	N-N/B	Yes
350	21457	Sunset Dr / Escondido Bl	N-W/B	Yes
350	21754	Escondido Bl / 13th Av	F-N/B	Yes
350	21758	Escondido Bl / Felicita Av	F-N/B	Yes
350	22156	Sunset Dr / Escondido Bl	F-S/B	Yes
354	22465	Lincoln Av / Goldenrod St	F-S/B	Yes
355	22719	Valley Pkwy / Rose St	F-E/B	Yes
305	24334	Mission Av / Quince St	F-W/B	Yes
388	24339	E Valley Pkwy / Beven Dr	F-S/B	Yes
354	92092	Mission Av / Broadway	F-E/B	Yes
350	92122	North County Fair	M-TC-Bus	Yes
355	93231	El Norte Pkwy / E Valley Pkwy	F-W/B	Yes
352	22953	Grand Av / Harding St	N-W/B	Yes
350	92123	North County Fair	M-TC-Bus	Yes

EXHIBIT C

SHARED MAINTENANCE COSTS

Amenity	Cost per Stop	Number of Stops	Total
Exhibit A Bus Stops with Bench* and Trash Can	\$13.43	17	\$228.31
Exhibit A Bus Stops with Bench* Only	\$10.47	38	\$397.86
Total Cost per Week			\$626.17
Weeks per Year			X 52
Total Annual Cost			\$32,560.84
50% NCTD Share			\$16,280.42

* Benches include non-conforming benches provided the ridership at the bus stop meets NCTD's thresholds. Benches marked "City" are City-owned benches, maintained by City as a part of its street furniture without any reimbursement from NCTD.

CITY COUNCIL STAFF REPORT

Current Business Item No. 10

April 3, 2019

File No. 0600-10, A-3292

SUBJECT: Award of a Design Build Agreement for the Design and Construction of the Membrane Filtration Reverse Osmosis Facility

DEPARTMENT: Utilities Department, Construction and Engineering Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2019-50, authorizing the award of a Design Build Agreement for the Membrane Filtration Reverse Osmosis (MFRO) Facility in an initial amount of \$2,716,068 to Filanc+BC, a joint-venture consisting of J.R. Filanc Construction Company, Inc. and Brown and Caldwell. It is also requested that the City Council approve a budget adjustment in the amount of \$3,000,000.

FISCAL ANALYSIS:

The award recommended by staff will authorize expenditure of \$2,716,068 for the initial Pre-construction Phase, which includes engineering, design, and pre-construction services. Funding for this initial phase will come from the existing CIP #801508 and Wastewater Fund Capital Improvement Plan (CIP) Reserves. Expenditures and approval for the Construction and Operations Phases will be brought back to the City Council for consideration at a later date as part of a proposed Guaranteed Maximum Price (GMP) Addendum.

A budget adjustment in the amount of \$3,000,000 is needed to fund the Pre-construction Phase. Funding is requested from the Wastewater Fund Capital Improvement Plan (CIP) Reserves to CIP #801508.

Through the first phase of the project, City staff will negotiate with the design-builder in an open book process to develop a Guaranteed Maximum Price (GMP) for completion of the project, which will include final design; materials procurement; construction; construction management; engineering services during construction; and one year of extended commissioning, training, and operations and maintenance. The GMP is not known at this time because it is dependent on the final outcome of the design, including opportunities for cost savings through value engineering. A proposed GMP Addendum for the Construction and Operations Phases will be brought to the City Council for consideration and approval at a later date.

The anticipated cost for the Construction and Operation Phases is approximately \$47,000,000 based on the Opinion of Probable Construction Costs (OPCC) submitted by Filanc+BC as a part of the proposal process. In addition to the existing CIP #801508, it is anticipated that funding for Construction and Operations Phases will come from the following sources:

1. Pending State Revolving Fund (SRF) Loan	\$29,000,000
2. CA Integrated Regional Water Management Grant	\$ 2,000,000
3. Federal Bureau of Reclamation Title XVI Grant	\$ 5,000,000
4. Wastewater Fund Capital Improvement Plan (CIP) Reserves	\$11,000,000

The SRF loan is pending the environmental review of the proposed project site at 901 West Washington Street. The project site is an industrially zoned parcel. Staff anticipate that the environmental review will result in a Mitigated Negative Declaration. The environmental work is being performed under a separate agreement directly with the environmental consultant. It is anticipated that the draft environmental document will be out for public review in the summer of 2019.

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 will 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 MFRO 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 MFRO 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 MFRO 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 MFRO 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 MFRO Facility 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 MFRO Facility (PHG 16-0014) located at 1201 E. Washington Avenue.

Following the City Council adoption of Resolution No. 2017-07 on January 11, 2017, the Springs of Escondido sued the City claiming that the City had not complied with the California Environmental Quality Act (CEQA) during the site selection process.

On August 10, 2017, the City settled the CEQA lawsuit filed by the Springs of Escondido by agreeing that no above-ground structure could be constructed within 50 feet of the Springs' property line, by agreeing that structure height would be limited to 35 feet within 100 feet of the property line, and by paying \$40,000 to the Springs of Escondido.

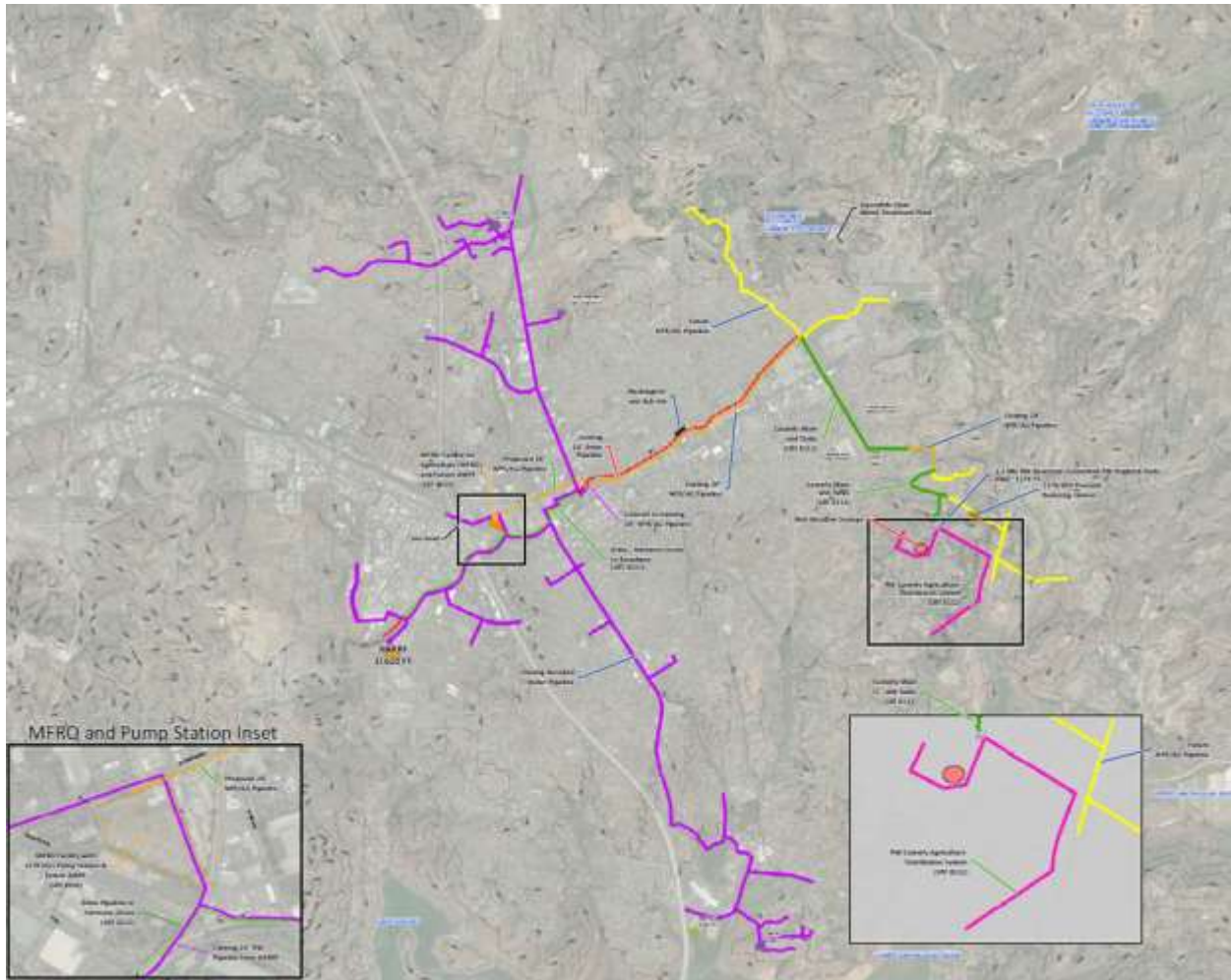
On April 4, 2018, the City Council adopted Resolution No. 2018-33, authorizing a Consulting Agreement with Black and Veatch Corporation in the amount of \$1,236,890 for design-build owner's agent services for construction of the MFRO Facility and for initiation of the design build process.

On January 16, 2019, the City Council provided direction to Staff to consider a new location for the MFRO Facility.

BACKGROUND:

The MFRO Facility will treat recycled water conveyed to it via a 24-inch pipeline from the City's Hale Avenue Resource Recovery Facility (HARRF). The plant will treat the recycled water using membrane filtration (MF) and reverse osmosis (RO) technologies, and will have a maximum production capacity of 2.0 million gallons per day. The MFRO product water will be blended with recycled water that has not been treated by the MFRO process, to produce water with a salt concentration appropriate for agricultural irrigation. The blended water will then be pumped to agricultural users. The MFRO Facility will provide high-quality water that is low in total dissolved solids and chlorides to high-water-demand avocado growers who serve a vital role in the City of Escondido's economy.

The location now planned for the MFRO Facility is a City-owned parcel located at 901 W. Washington Avenue, west of N. Spruce Street. This parcel is industrially zoned and bordered by Washington Avenue to the north, and industrial parcels to the east, west and south. Approximately 35 feet of the southeastern tip of the parcel is adjacent to the Reidy Creek flood control channel. The City's existing recycled water system, shown in purple on the map on the next page, originates at the HARRF, extends east to Broadway, then branches north on Broadway. The existing recycled water customers served by this system do not need MFRO treated water; therefore, approximately 4,800 feet of pipeline will need to be installed from the new MFRO location to the east side of Broadway in order to keep the existing recycled water system and the MFRO treated water system separate.



City of Escondido Existing and Planned Recycled Water Distribution System

The City has elected to use 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 time required to complete the project. Design-build is a method of project delivery in which both the design and construction of a project are procured from a single entity, or in the case of the MFRO project, a joint-venture between two companies.

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 problems in the plans and specifications that affect the constructability of the project. The design-build process shifts risk from the owner (in this case, the City) to the design-build team (in this case, the joint venture of Filanc and Brown & Caldwell), 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 City has the option to select a design-build team based on best value, rather than low bid. Best value is determined by evaluation of objective criteria that relate to price, features, functions, life-cycle costs, experience, and past performance.

The City publically advertised a Request for Qualifications (RFQ) in the same way in which design-bid-build construction projects are advertised. Six Statement of Qualifications were received. The Statement of Qualifications were evaluated based on mandatory pass/fail requirements and weighted criteria.

The mandatory pass/fail criteria included:

- meeting minimum bonding capacity;
- meeting minimum insurance requirements;
- possessing required licenses and professional registrations;
- not being subject to a termination for default, criminal conviction, and disbarment; and
- having a minimum on ten years of business operations in the water infrastructure sector.

The weighted criteria consisted of:

- entity profile, legal structure, management, financial capacity;
- project understanding, project approach, and key issues;
- key personnel qualifications and experience, past experience and reference checks, and
- safety record.

The top three scoring Statements of Qualifications from the following entities were prequalified or short-listed: (1) CDM Smith, Inc.; (2) J.F. Shea Construction in association with Tetra Tech; and (3) Filanc+BC, a joint venture of Filanc and Brown & Caldwell. These three entities were then eligible to submit proposals.

The proposals were evaluated based on weighted criteria consisting of:

- team qualifications;
- project approach;
- technical approaches;
- procurement and construction;
- startup, testing, and commissioning;
- permitting approach;
- extended commissioning/operations and maintenance;
- price proposal;
- technical design and construction expertise;
- life-cycle costs over a 15-year period; and
- an interview.

The determination of the best value proposal was done with a well-defined set of selection criteria and a diverse team of engineering, construction, and operations professionals that produced a clear consensus selection of the highest ranking proposal from Filanc+BC. The design-build process continued with contract negotiations with the selected design-build team, resulting in the contract proposed for your consideration here.

The Pre-construction Phase work includes design, engineering, and pre-construction services for the MFRO Facility, and approximately 4,800 feet of 24-inch pipeline to convey MFRO treated recycled water. This scope includes:

- development of a site layout;
- development of 60% design documents;
- geotechnical evaluation of the pipeline alignment;
- potholing at the MFRO site and along the pipeline alignment;
- grading design package;
- preparation of a Title 22 Engineering Report;
- development of a Guaranteed Maximum Price for Phase 2;
- critical path equipment procurement packages;
- 90% product water pipeline design;
- preparation and submittal of a Storm Water Pollution Prevention Plan;
- grading permit application;
- draft Caltrans encroachment permits;
- coordination with SDG&E;
- value engineering sessions and report;
- monthly project team meetings;
- training workshops for City treatment operations staff; and
- multiple design workshops throughout the initial phase to discuss and determine project details as the design progresses.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Christopher W. McKinney, Director of Utilities
3/28/2019 10:47 a.m.

ATTACHMENTS:

1. Budget Adjustment
2. Resolution No. 2019-50
3. Resolution No. 2019-50 - Exhibit "A" – Design Build Agreement for the Membrane Filtration Reverse Osmosis Facility for Agriculture

RESOLUTION NO. 2019-50

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR TO EXECUTE, ON
BEHALF OF THE CITY, A DESIGN-BUILD
AGREEMENT WITH FILANC+BC FOR DESIGN
BUILD SERVICES FOR THE MEMBRANE
FILTRATION REVERSE OSMOSIS FACILITY
FOR AGRICULTURE

WHEREAS, the Escondido City Council authorized a design build process for the design and construction of the Membrane Filtration Reverse Osmosis Facility for Agriculture (“Project”); and

WHEREAS, City of Escondido staff has elected to use the two phase design build process to construct the Project at 901 West Washington Avenue; and

WHEREAS, City of Escondido staff publicly solicited Request for Qualifications from design build entities to provide design build services for the Project; and

WHEREAS, City of Escondido staff thoroughly evaluated and ranked the six Statement of Qualifications received using mandatory pass/fail requirements and weighted criteria to determine the top three most qualified design build entities;

WHEREAS, the top three most qualified design build entities were invited to submit proposals; and

WHEREAS, City of Escondido staff thoroughly evaluated and ranked the three proposals and using weighted criteria to determine the best value proposal; and

WHEREAS, the proposal from Filanc+BC, the Joint Venture of Filanc & Brown and Caldwell, was determined to be the best value proposal; and

WHEREAS, City of Escondido staff have completed negotiations with Filanc+BC for the Pre-construction Phase of the Project and the Director of Utilities recommends that the Design Build Agreement (“Agreement”) be approved; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve said Agreement, which includes an initial authorization in the amount of \$2,716,068 for the Pre-construction Phase lump sum.

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 regarding the determination of best value and award of the Design Build Agreement to Filanc+BC.
3. That the Mayor is authorized to execute, on behalf of the City, a Design Build Agreement with Filanc+BC in substantially similar form as set forth in Exhibit “A”, which is attached to this Resolution and incorporated by this reference, and approved by the City Attorney.

DESIGN BUILD AGREEMENT

MEMBRANE FILTRATION REVERSE OSMOSIS FACILITY FOR AGRICULTURE

Address: 901 W. Washington Avenue, Escondido, CA 92027

Date: _____

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CITY OF ESCONDIDO DESIGN BUILD AGREEMENT

This Design Build Agreement (“Agreement”) is entered into this _____ day of _____, 2018, by and between the **City of Escondido**, a California municipal corporation and **Filanc+BC, a joint-venture consisting of J.R. Filanc Construction Company, Inc. and Brown and Caldwell** (“Contractor”) (collectively, the “Parties” and individually referred to as “Party”). The effective date shall be the date this Agreement is executed by the Mayor of the City (the “Effective Date”).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following covenants, terms, and conditions:

Section 1 Definition of Terms

Capitalized terms shall have the meanings as follows or as provided in the General Conditions if not provided herein:

- 1.1 **Applicable Laws.** “Applicable Laws” means all applicable federal, state and municipal laws, statutes, building codes, ordinances and regulations of Governmental Authorities having jurisdiction over the Project, Work, Site, Contractor, or City, including, without limitation, Environmental Laws, the Americans With Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101, et seq., Title 24, California Code of Regulations, and all other federal, state and local requirements of law pertaining to accessibility to persons with disabilities. This Project will be subject to the California Environmental Quality Act (“CEQA”) and National Environmental Policy Act (“NEPA”), if applicable.
- 1.2 **Application for Payment.** “Application for Payment” means the Contractor’s itemized payment application for review by City, which is prepared, submitted and substantiated in accordance with the requirements of the Contract Documents.
- 1.3 **Approval.** “Approved” or “Approval” shall mean the written authorization for specific applications by the City representative as provided in Section 3.12. All monetary authorizations required under this Agreement shall be approved by resolution of the Escondido City Council, unless otherwise expressly stated in this Agreement.
- 1.4 **Change Order.** “Change Order” means a written instrument signed by the City (and such other persons as designated by the City) on the one hand, and by the Contractor, on the other hand, describing a change, an adjustment to the Contract Price and/or Contract Time, or both.

- 1.5 **City Contingency.** "City Contingency" means the fund set up by the City as provided in Section 4.8.D of the Agreement.
- 1.6 **City Review Periods.** "City Review Periods" means the period(s) of time set forth in the Construction Schedule within which Contractor has scheduled City, or City consultants to provide information, review documents or render decisions.
- 1.7 **Claims.** "Claims" means a written demand or assertion seeking, as a matter of right, an interpretation of the Contract Documents, adjustment of the Contract Price or Contract Time, payment of money, recovery of damages, resolution of a disputed interpretation of the Contract Documents or other relief. A Claim does not include specific performance or injunctive relief to compel performance of any provision of the Contract Documents.
- 1.8 **Compensable Delay.** "Compensable Delay" means those Delays for which Contractor may be entitled to compensation pursuant to Section 5.6 of the Agreement and the General Conditions. No other compensation for Delay is permitted.
- 1.9 **Compensable Delay Rate.** "Compensable Delay Rate" shall be the rate as provided and established in Section 5.6.
- 1.10 **Construction Documents.** "Construction Documents" means the coordinated Drawings, specifications, or other construction documents prepared by Contractor that are Approved by City in writing.
- 1.11 **Construction GMP.** "Construction GMP" means the guaranteed maximum price for Construction as negotiated and finalized in a GMP Addendum to this Agreement.
- 1.12 **Construction Phase.** "Construction Phase" means the phase of the Work as set forth in Section 7 of the Agreement commencing with the performance of the first physical construction at the Site and ending upon Substantial Completion of the Construction Phase; provided, however, that nothing herein shall limit the right of City to direct that the Pre-construction Services be performed by Contractor concurrently with or overlapping the Construction Phase, if doing so would serve the best interests of the Project as a whole.
- 1.13 **Construction Schedule.** "Construction Schedule" means the schedule prepared by Contractor for the Work pursuant to Section 5.8 of the Agreement and any updated integration thereof.
- 1.14 **Contract Documents.** "Contract Documents" means the following collection of documents: (i) the Agreement including all exhibits attached thereto; (ii) the Payment and Performance Bonds; (iii) the General Conditions; (iv) the

- Construction Documents prepared by Contractor and Approved by City in writing; (v) any approved GMP Addendum; (vi) Change Orders; and (vii) Field Orders; provided, however, that under no circumstances shall the designation of the Bridging Documents or the Construction Documents as a "Contract Document" be interpreted as implying an assumption by City of responsibility for the accuracy, suitability or completeness of any portion of such document or any information contained therein other than the Project Criteria.
- 1.15 **Contract Price.** "Contract Price" means the maximum sum that City is obligated to pay to Contractor for performance in accordance with the Agreement. The term "Contract Price" is synonymous with "Guaranteed Maximum Price" and is not to be interpreted as creating or implying the existence of a "lump sum" price for the Work.
- 1.16 **Contract Time.** "Contract Time" means the periods specified in this Agreement for: (i) completion of the various phases and (ii) Substantial Completion and Final Completion of the Work.
- 1.17 **Contractor Contingency.** "Contractor Contingency" means the fund reserved in the Contract Price for payment of unforeseen Costs of Work as provided in Section 4.8.A of the Agreement.
- 1.18 **Contractor Fee.** "Contractor Fee" means the total compensation payable to the Contractor pursuant to Section 12 of the Agreement for its profit, general administrative overhead and other costs for which Contractor is not separately entitled to reimbursement as a Cost of Work.
- 1.19 **Contractor's Representative.** "Contractor's Representative" the individual identified in Section 3.8.A of the Agreement as having authority to act on behalf of and contractually bind Contractor.
- 1.20 **Costs of Work.** "Cost(s) of Work" shall mean only the costs listed in Section 9 that are necessarily and properly incurred and paid by Contractor in the proper performance of the Work and that are reimbursable to Contractor under the terms of the Contract Documents. Such costs shall be at rates not higher than the standard paid in the Greater San Diego vicinity, except with the prior written Approval of City. Costs of Work do not include non-reimbursable costs under Section 10.
- 1.21 **CSWRCB.** "CWSRCB" means the California State Water Resources Control Board.
- 1.22 **Days.** "Day(s)," whether capitalized or not, refers to a calendar day unless otherwise specifically designated as a business day meaning days the City of Escondido is open for business excluding holidays and weekends.

- 1.23 **Delay Days.** "Delay Days" shall have the meaning set forth in the General Conditions and include all related items therein including, "Excusable and Compensable Delay," "Excusable and Non-Compensable Delay," "Inexcusable Delay," "Concurrent Delay," and "Contemporaneous Delay."
- 1.24 **Design Documents.** "Design Documents" means all plans, drawings, tracings, specifications, programs, reports, calculations, models and other documents (or, materials containing designs, specifications or engineering information) prepared by Contractor, Trade Contractors or Design Professionals, including, without limitation, computer aided design materials, electronic data files, files and paper copies. Without limitation to the foregoing, it is understood that Design Documents includes all preliminary Design Documents and Construction Documents, regardless of whether or not Contractor is retained by City to build the Project.
- 1.25 **Design Professionals.** "Design Professionals" means the architects, engineers and other professional design or engineering consultants, of any Tier, who perform any design, architectural or engineering services required to be performed by Contractor under the Agreement.
- 1.26 **Differing Site Conditions.** "Differing Site Conditions" means those unforeseen conditions described in the General Conditions, for which Contractor may or may not be entitled to an adjustment in the Contract Price or Contract Time under the Contract Documents.
- 1.27 **Drawings.** "Drawings" refers to those portions of the Bridging Documents, Design Documents or Construction Documents that represent, in pictorial form, the designs and engineering for the Project.
- 1.28 **Equipment.** "Equipment" means all pre-manufactured or partially pre-assembled products or components, assembled or partially assembled before delivery to the Site.
- 1.29 **Escrow Agent.** "Escrow Agent" means a bank performing the deposit services as provided in Section 14.6.
- 1.30 **Existing Improvements.** "Existing Improvements" means all improvements located on the Site as of the date of execution of the Agreement, whether above or below the surface of the ground, including but not limited to existing buildings, utilities, infrastructure improvements and other facilities.
- 1.31 **Extra Work.** "Extra Work" means Work in the performance of which requires the expenditure of Contractor of additional and unforeseen Costs of Work; provided, however, that Extra Work does not include Work omitted from the Contract Documents if it is either: (I) a logical evolution of the design

- information set forth in the Contract Documents; or (2) reasonably inferable from the information set forth in the Contract Documents as necessary to satisfy the design intent for a completed and fully operational system, facility or structure. References to Extra Work shall not be interpreted to mean or imply that the Contractor is entitled to an adjustment to the Contract Price or Contract Time unless such Extra Work constitutes a Scope Change or Compensable Delay.
- 1.32 **Facilities.** "Facilities" means the final constructed Membrane Filtration Reverse Osmosis facility, with all improvements and approvals.
- 1.33 **Final Completion of Work.** "Final Completion of Work" means the point at which: (i) the entire Work is fully completed, including all minor corrective, or "punch list," items; (ii) a permanent and unconditional certificate of occupancy for the entire Work has been delivered to City; (iii) all documents required to be submitted by Contractor as a condition of Substantial or Final Completion of the Work have been submitted, including, without limitation, warranties, guarantees, and other Record Documents; (iv) the entire Site and Work have been thoroughly cleared of all construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork and other Work; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished Materials; all surfaces, fixtures, cabinet work and Equipment are wiped and washed clean and in an undamaged, new condition; all aluminum and other metal surfaces are cleaned in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with manufacturer's recommendations and buff dried by machine to bring the surfaces to sheen; (v) all portions of the Operations Phase have been completed; and (v) all conditions set forth in the Contract Documents for Substantial and Final Completion of the Work and for issuance of Final Payment have been, and continue to be, fully satisfied.
- 1.34 **Final Payment.** "Final Payment" means refers to the entire unpaid balance due and paid by City to Contractor based on City's receipt of the Contractor's Application for Final Payment submitted in accordance with the Agreement following Final Completion of the Work.
- 1.35 **Fragnet.** "Fragnet" also revered to as "Sub-network" means 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 three (3) business days, and submit a Fragnet for time impact analysis and time extension(s) on or within fourteen (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 and/or the City's Scheduling Consultant will provide a response to the Fragnet on or within fourteen (14) days.
- 1.36 **General Conditions Costs.** "General Conditions Costs" means the Cost of Work relating to management, protection, safety, temporary facilities, utilities, testing (to the extent required to be performed by the Contractor under the Contract Documents), access, parking, clean up, inspections (to the extent required to be performed by Contractor under the Contract Documents), bonds, insurance, estimating and supervision (including, without limitation, costs of laborers, inspectors, laboratories, consultants, designers, engineers, schedulers, and surveyors) and similar or related direct overhead Cost of Work incurred by Contractor in the performance of the Work. The definition provided for above shall not preclude Contractor from the right to compensation for Costs of Work defined herein as General Conditions Costs to the extent that such General Conditions Costs are not associated with a Compensable Delay.
- 1.37 **GMP Addendum.** "GMP Addendum" means an executed addendum to this Agreement outlining the Construction GMP, the Operations GMP, or both containing all of the content and requirements as provided in this Agreement, which is incorporated into this Agreement upon execution.
- 1.38 **GMP Proposal.** "GMP Proposal" means the proposed GMP Addendum(s) by the Contractor to the City as provided in Section 6.8.
- 1.39 **Governmental Authorities.** "Governmental Authorities" means the United States, State of California, the City of Escondido (acting in its regulatory capacity, rather than proprietary capacity), County of San Diego and any other political subdivision, agency, department, commission, board, bureau or instrumentality of any of them, which exercises jurisdiction over the Project, Work, Site, Contractor or City.
- 1.40 **Governmental Authority Review Periods.** "Governmental Authority Review Periods" means the period(s) of time set forth in the Construction Schedule within which the Contractor has provided for Governmental Authority (including but not limited to, City in its regulatory, as distinguished from its proprietary, capacity) review and approval of the Work.

- 1.41 **Hazardous Substances.** "Hazardous Substance(s)" or "Regulated Materials" refers to (1) any chemical, material or other substance defined as or included within the definition of "Hazardous Substances/ Regulated Materials," "hazardous wastes," "extremely Hazardous Substances/ Regulated Materials," "toxic substances," "toxic material," "restricted hazardous waste," "special waste," "contamination" or words of similar import under any Applicable Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally; or (2) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.
- 1.42 **Indemnities.** The term "Indemnities" is as provided and defined in Section 6.1.
- 1.43 **Loss.** The term "Loss" or "Losses" refer to any and all losses, costs, liabilities, claims, damages, actions, judgments, settlements, expenses, fines and penalties. "Losses" do not include attorney's fees or court costs, whether arising as an expense or cost of legal proceedings to which the Contractor is a party or as a consequential damage claimed against the Contractor by any third party or entity.
- 1.44 **Materials.** "Materials" means a generic term which shall include all building materials, articles, supplies and Equipment delivered to the Project for incorporation into the Work. "Materials" includes everything incorporated into the Work except labor, unless otherwise noted.
- 1.45 **Operations GMP.** "Operations GMP" means the guaranteed maximum price for the Operations Phase as negotiated and finalized in a GMP Addendum to this Agreement.
- 1.46 **Operations Phase.** "Operations Phase" means the phase of the Work as set forth in Section 8 of the Agreement commencing with Substantial Completion of the Construction Phase and ending upon Final Completion of the Work; provided, however, that nothing herein shall limit the right of City to direct that the Construction Services be performed by Contractor concurrently with or overlapping the Operations Phase, if doing so would serve the best interests of the Project as a whole.
- 1.47 **Operations Phase Scope of Services.** "Operations Phase Scope of Services" means the scope of services for the Operations Phase as approved by the City in the GMP Addendum.

- 1.48 **Payment Bonds.** "Payment Bonds" and "Performance Bonds" means the bonds required to be provided by Contractor pursuant to Section 18 of the Agreement.
- 1.49 **Payment Review Meeting.** "Payment Review Meeting" means the meeting as provided in Section 14.B.
- 1.50 **Permitting Plan.** "Permitting Plan" means a plan to be developed by the Contractor that includes a detailed schedule and approach for obtaining all Permits.
- 1.51 **Permits.** "Permits" means all permits, licenses, approvals and certificates of Government Authorities necessary for construction of the Project for its intended use.
- 1.52 **Pre-construction Fee.** "Pre-construction Fee" means the lump sum amount for the provision of the Pre-construction Services as provided in Section 6.
- 1.53 **Pre-construction Services.** "Pre-construction Services" means the services, testing design, materials, equipment, etc. as set forth in the Pre-Construction Scope of Work and in accordance with this Agreement.
- 1.54 **Pre-construction Phase.** "Pre-construction Phase" means the phase during which the Contractor is obligated to perform the design, pre-construction, and other services as provided in Section 6 of the Agreement. It is anticipated that the Pre-construction Phase may continue after commencement of the Construction Phase.
- 1.55 **Product Data.** "Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate a Material, product or system for some portion of the Work.
- 1.56 **Project.** "Project" means the complete work of improvement described generally as the Membrane Filtration Reverse Osmosis Facility, of which the Work may be all or a portion of the Project, as well as those objectives and criteria for the Project as more fully set forth in in the Contract Documents.
- 1.57 **Project Criteria.** "Project Criteria" means those designs, specifications and/or performance criteria expressed in the Bridging Documents or Construction Documents (or revisions, deletions or additions to the Bridging Documents or Construction Documents properly approved in writing by the City and in accordance with this Agreement) that define the City's objectives and criteria for Project relating to volume, flow rate, hydraulics, structural, civil, mechanical, use, general appearance and aesthetics and similar matters relating to use and occupancy. Unless specifically requested and approved by the City in writing

as a revision, deletion or addition to the Bridging or Construction Documents in accordance with this Agreement, Project Criteria do not include technical architectural or engineering designs, technical specifications or detailing that are present in the Bridging Documents or Construction Documents as a result of a judgment or determination by the Contractor that such technical designs or specifications are appropriate or necessary to achieve the City's express objectives and criteria for the Project or necessary in order to comply with Applicable Laws.

- 1.58 **Project Schedule.** "Project Schedule" means a comprehensive schedule for the entire project that includes all key milestone dates to be achieved by Contractor in performance of the different phases of Work.
- 1.59 **Record Documents.** "Record Documents" means the Drawings, Specifications, Change Orders, Submittals and other documents showing the as-built condition of the Work, including, without limitation, the locations of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown diagrammatically in the Contract Documents.
- 1.60 **Relief Event.** "Relief Event" is as defined in Section 8.7 of this Agreement.
- 1.61 **Schedule of Values.** "Schedule of Values" means a detailed, itemized breakdown of the Contract Price, which provides allocation of the dollar values to each of the various parts of the Work.
- 1.62 **Scope Changes.** "Scope Changes" refers to a change to the scope of the Work that:
 - A. is the result of (i) Differing Site Conditions, or (ii) an approved Change Order; and
 - B. does not arise, in whole or in part, from (i) an error, omission, conflict, ambiguity or violation of Applicable Laws contained in the Bridging Documents or Construction Documents, or (ii) failure by Contractor or its Design Professionals or Trade Contractors, of any Tier, to comply with the requirements of the Agreement or other Contract Documents, or (iii) conditions in the Bridging Documents or Construction Documents prepared by Contractor that are unsuitable for construction or do not achieve the Project Criteria; and
 - C. for which an adjustment of the Contract Price or Contract Time is expressly allowed and not prohibited by or waived under the terms of the Contract Documents; and
 - D. if performed would require Contractor to expend additional Costs of Work that would not have been expended in the absence thereof.

- 1.63 **Site.** The term "Site" refers to (i) the parcel of land identified on which the Work is constructed, (ii) all areas adjacent to such parcel that may be used by Contractor or its Trade Contractors for staging, storage, parking or temporary offices and (iii) all land areas, both private and public, adjacent to such parcel on which Work is required to be performed under the Contract Documents, Applicable Laws or permits relating to the Project.
- 1.64 **Submittal Schedule.** "Submittal Schedule" means Contractor's detailed schedule setting forth the dates for City review and City Review Periods, and other relevant schedule information, for submission by Contractor, and review and approval by City, of Construction Documents and Submittals.
- 1.65 **Submittals.** "Submittals" means shop drawings, samples, exemplars, manufacturers' instructions, product data and other design information required to be submitted by Contractor to City under the terms of the Contract Documents.
- 1.66 **Substantial Completion of Work.** "Substantial Completion of Work" means the point at which the entire Work, or any portions thereof specially designated by City, is: (i) sufficiently and entirely complete in accordance with the Contract Documents so that such Work can be beneficially occupied and utilized by City for its intended purpose (except for minor items which do not impair City's ability to so occupy and use the Work), (ii) receipt by City (in its proprietary capacity) of all permits and certificates (such as, but not necessarily limited to, a temporary certificate of occupancy) required to occupy and use the Project; and (iii) all systems included in the Work are operational as designed and scheduled, all designated or required inspections and certifications by Governmental Authorities have been made and posted and instruction of City's personnel in the operation of such systems has been completed.
- 1.67 **Tier.** "Tier" means the contractual level of a Trade Contractor or Design Professional with respect to Contractor. For example, a "first-tier" Trade Contractor is under contract with Contractor. A Trade Contractor or Design Professional under subcontract with a first-tier Trade Contractor is in the "second tier," and so on.
- 1.68 **Title 22 Engineering Report.** "Title 22 Engineering Report" shall mean the report to be submitted to the California Regional Water Quality Control Board and State Water Resources Control Board Division of Drinking Water to demonstrate that the MFRO Facility complies with the State of California Water Recycling Criteria.

- 1.69 **Trade Contractors.** "Trade Contractors" means construction contractors, subcontractors, suppliers and vendors, of any Tier, who furnish any portion of the Work required to be performed or supplied by Contractor under the Contract Documents.
- 1.70 **Work.** "Work" means all design services, Pre-construction Services, labor, Construction Phase work or services, Operations Phase work or services, Materials, Equipment, permits, licenses, management and other professional and nonprofessional services, taxes, and all other things necessary for Contractor to perform, in accordance with the Contract Documents, all of its obligations under the Contract Documents.

Section 2 Exhibits

- 2.1 **Bridging Documents.** "Bridging Documents" refers to and includes the Drawings, specifications and other documents as provided in Exhibit A attached to this Agreement.
- 2.2 **Contractor Insurance Requirements.** "Contractor Insurance Requirements" refers to and includes all insurance requirements and conditions as provided in Exhibit B attached to this Agreement.
- 2.3 **Funding Agreement.** "Funding Agreement" refers to and includes the terms and conditions of the funding agreement between the City and the CWSRF as provided in Exhibit C attached to this Agreement.
- 2.4 **General Conditions.** "General Conditions" refers to and includes the City's General Conditions as provided in Exhibit D attached to this Agreement.
- 2.5 **Integrated Regional Waste Management Program Grant.** "Integrated Regional Waste Management Program Grant" or "IRWM" refer to and include the grant for the Project with the San Diego County Water Authority as provided in Exhibit E attached to this Agreement.
- 2.6 **Key Personnel.** "Key Personnel" refers those individuals employed by Contractor and listed in Exhibit F to the Agreement, whose participation and continued performance while so employed is of essence to the Agreement.
- 2.7 **Off-ramp Services.** "Off-ramp Services" refers to and includes the terms, conditions, and pricing for Contractor performing the off-ramp services should this Agreement be Terminated without a GMP Addendum and if the City elects to proceed with said off-ramp services as provided in Exhibit G attached to this Agreement.

- 2.8 **Pre-construction Scope of Work.** “Pre-construction Scope of Work” refers to and includes the Pre-construction Services as provided in Exhibit H attached to this Agreement.
- 2.9 **Regulatory Standards.** “Regulatory Standards” refers to and includes the terms and conditions as provided in Exhibit I attached to this Agreement.
- 2.10 **Time Schedule Order.** “Time Schedule Order” shall mean Order No. R9-2015-0027 as provided in Exhibit J attached to this Agreement.
- 2.11 **United States Bureau of Reclamation Title XVI Grant.** “U.S. Bureau of Reclamation Title XVI Grant” or “Title XVI Grant” refers to and includes the grant for the Project with the U.S. Bureau of Reclamation as provided in Exhibit K attached to this Agreement.

Section 3 General Provisions

- 3.1 **Public Work of Improvement.** City and Contractor acknowledge that City is a political subdivision of the State of California and that construction of the Project is to be funded with public funds.
- 3.2 **Trust and Confidence.** Contractor accepts the obligation of trust and confidence established between it and City by this Agreement. The Contractor agrees to furnish the design, engineering, and construction services set forth in this Agreement, furnish efficient business administration, provide sufficient senior level management and other qualified personnel, and use good-faith and diligent efforts to complete the Project in the soundest way and in the most expeditious and economical manner consistent with the interests of the City and industry standards.
- 3.3 **Standard of Care.** Contractor shall perform all its obligations under the Contract Documents in accordance with the standard of professional skill and care applicable to the performance by Contractors of first-class public works infrastructure projects with similar size, scope and complexity as the Project. Where approval by the City is required, it is understood to be general approval only and does not relieve the Contractor's responsibility for errors and omissions; compliance with all Applicable Laws and codes; and exercising the standard of care as stated in this Section applicable to the performance of services and Work required by the Contract Documents. In the event portions of the Project are to be performed in accordance with a specific performance standard, the Work shall be performed so as to achieve such standard.
- 3.4 **Compliance with Funding Agreement.** The City and the CSWRCB have entered into the Funding Agreement, wherein the CSWRCB has agreed to provide financial assistance to the City to construct the Project. Contractor shall provide

- all services and Work under this Agreement in compliance with the terms and conditions of the Funding Agreement.
- 3.5 Compliance with IRWM. The City entered into the IRWM which imposes certain requirements for the Project. Contractor shall provide all services and Work under this Agreement in compliance with the terms and conditions of the IRWM.
 - 3.6 Compliance with Title XVI Grant. The Project has been approved for Title XVI Grant funding, which imposes certain requirements for the Project. Contractor shall provide all services and Work under this Agreement in compliance with the Title XVI Grant.
 - 3.7 Compliance with Time Schedule Order. The Project is subject to the terms and conditions of the Time Schedule Order. Contractor shall provide all services and Work under this Agreement in compliance with the Time Schedule Order and the San Diego Regional Water Quality Control Board Order No. R9-2018-0002 National Pollutant Discharge Elimination System No. CA0107981 with the exception of the completion date required under the Time Schedule Order which shall be governed by Section 5.3 B.
 - 3.8 Permits. Contractor shall obtain and pay (as a pass-through) for all permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work. Contractor shall develop a Permitting Plan that includes all phases of the Work and indicates an estimated calendar time required to submit a complete regulatory approval application, total time estimated to obtain the regulatory approval from the Agreement start date, and each instance where coordination or assistance from either the City or others in obtaining such regulatory approvals is required. Contractor shall include in all of the schedules it prepares, estimates of the time required for Governmental Authorities to inspect, review and approve the Work while in progress, including, without limitation, any schedules or designs.
 - 3.9 Contractor Personnel.
 - A. Contractor's Representative. Contractor hereby designates the Contractor's Representative as listed in the Key Personnel, who shall be deemed to be Contractor's agent with express authority to bind Contractor with respect to all matters requiring Contractor's approval or authorization.
 - B. Key Personnel. Contractor shall provide management for the Project using the Key Personnel which shall list the personnel provided by Contractor during the various phases of the Project. The Contractor shall not transfer to another project or reassign the responsibilities of the Contractor's Representative or any Key Personnel without the written approval of the City, which approval shall

not be unreasonably withheld. Contractor's Representative and any Key Personnel shall be replaced if, in the sole discretion of City, the Contractor's Representative or Key Personnel has failed to perform to City's reasonable expectations. Any individual designated as a replacement of Contractor's Representative or Key Personnel shall require the prior Approval of City, which Approval will not be unreasonably withheld.

3.10 Design Professionals and Trade Contractors.

- A. Selection. All professional services, construction services and operational services performed under this Agreement shall be performed by independent, qualified and duly licensed architects, engineers, State certified operators and contractors retained by Contractor pursuant to written contracts. Contractor shall have the right upon prior written notice to City, and approval by City, which shall not be unreasonably withheld, to engage Trade Contractors to perform selected portions of the Work on a design/build basis which shall be done in accordance with California Public Contract Code Section 22166 and all other Applicable Laws.
- B. Contractor Responsibility. Contractor shall be responsible to the City for the performance, acts and omissions of its Design Professionals and Trade Contractors and the employees and agents of each of them.
- C. Independent Contractor. Contractor shall be an independent contractor, and neither Contractor, its Design Professionals or Trade Contractors, nor any of their employees or agents, shall be considered employees or agents of the City.
- D. Termination. Prior to termination of a contract between Contractor and any Design Professional or Trade Contractor, and subject to the requirements and conditions of the Subletting and Subcontracting Fair Practices Act (California Public Contract Code section 4100 et seq.), Contractor shall identify to City in writing a proposed substitute professional or contractor to perform the services originally to have been performed by the terminated Design Professional or Trade Contractor, which substitute shall be subject to approval by the City at no additional cost to the City.
- E. Contingent Assignment. Contractor shall include in its contracts with its Trade Contractors and Design Professionals provisions reserving to City the right, to be exercised in City's sole discretion, to take an assignment of Contractor's contracts with its Design Professionals and Trade Contractors on such terms as set forth in the Contract Documents in the event that City terminates this Agreement with the Contractor.

- F. Notice of Violations. If Contractor believes or is advised that implementation of any instruction received from the City would cause a violation of any Applicable Laws, Contractor shall immediately notify City of such in writing. If Contractor fails to provide such notice, City shall be entitled to assume that its instruction is in compliance with Applicable Laws and Contractor shall assume responsibility for such direction.
- 3.11 Third-Party Rights and Obligations. Contractor shall take steps to assure that City is made an express third-party beneficiary to all such contracts between Contractor and its Trade Contractors and Design Professionals to the extent necessary for assignment and any other required terms as provided in the Contract Documents. Notwithstanding the foregoing or anything else to the contrary in the Contract Documents, there is no intent on the part of the City or Contractor by this Agreement to create any rights (including, without limitation, third-party beneficiary rights) in favor of any third-party and nothing contained in this Agreement or in any other Contract Document and no course of conduct, act or omission on the part of the City shall be construed as creating a contractual obligation on the part of City to any Design Professionals, Trade Contractors or other third parties.
- 3.12 City Representative and Authorizations. The authorized representative to act on the City's behalf with respect to the Project and provide all necessary Approvals, changes, or other authorizations in accordance with the terms of this Agreement is as follows:
- A. The City Manager, or designee is authorized to approve;
- (1) Change Orders to the Pre-Construction Phase costs not to exceed ten (10%) of the Pre-Construction Phase lump sum;
 - (2) Change Orders not to exceed ten (10%) of any subsequently approved early GMPs or GMP Addendum(s); and
 - (3) Any other approvals necessary for the administration of the Agreement that do not authorize additional expenditures.
- B. All other Approvals shall be done by resolution of the Escondido City Council, including, but not limited to:

- (1) Early GMP packages;
 - (2) The Construction GMP; and
 - (3) The Operations GMP
- 3.13 Inclusion of Provisions in Contracts. Contractor shall expressly include certain provisions of this Agreement in all of the contracts it enters into with its Trade Contractors and Design Professionals and shall require such Trade Contractors and Design Professionals to include such provisions in all contracts with lower Tier Trade Contractors and Design Professionals. The following provisions shall be included:
- A. Section 6.3;
 - B. Sections 3.10.E, and 22.1A.(4);
 - C. Any requirements or obligations that are required to be expressly included in any contracts for the Project as part of funding or grant requirements, including, but not limited to, the Funding Agreement, IRWM, and the Title XVI Grant; and
 - D. Any other provisions required to be provided in contacts by local, state or federal law.
- 3.14 Phased Services. The Work to be provided pursuant to this Agreement is anticipated to take place in phases.
- A. The initial Pre-construction Phase shall include the services of design, pricing, and other services for the Project based on the City's Project Criteria. Contractor shall perform such services to the level of completion required for the Contractor and the City to establish the Construction GMP and the Operations GMP. The Construction GMP and the Operation GMP shall be developed during the Pre-construction Phase on an "open-book" basis.
 - B. The Construction Phase shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in Section 7.
 - C. The Operations Phase shall consist of the extended commissioning, training, operations and maintenance as further described in Section 8.
 - D. Early GMP Packages. Contractor and City understand that procurement of long-lead time items, grading or other Work, services, Equipment or Materials

may need to be approved prior to or concurrently with the development of the Construction or Operations GMP. Contractor shall make recommendations regarding the need for said early GMP packages which may be approved by the City Council in advance of the Construction or Operations GMP and shall be incorporated in the final Construction or Operations GMP.

Section 4 Contract Price

- 4.1 Contract Price. The Contract Price shall be comprised of the Pre-construction Fee, the Construction GMP, and the Operations GMP.
- 4.2 Total Compensation for Pre-construction Phase. Payment for Work performed by Contractor during the Pre-construction Phase shall be a lump sum amount not exceeding the sum of Seven Hundred Sixteen Thousand and Sixty Eight Dollars (\$2,716,068) in accordance with the Pre-construction Scope of Work.
- 4.3 Total Compensation for Construction Phase. Payment for Work performed by Contractor during the Construction Phase shall be an amount not to exceed the Construction GMP established in accordance with this Agreement.
- 4.4 Total Compensation for Operations Phase. Payment for Operations Phase services performed by Contractor during the Operations Phase shall be an amount not to exceed the Operations GMP established in accordance with this Agreement.
- 4.5 Adjustments to Contract Price. There shall be no adjustment to the Contract Price except as authorized by (i) Change Order or (ii) by addendum to this Agreement after establishment of the Construction GMP or Operations GMP or both. All fees, expenses and Costs of Work in excess of the Contract Price, as adjusted by Change Order or GMP Addendum, shall be borne solely by Contractor, without reimbursement by the City.
- 4.6 Adjustments to Contractor Fee. Except as agreed upon in the GMP Addendum, there shall be no adjustments to the Contractor Fee.
- 4.7 Contractor's Warranty of Contract Price. Contractor warrants and represents that the Contract Price includes, without limitation, the following costs and expenses related to the Project:
 - A. all overhead and general and administrative expenses, including, without limitation, both on-site and off-site direct job expenses and allocable home office overhead for the Project;
 - B. all fees and assessments for building and other permits for which Contractor is responsible under this Agreement;

- C. all licenses;
- D. all inspections required to be performed or paid for by Contractor under the terms of the Contract Documents;
- E. includes and assumes that from time to time Contractor will encounter Delays, difficult conditions arising from limited access to Work areas or other interferences for which responsibility is not otherwise attributable to Contractor; and
- F. includes and assumes that from time to time Contractor will encounter unforeseen conditions at the Site not constituting Differing Site Conditions.

4.8 Contingencies.

- A. Contractor Contingency. The Contractor's Construction GMP shall include a contingency for use during the Construction Phase. The Contractor shall have the right to expend the Contractor Contingency with prior written approval by City, not to be unreasonably withheld, for which Contractor is not entitled to a Change Order adjusting the Contract Price, including but not limited to:
 - (1) City omissions of specified City requirements;
 - (2) unexpected material cost increases;
 - (3) acceleration and overtime unrelated to fault;
 - (4) unfavorable bidding from trade contractors due to market conditions, price increases, lack of competition and other variables;
 - (5) labor disputes unrelated to Contractor fault;
 - (6) increased scope and quantities related to design development from 60% to 100%;
 - (7) wage escalation and travel expenses related to unfavorable local construction labor market conditions; and
 - (8) other items identified during development of the GMP and agreed to by Owner.
- B. Contractor agrees that any costs arising from a subcontractor default or an event for which insurance or bond provides reimbursement, Contractor shall exercise reasonable steps to obtain performance from the subcontractor and recovery from any surety or insurance company, or both. Contractor agrees that if Contractor is subsequently reimbursed for said costs, then said recovery

- will be credited back to the Contractor Contingency if Contractor Contingency is utilized to complete the uncompleted subcontractor work.
- C. Contractor Contingency shall be adjusted only as permitted by this Section. Notwithstanding that the Contractor Contingency may have been initially established as a percentage of the Contract Price, it is agreed that Contractor Contingency shall not be increased for Change Orders executed by the City that increase the Contract Price after the GMP Addendum is executed.
- D. City Contingency. The GMP Addendum shall include a City Contingency, the amount of which shall be determined by the City in its sole discretion, and which may be a percent of the GMP. No funds shall be used from the City's Contingency without prior written approval by the City, which approval may be granted or withheld in the sole and absolute discretion of City. The amount of the City Contingency under this Section shall not be included as part of the savings pursuant to Section 4.9. The City shall have the right at any time to reduce (including the right to eliminate entirely) the amount of City Contingency, in which case a Change Order shall be issued reducing the Contract Price by amount of such reduction. Any unexpended portion of the City Contingency shall belong 100% to the City.
- 4.9 Savings. Any savings from the Contractor's Contingency that exists at the time: (i) Final Payment is due and owing pursuant to Section 10.3 of this Agreement, and (ii) all outstanding claims, disputes or disagreements between City and Contractor that constitute grounds for withholding payment have been fully and finally resolved and any sums due City by Contractor have been paid in full, shall be shared as follows: Sixty percent (60%) to City and forty percent (40%) to Contractor.

Section 5 Timing

- 5.1 Time of Essence. Time is of the essence with respect to all time limits set forth in the Contract Documents.
- 5.2 Commencement.
- A. Pre-construction Phase. Contractor shall proceed with performance of Work during the Pre-construction Phase promptly upon issuance by the City of a Notice to Proceed for the Pre-construction Phase and in accordance with the Project Schedule.
- B. Other Work. Contractor shall commence the portions of the Work other than Pre-construction Work upon issuance by the City of a Notice to Proceed for each phase.

5.3 Contract Time.

- A. Construction Documents. Contractor shall complete the Construction Documents and secure issuance of a general building permit for the entire Work within an agreed number of Days, to be mutually agreed to as part of the GMP Addendum.
- B. Substantial Completion of Work. Contractor shall achieve Substantial Completion of the Work within an agreed number of Days not to extend beyond December 31, 2021, or as mutually agreed to as part of the GMP Addendum, after City's issuance of the Notice to Proceed.
- C. Final Completion of Work. Contractor shall achieve Final Completion of the Work within forty-five (45) Days after Substantial Completion of the Work. At Final Completion of Work, the Contractor shall deliver an unconditional certificate of occupancy of the Project. The warranties, guarantees and other Record Documents shall be delivered prior to the Final Completion of the Work.

5.4 Extensions. The Contract Time shall not be extended except by a Change Order issued in accordance with the Contract Documents.

5.5 Compensation for Delay.

- A. Prior to GMP Addendum. Extensions of time adjusting the Contract Time due to any Delay occurring prior to the execution of the GMP Addendum shall be Contractor's sole and exclusive remedy for such Delay.
- B. Post GMP Addendum. After execution of the GMP Addendum extensions of time adjusting the Contract Time due to any Delay occurring during the Construction Phase after the GMP Addendum shall, except as described below, be Contractor's sole and exclusive remedy for such Delay. Compensation shall be permitted for Compensable Delay pursuant to Section 5.6 only if, and to the extent that: (i) Contractor is entitled to an extension of time for Substantial Completion of the Work under the provisions of the General Conditions governing extensions of time for Compensable Delays; and (ii) in the case of Delay caused by failure of the City to provide timely information, or decision or approval, such Delay shall not be considered a Compensable Delay unless (a) the City's obligation was identified on the Project Schedule, or (b) the delay continues after the expiration of five (5) business days following Contractor's advance written notice to City describing in detail the information, decision or approval that is required and stating that if such information, decision or approval is not timely provided that, Contractor may seek an adjustment to the Contract Price on the grounds of Compensable Delay. The

requirements of this Section with respect to notice of Compensable Delay are in addition to, and not a limitation upon, the other notice requirements of the Contract Documents relating to Excusable or Compensable Delay, Change Order requests and Claims.

5.6 Compensable Delay.

- A. Damages to Contractor. Contractor's GMP Proposal will suggest and the GMP Addendum will include a negotiated amount of Compensable Delay Rate applicable solely to the Work contemplated during the Construction Phase pursuant to this section.
- B. Compensable Delay Rate. During the Construction Phase of the Work, the Contract Price shall be increased by the fixed Compensable Delay Rate for each Day of extension to the Contract Time for Substantial Completion of the Work that Contractor is entitled to be granted under the terms of this Agreement and the General Conditions due to Compensable Delay occurring after execution of this Agreement and prior to Substantial Completion and affecting Substantial Completion of the Work, but only to the extent that the Compensable Delay is not concurrent with (1) an Inexcusable Delay or (2) another Excusable Delay that is not also a Compensable Delay. Sums payable to Contractor for Compensable Delay shall be included as part of Contractor's Application for Progress Payment following approval of the Compensable Delay by City.
- C. Full Compensation. Without limitation to the foregoing and to the fullest extent allowed by law, Contractor agrees to accept the compensation provided for in Section 5.6, as its sole and exclusive right, remedy and recovery and total compensation for any of the following foreseen or unforeseen costs associated with Delay incurred by Contractor or its Trade Contractors or Design Professionals: (i) General Conditions Costs; (ii) extended overhead (field or home office); (iii) added insurance or bond costs; (iv) loss of productivity or inefficiency; (v) labor, wage, material or equipment escalation, and (vi) other consequential costs, expenses or damages, direct or indirect, arising from or related to Delay, compression, acceleration or their "impact," "cumulative impact," or "ripple effect" on the Work. Nothing herein shall be interpreted as precluding Contractor from reimbursement of General Conditions Costs that are incurred solely as the result of Extra Work involved in the performance of Scope Changes and that Contractor demonstrates are not incurred as a result of any Delay associated with the performance of such Scope Change.

- D. No Contractor Fee. Notwithstanding any other provision of the Contract Documents to the contrary, Contractor shall not be entitled to seek or receive payment of a Contractor Fee that is based on sums payable by City pursuant to Delay.
- E. Exercise of City Rights. Except as expressly provided in other provisions in the Contract Documents, City's exercise of any of its rights or remedies under the Contract Documents shall not under any circumstances entitle Contractor to extension of the Contract Time or compensation for Compensable Delay.

5.7 Liquidated Damages to the City.

The following liquidated damages provision shall be included in the GMP Addendum, based upon the City's reasonable effort to estimate fair compensation for each day that the Work has not achieved Substantial Completion in accordance with the Contract Time:

IF CONTRACTOR FAILS TO ACHIEVE SUBSTANTIAL COMPLETION OF THE WORK WITHIN THE CONTRACT TIME REFERRED TO IN SECTION 5.3 OF THIS AGREEMENT (AS ADJUSTED BY CHANGE ORDER FOR EXTENSIONS PERMITTED BY THE CONTRACT DOCUMENTS), CITY WILL INCUR DAMAGES, THE AMOUNT OF WHICH WILL BE DIFFICULT OR IMPOSSIBLE TO ESTABLISH WITH CERTAINTY, INCLUDING BUT NOT LIMITED TO INEFFICIENCY AND DISRUPTION OF CITY'S OPERATIONS. THE PARTIES THEREFORE AGREE THAT FOR EACH DAY PAST THE SUBSTANTIAL COMPLETION DATE REFERRED TO IN SECTION 5.3 (AS ADJUSTED BY CHANGE ORDER FOR THE EXTENSIONS PERMITTED BY THE CONTRACT DOCUMENTS) THAT THE WORK IS NOT SUBSTANTIALLY COMPLETE, CONTRACTOR SHALL PAY CITY THE SUM OF \$ 5,000 PER DAY AS LIQUIDATED DAMAGES. THIS SUM REPRESENTS A REASONABLE EFFORT TO ESTIMATE FAIR COMPENSATION FOR THE FORESEEABLE LOSSES CITY WILL INCUR ON ACCOUNT OF DELAYS IN SUBSTANTIAL COMPLETION OF THE WORK AND IS NOT A PENALTY. CITY AND CONTRACTOR HEREBY INDICATE THEIR AGREEMENT TO THE FOREGOING LIQUIDATED DAMAGES PROVISION:

City

Contractor

- 5.8 Schedules During Pre-Construction Phase. The Project Schedule sets forth the key milestone dates to be achieved by Contractor in performance of the different phases of Work. Within thirty (30) days of the Effective Date, Contractor shall submit a baseline Project Schedule for all Work to be performed during the Pre-Construction, Construction, and Operations Phases that is consistent with the milestone dates to be achieved in the Project Schedule.
- A. Amendments to Pre-Construction and Construction Schedules. Contractor may propose adjustments to the Pre-Construction and Construction Schedule so long as the proposed adjustments are consistent with the milestone dates to be achieved in the Project Schedule. Adjusted Schedules, when Approved by City, shall govern the Contractor's performance during the Pre-Construction Phase Work. The last adjustment to the Construction Schedule during the Pre-Construction Phase shall occur as part of the Negotiation of the Construction GMP or Operations GMP, or both.
- 5.9 Schedules During Construction Phase. The Construction Schedule approved as part of the GMP Addendum shall become the controlling schedule for performance of the different phases of Work and computation of adjustments to the Contract Time during the Construction Phase and Operations Phase.
- A. Content of Contractor's Schedules. Contractor shall prepare and submit to City, with the GMP Proposal a Construction Schedule and Submittal Schedule for the different phases of Work. Unless otherwise directed in writing by City, the Construction Schedule and Submittal Schedule shall be consistent with, and an absolute derivative of, the latest Construction Schedule that has been Approved by City. The Construction Schedule and Submittal Schedule shall be prepared, utilizing a time-scaled bar chart showing continuous flow from left to right and major milestones which are critical to the completion of the design, engineering and construction of the Project and a clearly highlighted critical path. Durations and specific calendar dates shall be clearly and legibly shown for the start and finish of each activity. Activities shall be in sufficient detail to demonstrate a practical plan to complete the design, engineering and construction within the Contract Time. At a minimum, the Submittal Schedule shall include dates for City review and City Review Periods related to preparation and processing of Construction Documents, Submittals, delivery of Materials or Equipment requiring long-lead time procurement, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates of Substantial Completion, performance of minor (or "punch list") Work and Final Completion.

- B. Adjustment of the Contractor's Schedules. The Construction Schedule and Submittal Schedule shall only be adjusted as permitted by this section and as provided in the General Conditions for Excusable Delay or Compensable Delay.
- 5.10 City Review Periods. The Submittal Schedule, and updates thereof, shall include such City Review Periods as are required by the nature of the Work or as requested by City, Contractor shall in all cases deliver to City prior to commencement of a City Review Period a complete written request for review, accompanied, if appropriate, by the document, question or other information requiring City or City Consultant review, response, Approval or consideration. No City Review Period shall have a duration of less than ten (10) Days, and shall be of longer duration in the case of submissions that are anticipated to be complex or lengthy. For purposes of determining compliance with the City Review Periods, if Contractor does not deliver its request for review before the first Day of a City Review Period scheduled in the governing schedule, the City Review Period shall not commence until Contractor delivers such request and the respective City Review Date shall be extended (without any corresponding adjustment to the Contract Time) on a Day-for-Day basis until Contractor delivers such request to the proper entity from which a response, review or Approval is sought. To the extent that such an extension causes Delay to Contractor's performance within the Contract Time, such Delay shall be deemed an Inexcusable Delay.
- 5.11 Governmental Authority Review Periods. All schedules shall include estimates of the time required for Governmental Authorities to issue permit, inspect, review and approve of the Work while in progress, including, without limitation, any Submittals or other designs prepared by Contractor or Trade Contractors relating to the Work. Contractor is solely responsible for the sufficiency and accuracy of its estimates of time for all Governmental Authority Review Periods. However, Contractor may be entitled to an adjustment in Contract Price or Contract Time for unreasonable delays by Governmental Authorities that would be unanticipated by a reasonable professional in the same or similar situation.
- 5.12 Schedule Updates ("Look Ahead" Schedules). All schedules shall be updated by Contractor as provided in the General Conditions and other Contract Documents. Updates shall be delivered in computer media form using Primavera P6 or greater software programs. The Contractor will provide licenses for the City's use for the duration of the Project. In addition, Contractor shall prepare short term, four (4) week "look-ahead" schedules generated from the then-current schedule that has been approved by City. Subject to Contractor's rights to adjustments of the Contract Time as set forth in the

- General Conditions, if updates or "look ahead" schedules suggest that Contractor may not achieve performance of the Work within the Contract Time, Contractor shall make appropriate recommendations and implement revisions, to revise the governing schedule to reduce the time for performance to achieve performance within the Contract Time.
- 5.13 Responsibility for Schedules. Contractor is solely responsible, notwithstanding City's review or Approval thereof, for the accuracy, completeness, suitability and feasibility of all elements of all schedules it prepares for the Project. City makes no warranty, implied or express, and assumes no responsibility or liability for the reasonableness, feasibility or appropriateness of the Project Schedule and Contract Time.
- 5.14 "Fast-Track" Design and Construction. Contractor is solely responsible for the sequencing of design and construction activities. There shall be no additional compensation or adjustments to the Contract Price or Contract Time on the grounds that circumstances require that the design and construction proceed on a "fast track" basis. If City directs in writing, Contractor may be required, with no adjustment to the Contract Price, Contractor Fee or Contract Time, to: (i) commence the Construction Phase before the Pre-construction Phase is completed, in which case both phases shall proceed concurrently; and (ii) furnish Pre-construction Services in a non-continuous or out-of-sequence manner that correspond to City's requirements, including, without limitation, City's requirements for phased or "fast track" construction.
- 5.15 Condition of Payment. Without limitation to any other provisions of the Contract Documents pertaining to performance of scheduling obligations, if Contractor fails to perform any of its obligations under the Contract Documents pertaining to scheduling, City shall have the right to withhold payments otherwise due to Contractor until such compliance has occurred. Payment by City under circumstances in which City, for any reason, fails or elects not to assert its right to withhold payment for noncompliance with this section shall not be construed as a waiver of the right to withhold future payments on account of such noncompliance or any other noncompliance with the scheduling requirements of the Contract Documents.

Section 6 Pre-Construction Phase

- 6.1 Pre-construction Services.
- A. Pre-construction Services. Contractor shall perform all of the design, pre-construction services, and provide all material, equipment, tools and labor as set forth in the Pre-construction Scope of Work. The scope of the Pre-construction Services to be provided by Contractor under this Agreement is

intended to include, at no additional cost to City, all surveying of both the Work and Existing Improvements (including, without limitation, existing storm drains and utilities), geotechnical, soils and subsurface investigation, programming, management, coordination, design, architectural, engineering, and other related services necessary for the Pre-construction Phase of the Project in accordance with the Project Criteria in a condition that is suitable and sufficient for its intended purpose, use and occupancy, including, without limitation, the proper design, engineering, and sizing of electrical, mechanical, plumbing, hydraulics, process, life/safety, security, and other building systems necessary to assure the proper operation of any fixtures, devices or Equipment to be furnished and installed by City, Contractor or others.

- B. Suitability of Designs in Bridging Documents. Contractor acknowledges and accepts the adequacy and accuracy of the design information contained in the Bridging Documents and agrees to assume all risk and sole responsibility for all conditions in or among the various parts of the Bridging Documents that (i) constitute errors, omissions, conflicts, ambiguities, or violations of Applicable Laws, or (ii) are unsuitable for construction, or (iii) do not achieve the Project Criteria.
- C. Resolution of Uncertainties. City and Contractor acknowledge that questions may arise concerning the level and scope of performance required under the Bridging Documents. City and Contractor will in good faith attempt to resolve such conflicts and uncertainties in a manner that is consistent with the express design intent of the Bridging Documents and without adjustment to the Contract Price or Contract Time. In the event the parties are unable to resolve such differences, City and Contractor agree that all such unresolved conflicts or uncertainties shall be interpreted so as to require Contractor to perform the Work, without adjustment to the Contract Price or Contract Time, in a manner that reflects the higher or better standard indicated by the Bridging Documents.

6.2 Project Criteria

- A. Project Criteria. The City's Project Criteria for the Project are set forth in the Bridging Documents, including revisions, deletions or additions to the Bridging Documents or Construction Documents hereafter requested by City in writing and Approved by City pursuant to this Agreement. Contractor may rely upon the Project Criteria as constituting an expression of the City's criteria and objectives for the Project that is to be followed by Contractor in designing and constructing the Project.

B. Revisions to Project Criteria. City shall have the absolute right, in its sole discretion, to revise, delete or add to the Project Criteria at any time prior to execution of the GMP Addendum. However, in the event of any Scope Changes to the Project Criteria which Contractor believes materially increases the Contractor's estimate of the Costs of Work or cause Delay to the activities or deadlines in the Contract Schedule, then Contractor shall notify City in writing, within seven (7) Days of the receipt of any request by City that Contractor believes constitutes a revision, deletion or addition to the Project Criteria. If requested by City, Contractor shall provide the City in writing recommendations for reducing cost or time to minimize or eliminate such impact while allowing City to retain the benefits of such revisions, deletions or additions to the Project Criteria.

6.3 Ownership and Use of Documents.

A. Property of City. All Bridging Documents and Design Documents shall be the property of City, whether or not the Project is completed or the GMP Addendum is executed, and all common law and statutory copyrights now held or acquired in the future by Contractor and its Trade Contractors and Design Professionals in the Bridging Documents, Design Documents or in the design of the Project, or any portion of the Project, are hereby irrevocably assigned to City. Contractor and its Trade Contractors and Design Professionals are hereby granted by City a limited license, revocable at any time by City, to copy and use the Bridging Documents and Design Documents for the purposes of completing the Project only. Notwithstanding anything to the contrary herein, nothing herein shall be deemed to prevent the Contractor, or any of its other Design Professionals and Trade Contractors, from using engineering or design ideas or functional elements incorporated within the Bridging Documents or Design Documents for any other project the Contractor or its Design Professionals will be involved in without permission from the City, as long as the overall design of this Project remains unique.

B. Delivery to City. Contractor shall deliver all Design Documents to City no later than the earlier of: (i) the date of Final Completion of the Project, or (ii) the date this Agreement is terminated for any reason prior to Final Completion of the Project. If this Agreement is terminated for any reason, City and its agents, employees, representatives and/or assigns may use the Design Documents, in whole or in part, or in modified form, at City's sole discretion to complete the Project and without further employment of, or payment of further compensation to, Contractor or any third party.

- C. Reuse by City. As the exclusive owner of the Design Documents, City may reuse any portion of the Design Documents for the Project, or the building design, for any other or separate project without the permission of the Contractor, or any of its other Design Professionals and Trade Contractors. Any such subsequent use of or changes to Design Documents, or to the designs depicted in them, will be at City's sole risk and without liability to Contractor. Contractor does not warrant or guarantee the adequacy or sufficiency of the Design Documents for reuse on any other project, or for any purpose not related to the design or construction of the Project.
- D. Official Submissions. Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of copyrights or other reserved rights.

6.4 Preliminary Design Documents, Construction Documents.

- A. Evaluation. Promptly after execution of this Agreement and continuously throughout the Pre-construction Phase, Contractor shall evaluate the suitability and completeness of the City's needs, requirements, criteria and goals for the Project, including, but not limited to, the Project Criteria. It is understood that although this preliminary evaluation is a collaborative effort, City is relying upon Contractor's expertise and experience to proactively initiate inquiries, investigate and take other steps necessary to obtain all pertinent information concerning City's special needs and requirements so as to enable Contractor to obtain a clear understanding of the goals of the Project in terms of design, cost, quality and schedule and to provide complete advice to City that will enable City to make fully informed decisions concerning the Project.
- B. Consultation. Contractor shall jointly schedule and attend regular meetings with City regarding Site use and improvements, and the selection of Materials, building systems and Equipment, and provide continuous advice and recommendations on issues of design, construction feasibility, and constructability that will result in efficient design, lower cost and long-term ease of maintenance; minimizing adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or Materials, preliminary budgets, value engineering and possible economies.
- C. Design. Contractor shall provide as part of the Work all management, coordination, design, architectural, engineering, and other related services necessary to plan, design and build the Work of the Project to a condition that

- is suitable and sufficient for its intended purpose, use and occupancy as established by the Project Criteria, including, without limitation, the proper design, engineering, and sizing of electrical, mechanical, plumbing, life/safety, security, and other building systems necessary to assure the proper operation of any fixtures, devices or Equipment to be furnished and installed by City, Contractor or others.
- D. Geotechnical Services, Surveying, Site Investigation. Contractor shall furnish geotechnical services, surveying and site investigation of the Site prior to completing preliminary design of the Project.
- E. Construction Documents. Promptly following execution of this Agreement, Contractor shall proceed to prepare, for Approval by City, Construction Documents that incorporate designs and specifications that are suitable for construction and suitable to achieve the Project Criteria.
- F. Revisions Requested by City. City shall have the absolute right, in its sole discretion, to request in writing that Contractor revise, delete or add to the designs and specifications contained in the Bridging Documents or Construction Documents. Contractor shall notify City in writing, within seven (7) Days of the receipt of any request by City that Contractor believes constitutes a revision, deletion or addition that constitutes a Scope Change. City shall thereafter issue to Contractor its Approval or disapproval thereof. Failure by Contractor to provide such notice within ten (10) Days after receipt of such request by City shall result in such revision, deletion or addition being deemed to not constitute a Scope Change. Contractor shall be entitled to an adjustment of the Contract Price and/or Contract Time on account of such additions, deletions or revisions for which Contractor has provided written notice as required by this Section only if and to the extent permitted by this Agreement and the General Conditions for Scope Changes or Compensable Delay.

G. Progress and Final Submissions.

- (1) Contractor shall formally submit to City for its review and Approval, no less than monthly and more frequently, complete sets of in-progress and final design and Construction Documents reflecting Contractor's progress in the performance of its Pre-construction Services at the following points in time: (i) upon completion of soil investigation, geotechnical engineering and surveying; (ii) the Value engineering report; (iii) 60% Construction Drawings and Design Submittal; (iv) GMP proposal; (v) 90% Construction Drawings and Design Submittal; and (vi) 100% Construction Drawings and Design Submittal. The foregoing schedule for formal submissions shall be without limitation to City's right, at any time upon request by City, to review the status of any portion of the Design Documents as they are being developed.
- (2) City and Contractor each understands, acknowledges and agrees that while each subsequent submission is dependent upon City's timely and thorough review of each earlier submission in accordance with this Agreement, Contractor is ultimately responsible for any errors and omissions; compliance with Applicable Laws and codes; and exercising the standard of care required by this agreement notwithstanding city's review of each submission.
- (3) Contractor shall separately identify in writing at the time of its formal submissions listed above in this Section any portions of such in-progress or final Construction Documents that constitute deviations from the Bridging Documents or other Scope Changes. No such deviations or Scope Changes shall be deemed Approved by City unless Approved in writing by City expressly acknowledging and adopting such deviations as accepted as Scope Changes or Changes to the Project Criteria. All submittals of Construction Documents to City, including electronic submittals, shall include a certification by Contractor that, except as specifically noted in accordance with the requirements of this Section, the submitted Construction Documents do not contain any deviations from the Project Criteria or other Scope Changes. Any deviations from Project Criteria or other Scope Changes that are so noted by Contractor and Approved by City shall be formalized in a Change Order. Such Change Order shall not, except as otherwise permitted by this Agreement or the General Conditions, include an adjustment to the Contract Price or Contract Time, but shall be for the sole purpose of memorializing the current status of any Changes to the Project Criteria or other Scope Changes that have been Approved by City. Contractor shall at all times remain solely responsible, notwithstanding

City's review or Approval of such in-progress or final Construction Documents, for their accuracy, completeness, sufficiency and suitability to achieve the Project Criteria. Designs, details, specifications or other portions of the Construction Documents not in compliance with the requirements of this Section or Applicable Laws shall, unless otherwise ordered by City in writing, be corrected and resubmitted to City. The cost of such design corrections shall not entitle Contractor to an adjustment of the Contract Price or Contract Time.

- H. Pre-construction Meetings. Contractor shall participate in all meetings as reasonably determined necessary by City or as necessary by the nature of the Project and complete performance of its Pre-construction Services required by this Agreement. Minutes of meetings shall be maintained by Contractor and provided to City. City shall review such minutes promptly. If corrections are needed, City shall notify Contractor immediately specifying with particularity the additions or modifications to the minutes that City believes are needed in order for the minutes to be complete and accurate.
- I. Permits. Contractor shall provide those Construction Documents necessary to apply for all Permits. The fees and costs of such Permits shall be paid by Contractor as a pass through. If Contractor learns of any other fees and costs for Permits that are necessary for construction of the Project, Contractor shall promptly notify City of same and such fees and costs shall, if not waived by City acting in its regulatory capacity, be either paid by City directly or, if requested by City, shall be paid by Contractor as an adjustment to the Contract Price pursuant to the Change Order process.
- J. Alternative Designs, Value Engineering. At all stages during the development of the Design and Construction Documents, Contractor shall consult with and advise City regarding access and use of the Site, and the selection of Materials, building systems and Equipment. Contractor shall, after consultation with its Design Professionals and Trade Contractors, provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or Materials, value engineering and possible cost reductions. Contractor is solely responsible, notwithstanding any review, approval or acceptance thereof by City, for the sufficiency of all such alternative designs that are incorporated into the design for the Project.

- K. City-Furnished Information. City has made available to Contractor: (i) existing surveys and other information concerning the physical conditions and Existing Improvements at the Site, and (ii) existing reports, data, investigations, and other information concerning geotechnical, soils, and other subsurface information that relate to surface and subsurface conditions, obstructions, or Hazardous Substances that exist or might be encountered at the Site. City does not expressly or impliedly warrant or represent the accuracy, completeness or suitability of the data, opinions, recommendations or other statements therein or that they constitute all of the information that may exist or be available relating to such matters. Accordingly, except allowed pursuant to Differing Site Conditions, City shall have no liability or responsibility to Contractor in the event that other unknown or undisclosed information relating to such matters exists that is material to the Contractor's performance of this Agreement or construction of the Work within the Contract Price and Contract Time. As a material part of the consideration given by Contractor and as an inducement for City to enter into this Agreement, Contractor assumes full and sole responsibility to ascertain the accuracy, completeness, and suitability of such information and assumes full and sole responsibility to determine the necessity for, and to pay for, any additional surveys (including, without limitation, surveys of subsurface storm drains, utilities and other Existing Improvements), professional recommendations or other investigations that may be needed to fully understand the physical surface or subsurface conditions, characteristics, legal limitations and utility locations for the Site, including, without limitation, and as applicable: grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, locations of Existing Improvements relative to the Site and the Work, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and available data, if any, pertaining to existing buildings, other improvements and trees; information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths; test borings; test pits; determinations of soil bearing values; percolation tests; evaluations of Hazardous Substances; ground corrosion and receptivity tests and necessary operations for anticipating subsoil conditions.
- L. Utility Relocation. Subject only to Contractor's rights to adjustment in the Contract Price or Contract Time for Differing Site Conditions, Contractor shall, except as otherwise expressly stated in the Bridging Documents, include in its performance of the Work provision for all aspects of design, permitting, relocation and construction of existing and new utilities.

6.5 Cost Estimating.

- A. Progress Estimates. Within fifteen (15) Days after each Contractor's submission of Design and Construction Documents submittal, Contractor shall present to City, for review and Approval by City, detailed estimates of the cost to City of the design and construction of the Project, including all sums that will be or have been incurred, or that Contractor estimates may be incurred, by City under the terms of this Agreement for the complete design and construction of the Project. Within fifteen (15) days after the acceptance of 60% design and construction documents submittal by the City, Contractor shall present to the City a GMP Proposal in accordance with the Project Schedule, for review and Approval by the City. Contractor shall present to City for review and Approval by City, detailed estimates and a GMP Proposal of the cost to City of the design and construction of the Project, including all sums that will be or have been incurred, or that Contractor estimates may be incurred, by City under the terms of this Agreement for the complete design and construction of the Project. The cost estimate and GMP Proposal shall include separate statements of: (i) anticipated reimbursable Costs of Work for performance of construction and operations, (ii) Contractor Fee, and (iii) the Contractor and City Contingencies. Costs of Work shall be based on competitive Trade Contractors pricing from no fewer than three (3) Trade Contractors, suppliers or vendors, with such supporting data and verification as may be requested by City, and allocated by line items reflecting at a minimum the actual or estimated Costs of Work for each separate category of specialty Trade Contractor Work and Design Professional services, self-performed Work, Contractor Fee, on-site supervision, and other on-site overhead broken down into categories of discrete overhead costs, such as temporary facilities, utilities, etc. Contractor shall provide the City with the actual prices of contracts entered into between Contractor and its Trade Contractors as soon as such prices are available. Contractor shall additionally submit proposed labor rate schedule for approval. Labor rates submitted shall be used in calculations for additional work or requests to utilize contingencies.
- B. Updates. No less frequently than monthly and more often if requested by City, Contractor shall update and refine its estimate prepared to reflect the current status of the preliminary Design Documents, current market prices and the status of Trade Contractor competitive pricing.
- C. City Approval. Approval by City of any estimate or updated estimate provided by Contractor shall not be interpreted as the Approval of any design that deviates from the requirements of this Agreement or the other Contract

Documents, unless such deviation is specifically noted by Contractor and Approved by City in writing. No Approval by City shall be interpreted as authorizing or approving any increase in the Contract Price unless such Approval is set forth in a Change Order, signed by City, setting forth the amount of such increase.

- D. Cost Reduction Recommendations. If any cost estimate or GMP Proposal submitted by Contractor to City exceeds a previous estimate that has been reviewed or Approved by City, Contractor shall explain the reason therefore and shall, at no cost to and without reimbursement by City, suggest and implement revisions in the Construction Documents as alternatives to reduce costs. In the interest of cost consciousness, Contractor and its subcontractors and sub consultants shall use good-faith and diligent efforts throughout the duration of their performance on the Project to identify high cost, low value items or systems and make recommendations to the City on alternatives thereto that would reduce costs and improve cost-benefit ratios, taking into consideration the following factors: availability; construction feasibility; design access and use of the Site; possible adverse effects of labor or material shortages; time requirements for procurement; and installation and construction completion. City and Contractor shall cooperate in good faith to evaluate systems and methodologies that align with the City's overall interests. Contractor understands that it is Contractor's sole responsibility to assure that the total of the Costs of Work and Contractor Fee for the completed design and construction of the Work does not exceed the Contract Price (as adjusted for Change Orders permitted by the Contract Documents). If any estimate or summary of bids or costs submitted by Contractor to City exceeds, the previous estimates, the Contract Price as adjusted for Change Orders, Contractor shall explain the reason therefore and shall recommend revisions in the Construction Documents as alternatives to reduce Costs of Work so that the total estimated or actual Costs of Work and Contractor Fee does not exceed the Contract Price. City may, in its sole discretion, refuse to Approve any cost reduction recommendation under circumstances where such recommendation would, if Approved and implemented, constitute a change in the Project Criteria or that would render the designs or specifications set forth in the Construction Documents unsuitable to achieve the Project Criteria.

6.6 Bidding.

- A. Proposed Bidder List. Contractor shall actively seek to develop interest in the Project among potential, qualified Trade Contractors and prior to submission of its GMP Proposal, shall furnish to City for its information a list of proposed Trade Contractors, consisting of no fewer than three (3) proposed Trade

Contractors who have been pre-qualified by Contractor who Contractor proposes to furnish work, Materials or Equipment for the Project and from whom Contractor intends to solicit competitive bids, as the basis for Contractor's preparation of its GMP Proposal. Contractor shall deliver to City copies of all documentation required as provide in the Regulatory Standards, Funding Agreement, IRWM, and Title XVI Grant.

B. Prequalification. Contractor will thoroughly investigate the qualifications and experience of potential bidders and, without limitation to any other factors relevant to bidder responsibility, Contractor shall not include on such list any individual or firm:

- (1) that is debarred from contracting with the United States, State of California, any city, county, or political subdivision of the State of California, or any agency or department thereof; or
- (2) that is not properly registered with the Department of Industrial Relations or licensed or has an existing unsatisfied judgment entered against it arising from a violation of the applicable license laws; or
- (3) has been previously terminated for default or assessed liquidated damages by the City or another government agency; or
- (4) previously has submitted a false claim as defined in Government Code Section 12650, et seq.; or
- (5) as to which there exists reasonable evidence that the individual or firm is not qualified or is unfit to perform the Work; or
- (6) that is unable or fails to provide the insurance coverage required by the Contract Documents; or
- (7) that has been assessed penalties by any federal, state or local government entity for prevailing wage violations.

Contractor shall provide to the City such information on the qualifications of potential bidders as is generated from its investigation. City shall promptly identify any bidder as to whom City has any objection to a bidder's qualifications based on the information provided by Contractor. Failure by City to so object shall not relieve Contractor from its sole responsibility for the qualifications of its bidders nor shall it constitute a waiver of the City's right to later require Contractor to disqualify from bidding any bidder whose qualifications do not satisfy the requirements of this Section.

- C. Bidding Documentation. Contractor shall deliver to City copies of all invitations to bid, bids and bid tabulations received from qualified proposed Trade Contractors who have submitted bids in a form that will enable easy comparison and evaluation of the bid prices and scope, each to the other. Contractor shall deliver to City copies of all documentation required as provide in the Regulatory Standards, Funding Agreement, IRWM, and Title XVI Grant. In the event City determines that a bid is incomplete or unclear in any respect, Contractor shall seek clarification of same prior to award. Contractor shall include its recommendation as to the bidder to whom it proposes to award a contract for each portion of the Work. Contractor shall remain solely responsible for the sufficiency, completeness and award of bids notwithstanding any such review or evaluation conducted by City.
- D. Substitution of Trade Contractors. City shall notify the Contractor within fifteen (15) Days of receipt of the bidding documentation above, of its objections, if any, to any bidder to whom Contractor proposes to award a contract for a portion of the Work. No proposed Trade Contractor to whom City has a reasonable objection shall be awarded a contract. Neither the review nor Approval of such documentation by City shall create any obligation on the part of City to investigate the qualifications of proposed Trade Contractors, nor shall it waive the right of City (subject to Contractor's right to adjustment of the Contract Price) to later object to, reject or request substitution of any proposed Trade Contractor on any grounds hereinabove authorized by this Section. No adjustment to the Contract Price on account of any such reasonable objection by City to a proposed Trade Contractor shall be permitted except as provided in this Section. If Contractor has complied with the provisions of Section 6.6 and if City instructs Contractor to reject the bid of a Trade Contractor that is the lowest bid among those submitted for the same portion of the Work on grounds other than that set forth in Clauses 1 through 7 of Section 6.6.B, then Contractor shall be entitled to an adjustment in the Contract Price by Change Order in an amount equal to the difference between such bid and the bid price of the next bidder selected by City, whether or not such next bidder is awarded the Work by Contractor; the adjustment for the Contract Price shall be without the Contractor fee.
- E. Self-Performed Work. No portions of the Work shall be self- performed or proposed to be self-performed by Contractor without prior Approval by City, which may be granted or withheld in City's sole discretion. Requests for Approval by City of self- performed Work shall be accompanied by documentation demonstrating (i) that Contractor has the capability and experience to self-perform the scope of Work proposed to be self- performed

- by Contractor; (ii) the cost savings to the Project, as evidenced by quotes from other trade contractors, a fully documented and open-book quote provided by the Contractor or by other evidence as approved by the City; and (iii) a proposed lump sum price for Work to be self-performed by Contractor. Submission of a lump sum proposal to self-perform Work constitutes a representation and binding commitment by Contractor that if requested by City it will perform such Work for the lump sum price proposed. Provided that the City, in its sole discretion, approves the amount as competitive, the Contractor may self-perform the portion of the Work for a fixed, lump sum price as approved in the GMP Addendum; provided, however, that in consideration of the City's so agreeing, the Contractor agrees that notwithstanding anything else stated in the Contract Documents to the contrary, Contractor guarantees that the Costs of Work to complete said portion of the Work shall not exceed the agreed lump sum price set forth in the GMP Addendum and that any Costs of Work incurred in excess thereof in performance of the portion of the Work described in the GMP Addendum whether incurred by Contractor or others, shall be borne by Contractor at its own expense, not as a Cost of Work and shall not be reimbursed in any form by City, including, without limitation, from Contractor Contingency or City Contingency. Said guaranteed lump sum price for the portion of the Work described in the GMP Addendum shall only be adjusted for deletions or Scope Changes to the portion of the Work described in the GMP Addendum authorized by Change Order.
- 6.7 Procurement. Contractor shall recommend to City a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Construction Schedule. Contractor shall expedite the delivery of long-lead time items to the maximum extent possible.
- 6.8 Contractor's GMP Proposal(s). Contractor shall prepare and submit a GMP Proposal(s) for the Construction Phase and Operations Phase to the City, as follows:
- A. Basis of GMP Proposal. Pursuant to the Project Schedule or within fifteen (15) days after the acceptance of 60% Design and Construction Documents submittal by the City, whichever is earlier, Contractor shall submit to City a GMP Proposal for such phase of Work setting forth a proposed Contract Price that is in all respects consistent and in conformance with the requirements of the Contract Documents. Contractor shall include with its GMP Proposal a written statement of its basis, which shall include at a minimum:

- (1) A list (by sheet number, issuance date and last revision date) of the Design and Construction Documents Approved by City, which were used in preparation of the GMP Proposal. All such Design and Construction Documents shall list the licensed Design Professional who approved and prepared or directly supervised preparation of the Construction Documents, along with the name of the Contractor.
 - (2) The proposed GMP or revisions to the Contract Price, which shall include all costs and expenses to completely design and build the Project, without any exceptions, qualifications, allowances, or exclusions except those that have been previously Approved by City for inclusion in the GMP Addendum.
 - (3) Contractor's Contingency and City Contingency.
 - (4) The Contractor Fee.
 - (5) The dates for completing the Design and Construction Documents, Substantial Completion and Final Completion of the Work and for achieving other key milestones as set forth in the Project Schedule (such as, but not limited to, deliveries and installation of major Equipment, fixtures and furnishings and occupancy) or the latest updated Construction Schedule Approved by City.
 - (6) A proposed Schedule of Values, made out in a form Approved by City, which itemizes each activity that is to be performed by separate Trade Contractors and Design Professionals, self-performed Work, Professional Services during Construction Phase, Contractor Fee, and Contractor and City Contingencies, the total of which shall equal the GMP Proposal.
 - (7) Contractor's Compensable Delay Rate per day.
- B. Review by City. Contractor shall meet with City, Construction Manager and City Consultants to review such GMP Proposal and the written statement of its basis.
- C. Period of Irrevocability. The GMP Proposal shall remain open and irrevocable for a period of no less than sixty (60) Days after delivery to City, or as such longer time as may be otherwise stated in the GMP Proposal.
- D. Revision to GMP Proposal. In the event City and Contractor are not able to reach agreement upon all of the terms set forth in the GMP Proposal, then Contractor shall prepare and submit, within ten (10) Days after requested by City, a revised GMP Proposal for City's consideration.

- 6.9 Negotiation of GMP Addendum. Upon Approval by City of the GMP Proposal, the parties shall execute a GMP Addendum in a form mutually agreed upon by both parties that will be incorporated into this Agreement upon execution as the GMP Addendum. Except as otherwise permitted by this Agreement and set forth in the GMP Addendum, Contractor's obligations with respect to the design and construction of the Project shall be governed by the terms and conditions of this Agreement and the other Contract Documents identified in the GMP Addendum.
- A. Contractor represents and agrees that its GMP Proposal and the proposed Contract Price and Contract Time set forth therein, shall include sufficient monies and sufficient allotted time for completion of design and construction of the Work in accordance with the Project Criteria and within the Contract Price and Contract Time.
 - B. Contractor shall not, prior to execution of a GMP Addendum, incur any Costs of Work except as City may specifically authorize in writing. Costs incurred by Contractor other than as permitted by this Section shall be at Contractor's expense and shall not be reimbursed by City as a Cost of Work, or in any other manner.
 - C. Upon execution of a GMP Addendum, the Contract Price and Contract Time shall thereafter only be adjusted by Change Order.
 - D. The Contract Price shall include, as a Cost of Work, all and only those taxes which are enacted at the time the GMP Addendum is executed by the parties.
- 6.10 Termination Without GMP Addendum. Notwithstanding anything in this Agreement to the contrary, in the event that City and Contractor do not negotiate and execute the GMP Addendum or are unable to reach agreement on a GMP which prevents execution of the GMP Addendum this Agreement shall be considered complete and Contractor's sole compensation shall be the lump sum Pre-construction Fee. Alternatively, the City may pay the Off-ramp fee as provided in the Off-ramp Services and Contractor will provide the Off-ramp Services as described therein.

Section 7 Construction Phase

- 7.1 Generally.
- A. Contractor shall completely perform all of the Work in accordance with this Agreement, the General Conditions, and all Contract Documents.

- B. Unless otherwise provided in the Contract Documents, Contractor shall furnish, or cause to be furnished, and shall pay for all design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.
 - C. Contractor, and its appropriate Trade Contractors and Design Professionals, shall attend meetings with City as frequently as reasonably determined necessary by City or as necessary to the expeditious performance of the Work for the purpose of discussing and resolving design and construction issues which may arise during the Project.
- 7.2 Supervision of Work. Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.
- 7.3 Taxes. Contractor shall pay all sales, consumer, use and similar taxes in connection with the Work. If, in accordance with City's direction, an exemption is claimed for taxes, City agrees to defend, indemnify and hold harmless Contractor from any liability, penalty, interest, fine, tax assessment or other cost incurred by Contractor as a result of any action taken by Contractor in accordance with City's direction.
- 7.4 Permits, Approvals, Licenses and Notices. Contractor shall apply for and obtain, renew or extend, as necessary, all Permits necessary for construction and occupancy of the Project for its intended use. The fees and costs of such Permits shall be paid in accordance with this Agreement as a pass through. If Contractor learns of any other fees and costs for Permits that are necessary for completion or occupancy of the Project, Contractor shall promptly notify City of same and such fees and costs shall, if not waived by City acting in its regulatory capacity, be either be paid by City directly or, if requested by City, shall be paid by Contractor as pass through.
- 7.5 Safety.
- A. Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work. While the provisions of this Section establish the responsibility for safety between City and Contractor, they do not relieve Trade Contractors of their responsibility for the safety of persons or property in the performance of the Work, nor for compliance with Applicable Laws.

- B. Contractor shall seek to avoid injury, Loss or damage to persons or property by taking reasonable steps to protect:
 - (1) Employees and all other persons at the Site;
 - (2) Materials and Equipment stored on the Site or off the Site at locations for use in performance of the Work; and
 - (3) The Project and all property located at the Site, whether or not said property or structures are part of the Project or involved in the Work.
- C. Contractor shall designate an individual at the Site in the employ of Contractor who shall act as Contractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by Contractor in writing to City, the designated safety representative shall be Contractor's Project superintendent.
- D. Contractor shall provide City with copies of all notices required of Contractor by Applicable Laws. Prior to commencement of any Work on the Site, Contractor shall prepare and submit to City a formal, written safety program, which shall comply with the requirements of Governmental Authorities and quasi-Governmental Authorities having jurisdiction over the Project.
- E. If City deems any part of the Work or Site unsafe, City may require Contractor, without assuming responsibility for Contractor's safety program, to immediately stop performance of the Work or take corrective measures. Neither City's order nor Contractor's action in response thereto shall be the basis for adjustment in the Contract Price or Contract Time.

7.6 Submittals.

- A. Generally. In accordance with the Contract Documents and Construction Schedule, Trade Contractors shall submit Submittals, including Shop Drawings, Product Data and Samples, for Contractor's approval and City's review. Contractor shall advise Trade Contractors prior to commencement of Work on the Submittal requirements for the Project. Any variance between a Submittal and the Construction Documents Approved by City shall be specifically identified in the Trade Contractor's Submittals. Contractor's review and Approval shall not relieve a Trade Contractor of its responsibilities to perform the Work in accordance with the Contract Documents unless Contractor and City expressly Approve in writing of such variance. Submittals for iron and steel products shall comply with all requirements of the State Revolving Fund loan from the California State Water Resources Control Board American Iron and Steel requirements, which include but are not limited to:

- clearly naming the manufacturer, the address of the manufacturing plant, and signed by an authorized representative of the manufacturer. Additional information can be found at: <https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>.
- B. Review. City shall have the right, but not the obligation, to review and request corrections to Submittals by Contractor. Contractor shall remain solely responsible for the content of its Submittals notwithstanding any action, review, correction, or Approval by City of such Submittal.
- 7.7 Substitutions. There shall be no substitutions in the Work or procedures or methods specified by the Contract Documents for performing the Work, unless Contractor first receives written Approval for such substitution from City.
- 7.8 Trade Contractors. Contractor shall employ only Trade Contractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Each Trade Contractor, of every Tier, shall be fully bound to the Contract Documents in the same manner as Contractor is bound to City for all the requirements of the Contract Documents to the extent applicable to the Trade Contractor's portion of the Work. Contractor assumes responsibility for the proper performance of the Work of Trade Contractors, of every Tier, and any acts or omissions in connection with such performance. Contractor shall coordinate the activities of all Trade Contractors, of every Tier.

Section 8 Operations Phase

- 8.1 Operations Phase Services. Operations Phase services are included in and are part of this Agreement as described in the Operations Phase Scope of Services. Contractor shall commence the Operations Phase upon completion of the Construction Phase and continue to perform such Work until the end of the Operations Phase in accordance with the requirements as provided in the Operations Phase Scope of Services and the Contract Documents. Contractor shall procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any goods, equipment and materials required under this Agreement. Contractor shall provide transition services, including monitoring and advising on City's operations and maintenance of the facilities build under this Agreement including assisting City in training City staff. Contractor shall provide Operations and Maintenance staff with membrane filtration and reverse osmosis experience. O&M at a minimum shall include: maintenance, electrical, instrumentation & controls, and certified treatment plant operators. Operators shall have current certification by the State Water Resources Operators in Water or Wastewater Treatment. Both Grade III and Grade IV operators are required.

- 8.2 Prevailing Wages. Contractor acknowledges that the prevailing wage and related requirements of the California Labor Code apply to “maintenance work” as defined at California Code of Regulations Title 8, Section 16000 and that the Work performed during the Operations Phase includes such maintenance work. Contractor shall comply with the Labor Code provisions concerning payment of prevailing wage rates, penalties, and retention of payroll records, and related requirements with regard to any employees performing maintenance work as part of the Work performed during the Operations Phase, as may be required by Labor Code section 1771 and California Code of Regulations Title 8, chapter 8, subchapter 3.
- 8.3 Performance Requirements:
- A. Contractor shall meet or exceed the performance requirements during the Operations Phase as provided in the Operations Phase Scope of Services. Contractor’s performance in relation to the Performance Requirements will be assessed on a pass or fail basis against the Operations Phase Scope of Services.
 - B. In addition to the Contractor’s self-monitoring and reporting process, City personnel and the City’s Representative shall also be entitled to identify and remedy Defective Work in accordance with the Contract Documents.
- 8.4 Records and Reporting. Contractor shall prepare all reports as required by the Operations Phase Scope of Services. Contractor shall keep sufficient records of its performance as against the Performance Requirements to enable the City’s Representative to evaluate the performance of the Contractor under the Agreement. Contractor acknowledges that the records required to be kept under this Section of the Agreement will not limit the City’s Representative’s evaluation of the performance of the Contractor under the Agreement and the City’s Representative may consider all such other matters as it considers, in its absolute discretion, to be relevant to the evaluation of the performance of the Contractor under the Agreement.
- 8.5 Inspections. Contractor shall carry out inspections as required by the Operations Phase Scope of Services.
- 8.6 Utilities. Contractor shall provide access to utility companies in order for such utility companies to provide, repair, service and install all utilities required or necessary for Facilities operations.
- 8.7 Relief Events During Operations Phase
- A. Relief Event. A relief event is defined as any act, event or condition (including a change in law) that:

- (1) Materially and adversely increases the cost of the Operations Phase; or
- (2) Materially and adversely increases the performance of the Operations Phase; but as to either (1) or (2):
- (3) Only to the extent such act, event or condition (or the effects thereof) (i) is not due to any Contractor Fault and (ii) could not have been avoided or prevented by due diligence and use of reasonable efforts by Contractor.

B. Relief Event Occurrence. Upon the occurrence of a Relief Event:

- (1) To the extent directly arising out of such Relief Event, any failure by Contractor to perform, and any poor performance of, any affected Operations Phase services will not constitute a breach of this Agreement by the Contractor;
- (2) Contractor shall be relieved of its obligations to perform any Operations Phase services for the duration of the Relief Event and to the extent directly prevented by such Relief Event provided that the Contractor will remain fully responsible and liable for performance, in accordance with the requirements of the Agreement, of such elements of the Operations Phase services not directly impacted or affected by such Relief Event;
- (3) No Contractor Default, right of termination or other claim by the City will arise under the Agreement by reason of any failure by a party to perform any of its obligations under the Agreement, to the extent that such failure is a direct result of the Relief Event;
- (4) No deductions will be applied for any failure to achieve any Performance Requirements directly attributable to such Relief Event; and

8.8 Closeout Requirements

A. Condition of the Facilities on Closeout. Closeout requirements includes all requirements that must be met by the upon transfer of control of the Facility to the City at the end of the Operations Phase so as to be consistent with:

- (1) The Facilities having been designed and built in accordance with the applicable requirements specified in the Pre-construction, Construction, and Operations Phase Scope of Services;
- (2) Contractor having performed the Work during the Operations Phase in accordance with this Agreement; and

- (3) Contractor otherwise having complied with the requirements of this Agreement.
- B. Final Inspection. The City, with the assistance of the Contractor and other parties as required, will perform a joint inspection of the Facilities. The Contractor must produce and deliver to the City a facilities condition report for review and approval by the City, that:
- (1) Identifies the condition and each element and component of the Facilities in relation to the closeout requirements;
 - (2) Includes a performance validation correction list and otherwise complies with the Scope of Services of the Operations Phase; and
 - (3) Identifies any work required to ensure all the elements and components of the Facilities will meet the closeout requirements at the end of the Operations Phase and describes the plan for completion of all such work.
- C. The Contractor must provide or update a project management plan as appropriate to reflect the need for performance of all closeout work.
- D. Contractor must carry out the closeout work subject to the provisions in the Operations Phase Scope of Services and otherwise in accordance with this Agreement.
- E. The Parties will perform further joint inspections in accordance with the Operations Phase Scope of Services.
- F. The Contractor must produce and deliver to the City a final facilities condition report within twenty (20) business days after the end of the Operations Phase documenting compliance with the closeout requirements or describing any compliance failures along with the Contractor's plan to remedy the compliance failure.
- G. If the final facilities condition report identifies any compliance failures, the City may exercise any of its rights under this Agreement and the General Conditions regarding compliance.
- H. Assistance in Transition. Contractor shall do all things reasonably required by the City to ensure the smooth and orderly transfer of responsibility for the Facilities to the City or its nominee at the end of the Operations Phase including:

- (1) Meeting with the City and such other persons notified by the City to discuss the Project;
- (2) Providing access to its operations for the purpose of familiarization;
- (3) Providing sufficient information to the City and its nominee to determine the status and condition of the Project; and
- (4) Complying with the timing and phasing of the Operations Phase Scope of Services and this Agreement and all other Contract Documents.

Section 9 Cost of Work

- 9.1 Onsite Labor Costs. Wages of construction workers directly employed by Contractor to perform Work at the Site or, with City's prior written agreement, at locations located outside of the Site.
- 9.2 Administrative Labor Costs. The following wages or salaries of Contractor's supervisory and administrative personnel:
 - A. when stationed at the Site, or on the road engaged in expediting the production or transportation of Materials or Equipment required for the Work;
 - B. supervisory and administrative personnel listed in Exhibit "[X]" to this Agreement providing services to the Project at the Contractor's principal and branch office(s) provided that such services are verified by contemporaneously maintained time sheets showing the portion of their time devoted exclusively to the Project; and
 - C. an allocable portion of Contractor's branch office project accounting costs devoted to the Project.
- 9.3 Any request for contingency transfer for personnel must be accompanied by substantiating documentation. The rate specified for team members assigned full-time to the project shall not exceed 2080 hours per year. Billable hours for assigned staff beyond an 8-hour day, or beyond forty (40) hours per week, will not be reimbursed. However, overtime and acceleration costs anticipated and agreed upon as part of the Construction GMP shall not be subject to this limitation for those specifically identified items solely. The cost shall not exceed the amount negotiated with Contractor as part of the GMP Addendum for the duration of the Project.
- 9.4 Costs paid or incurred by Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave and medical and health benefits at the agreed, fixed rate (or fee)

- as provided in the GMP Addendum shall be payable as Costs of the Work during the Construction Phase.
- 9.5 Trade Contractor, Design Professional Costs. Payments made by Contractor to Trade Contractors or Design Professionals in performance of the Work in accordance with the requirements of their contracts with Contractor and the Contract Documents.
- 9.6 Costs of Materials and Equipment Incorporated into the Work.
- A. Costs of Materials and Equipment incorporated or to be incorporated into the Work including transportation, inspection, storage, testing and necessary handling.
- B. Costs of materials described in the preceding Section in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess Materials, tools, or Equipment paid for by City, if any, shall be delivered to City at Final Completion of the Work or, at City's option, shall be sold by Contractor. Amounts realized, if any, from such sales shall be credited to City as a deduction from the Cost of the Work.
- 9.7 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.
- A. Costs, including transportation, installation, maintenance, dismantling and removal of Materials, supplies, temporary facilities, machinery, Equipment, and hand tools, not customarily owned by the construction workers, which are provided by Contractor at the Site and fully consumed in the performance of the Work; and cost, less salvage value, on such items if not fully consumed, whether sold to others or retained by Contractor. Cost for items previously used by Contractor shall be at fair market value. Small tool purchases shall be limited to that which is reasonably required for the efficient performance of Work in a manner that avoids unnecessary waste. Monthly small tool purchases having a cumulative value in excess of \$1,000 shall be submitted to City for review and Approval in advance of purchase.
- B. Rental charges for temporary facilities, machinery, Equipment, and hand tools not customarily owned by the construction workers, which are provided by Contractor at the Site, whether rented from Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rental charges for all necessary temporary facilities, machinery, and Equipment, exclusive of hand tools, which are provided by Contractor at the Site, including costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof, whether rented

- from Contractor or others, shall be consistent with the lesser of (i) the rate prevailing at the locality of the Project, or (ii) eighty percent (80%) of the published Caltrans rate. Rates and quantities of Equipment rented shall be subject to City's reasonable prior Approval.
- C. Costs of removal of all non-hazardous substances, debris and waste from the Site which Contractor shall provide notice of to the City immediately and prior to any removal.
 - D. Costs directly related to performance of the Work for reproduction; telegrams; long distance telephone calls; postage and express delivery charges; and use of Project listed supervisory and administrative personnel cellular telephones. Costs of the following used at the Contractor's offices located at the Site: telephone service; computer system charges; cable charges; computers (PC's) software license fees; and plotter/printers; and reasonable petty cash expenses.
 - E. That portion of the reasonable travel and subsistence expenses of Contractor's personnel incurred while traveling in discharge of duties connected with the Work, including vehicle expenses and associated fuel charges. Maximum individual per diem expenses related to travel shall be based on the domestic per diem rates for travel, meals and lodging for that location as established by the U.S. General Services Administration (GSA). Alcohol is not reimbursable.
 - F. Reasonable costs and expenses of establishing, operating, mobilizing and demobilizing the Contractor's office located at the Site.
- 9.8 Miscellaneous Costs.
- A. That portion or pro rata share directly attributable to the performance of the Work of the premiums for insurance, bonds purchased by Contractor, and subcontractor default insurance (SDI) purchased by Contractor and bonds purchased by those Trade Contractors whose subcontract prices exceed One Hundred Thousand dollars (\$100,000). Costs of SDI or bonds purchased by any Trade Contractor whose subcontract price is equal to or less than One Hundred Thousand dollars (\$100,000) shall be reimbursable as a Cost of Work only if approved in advance by City, which approval shall not be unreasonably withheld. SDI shall be charged at a rate of 1.1% of subcontract value enrolled in the SDI program and payable at the onset of Work.
 - B. Costs for Insurance Premiums. Costs for premiums for Insurance required to be purchased pursuant to the Contract Documents.

- C. Sales, gross receipts, use or similar taxes and business license fees imposed by a Governmental Authority, which are related to the Work and for which Contractor or its Trade Contractors are liable and which would not have been imposed in the absence of Contractor performing the Work.
 - D. Royalties and license fees paid for the use of a particular design, process or product expressly required by the City, provided that Contractor notified City, in writing, that a royalty payment would be necessary to use the design, process, or product. Costs of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product that City has "expressly required" to use in the Work, and paying legal judgments against Contractor resulting from such suits or claims and paying settlement thereof made with City's Approval. A design, process, or product contained in the Bridging Documents or in any Construction Documents Approved by City shall not be interpreted as being "expressly required" by City for purposes of this Section unless Contractor has requested that an alternative and equal design, process or product be used and such request has been denied by City.
 - E. Deposits lost, except to the extent that such loss was caused by the negligence of Contractor or a Trade Contractor or the failure of Contractor to comply with the requirements of the Contract Documents.
 - F. Utilities, including electrical, water, sewer and other utilities until installation of the permanent power system to the Project and the energizing of that system.
 - G. Governmental fees for permits, approvals, or inspections for which Contractor is responsible pursuant to this Agreement.
 - H. Sums payable by City to Contractor for Compensable Delay.
 - I. Sums payable to Contractor for lump sum performance of self- performed Work on the basis of the lump sum price Approved by the City in accordance with this Agreement.
- 9.9 Other Costs. Other costs incurred in the performance of the Work if and to the extent Approved in advance in writing by City.
- 9.10 Emergencies. Costs incurred in taking action, not necessitated by any fault or neglect on the part of Contractor or its Trade Contractors or Design Professionals to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

- 9.11 Warranty Inspections, Commissioning. Warranty inspections, post-completion services and commissioning services shall be payable as a lump sum, to be negotiated as part of the GMP Addendum.

Section 10 Costs not to be reimbursed

- 10.1 The Cost of the Work shall not include and Contractor shall not be reimbursed for the following:
- A. Except as provided above, salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or other offices (other than Contractor's offices located at the Site), including without limitation employees, salaries and other expenses of supervision and administration of progress, schedule, and cost control.
 - B. Payments to employees or personnel assigned to the Project, whether located or working on the Site or at other locations, for bonuses, incentives, 401(k) plans or pension plans.
 - C. Except as provided above, expenses of Contractor principal, branch and district offices, other than Contractor offices located at the Site including, without limitation, supervision of the Work by personnel, and costs of copying, transmissions, office equipment and supplies, located or generated at Contractor's principal, branch and district offices.
 - D. Profit, overhead and general and administrative expenses, of any kind, including without limitation general accounting (except as otherwise provided in Section 9), auditing, tax preparation, and insurance administration.
 - E. Except as provided in above, costs and expenses for travel and subsistence incurred by employees above the level of project manager and relocation costs of employees, whether assigned to work at the Site or at other locations.
 - F. Contractor's capital expenses, including interest on Contractor capital employed for the Work.
 - G. All attorney's fees and expenses of litigation, except to the extent permitted under the terms of this Agreement.
 - H. Except as clarified above, Costs and expenses of computers, except for individual personal computers (PC's) and other special equipment (such as plotters for scheduling) in use at the Site for the sole benefit of the Project.
 - I. Rental costs of machinery and Equipment, except as specifically permitted above.

- J. Costs associated with the performance, testing, inspection, repair or replacement of Defective Work, or Losses resulting from therefrom, including without limitation any costs incurred in performance of any warranty or guarantee obligation.
- K. Except as provided in above, costs of business licenses and dues, assessments and contributions to technical or trade associations or for representation in collective bargaining
- L. Costs of insurance on tools or Equipment owned or rented by Contractor that are not furnished to or used for the Project; taxes assessed against property or Equipment of Contractor that is not incorporated into the Work; and taxes on gross income.
- M. Costs incurred by Contractor or any Trade Contractor or Design Professional, as a result of Delay, except to the extent expressly permitted by this Agreement for Compensable Delay and except as may be paid from Contractor Contingency in accordance with this Agreement.
- N. Costs that would cause the Contract Price to be exceeded except as adjusted by Change Order(s).
- O. The cost for any item not specifically and expressly listed as a Cost of the Work in Section 9.
- P. Any cost or expense incurred as a result of any violation of any term or condition of this Agreement or any other Contract Document, including without limitation the failure to obtain or maintain required insurance coverage.
- Q. Building permit fees, grading permit fees, plan check fees and other fees not related to the permitting of construction for the Project.
- R. Expenditures from Contractor or City Contingency that are not Approved by City in writing in advance pursuant to this Agreement
- S. Costs or expenses that are expressly stated in any portion of the Contract Documents to not be a Cost of the Work, or that Contract Documents expressly require to be borne by Contractor at its own expense.
- T. Costs or expenses incurred as a result of the reschedule of labor, strikes, or slowdowns
- U. Administrative fines or penalties levied by any government agency related to the Work performed.

V. Liquidated damages assessed pursuant to Section 5.7 of this Agreement.

W. Any costs incurred in whole or in part arising from the willful misconduct of the Contractor or any of its Trade Contractors.

Section 11 Discounts Rebates and Refunds

Cash discounts obtained on payments made by Contractor shall accrue to City if, before making the payment, Contractor included the cost of the item(s) in an Application for Payment and received payment therefore.

Section 12 Contractor Fee

12.1 Construction Phase. The Contract Price for the Construction Phase includes the following Contractor Fees:

- A. An engineering fee not to exceed \$2,389,000 paid on a time and materials basis for all Construction Phase engineering services;
- B. A general conditions fee not to exceed \$3,605,000 paid on a time and materials basis for all Construction Phase General Conditions Costs;
- C. Profit and overhead of 10% of the direct construction costs.

12.2 Operation Phase. The Contract Price includes fees for the performance of the Operations Phase services which shall be proposed as party of the GMP Proposal and incorporated into the GMP Addendum as approved by the City.

Section 13 Schedule of Values.

13.1 Content. Contractor shall submit to City a Schedule of Values in sufficient detail as City may, in its discretion, deem necessary to evaluate progress at any point in the performance of the Work, including a breakdown of the general categories of Costs of Work, Contractor Fee and Contractor Contingency that corresponds to the trade category breakdown thereof. The Schedule of Values must be prepared in sufficient detail and supported by such data to substantiate its accuracy as City may require.

13.2 Buy Out, Updating, Contingency Transfers. Line items that are based on estimates shall be designated as "estimates". No less frequently than monthly, the Schedule of Values shall be updated by Contractor and submitted to City for its review and Approval. Without limitation, such updating shall include replacing estimates with actual subcontract, purchase order or vendor prices, as soon as such prices are available. If the amount of the actual subcontract, purchase order or vendor price for a trade line item in the Schedule of Values is, due to estimating errors or omissions by Contractor or its Trade Contractors,

greater than Contractor's estimate for that same line item, then the amount of Contractor Contingency shown in the Schedule of Values shall be decreased by the difference. Conversely, if the amount of the actual subcontract, purchase order or vendor price for any line item is less than Contractor's estimate for that same line item, then amount of Contractor Contingency shown in the Schedule of Values shall be increased by the difference. If the actual Costs of Work charged to Contractor by the Trade Contractor for such portion of the Work exceeds the amount of such trade line item due to circumstances not constituting grounds for adjustment of the Contract Price by Change Order and such excess constitutes Costs of Work for which Contractor is entitled, with approval by City, to utilize from the Contractor Contingency, then the amount of the Contractor Contingency shall be decreased and the line item amount increased by such excess amount. Conversely, if the actual Costs of Work charged to Contractor for such portion of the Work is less than the amount of such trade line item, then the Contractor Contingency shall be increased by such savings amount. Each transfer to and from the Contractor Contingency as permitted by this Section shall be clearly delineated in the Schedule of Values so that City can monitor each such transfer. Prior to the any release of any contingency funds, each contingency request shall be submitted for city review and consideration. The request shall state the contractors reasoning for request of contingency transfer and will be accompanied by the substantiating back up documentation in support of such reasoning. Nothing herein shall be interpreted as authorizing any expenditure from the Contractor or City Contingency that is otherwise prohibited by this Agreement.

- 13.3 Use for Payment. The Schedule of Values, when Approved by City, shall be used as a basis for Contractor's Applications for Payment. Once a month, Contractor and City will meet to estimate the percentage complete, projected through the end of the month, under each line item. Progress payments will be based upon verifiable Costs of Work. City acknowledges that, except as otherwise expressly provided in this Agreement or the General Conditions, Contractor does not guarantee the amounts of individual line item amounts in the Schedule of Values.

Section 14 Progress Payments.

- 14.1 Application for Payment.
 - A. Marked Schedule of Values. Contractor shall submit to City a copy of the Schedule of Values, marked in pencil to show the percentage of completion certified by Contractor for each line item in the Schedule of Values, including a list of stored Materials Approved by City for inclusion in the Application for

- Payment, any reduction in retention Approved by City, and any withholdings from Contractor proposed by City at least seven (7) days before the Payment Review Meeting.
- B. Payment Review Meeting. At a meeting held on or about the twenty- fifth (25) of each month, Contractor, and the City will review Contractor's Application for Payment including percentages of completion and other payment issues and endeavor to agree on a final amount to be paid for that month. In the event they are unable to agree, then the amount to be paid shall be determined, in good faith, by City, which determination shall be communicated to Contractor no later than the last Day of the month in which the Payment Review Meeting was held. The percentages and other pay items will be input into a master spreadsheet by Contractor, who will then prepare a summary Application for Payment for the month, supported by the detailed back-up material. Review of the Application for Payment should reconcile contract buyouts and consequent line item adjustments in addition to Contractor Contingency changes. Any proposed use of the Contractor Contingency will be reviewed through submittal on a form approved by the City. Requests will be approved or denied.
- C. Application for Payment. Following agreement on percentages of completion and not later than ten (10) days after the last Day of the month in which the Payment Review Meeting occurs, Contractor shall submit three copies of the summary Application for Payment to the City. Each Application for Payment shall be accompanied by (i) statutory forms of conditional lien, stop notice and bond waiver and release, complying with Applicable Laws, for all Work performed during the time period covered by the current application, signed by Contractor and its Trade Contractors and Design Professionals, conditionally releasing all lien, bond, and stop notice rights, and (ii) statutory forms of unconditional lien, stop notice and bond waiver and release, complying with Applicable Laws, for all Work paid and performed during the time period covered by the previous application, signed by Contractor and (iii) statutory forms of unconditional lien, stop notice and bond waiver and release, complying with Applicable Laws, for all Work performed and paid forty-five (45) or more days prior to the current Application for Payment, from Contractor's Trade Contractors and Design Professionals, unconditionally releasing all lien, bond and stop notice rights. Contractor shall preserve and maintain the original signed statutory forms of conditional and unconditional lien, stop notice and bond waiver and releases, which documentation shall be available for review by City or City upon reasonable notice during normal business hours.

D. Certification. The signing of an Application for Payment will constitute a representation and certification by Contractor to City that (i) the data comprising the application for payment is accurate and the Work has progressed to the point indicated; (ii) to the best of Contractor's knowledge, information and belief, the Work is in accordance with the Contract Documents; (iii) Contractor is entitled to payment in the amount certified; and (iv) all sums previously applied for by Contractor on account of Work performed by Trade Contractors and that have been paid by City have (unless otherwise agreed in a writing between City and Contractor a true and correct copy of which is attached to the certification) been paid to the Trade Contractors performing such Work, without any retention beyond the retention permitted by law and reflected in the Application for Payment, withholding or back charge by Contractor.

14.2 Payment.

A. Timing. Subject to the retention provisions of this Agreement, amounts requested by Contractor for payment pursuant to an Application for Payment properly prepared and submitted in accordance with the Contract Documents that are not disputed in good faith by City shall be paid within forty-five (45) Days after receipt of such Application for Payment from Contractor.

B. Rejection. Application for Payments that are rejected shall be returned to Contractor within fourteen (14) Days after receipt along with a statement of the reasons for the rejection; provided, however, that failure by City to either timely reject an Application for Payment or specify any grounds for rejection shall not constitute a waiver of rights by City. Application for Payments that are rejected shall be corrected and resubmitted within seven (7) Days after receipt by Contractor of such statement by City.

C. Joint Payment. City reserves the right to make any payment to Contractor, after written notice to Contractor, by checks jointly payable to Contractor and its Trade Contractors or Design Professionals; provided, however, that nothing herein shall be construed as limiting City's right, following City's furnishing of notice and opportunity to be heard, to directly discuss, negotiate, settle or pay, without further notice to or participation by Contractor, any stop notice claims asserted by Trade Contractors or Design Professionals.

D. Payment for Stored Materials. Payments may be made by City, at its discretion, on account of Materials or Equipment not incorporated into the Work but delivered to the Site and suitably stored by Contractor. Payments for Materials or Equipment stored shall only be considered upon submission by Contractor of satisfactory evidence that it has acquired title to same, that the Material or

Equipment will be utilized in the Work and that the material is satisfactorily stored, protected and insured, or such other procedures satisfactory to City to protect City's interests. Materials or Equipment stored off-site, to be considered for payment, shall, in addition to the above requirements and unless otherwise specifically Approved by City, be stored in a bonded warehouse, fully insured, and available to City for inspection.

- 14.3 Withholding. In addition to the amounts which City may retain as provided below, City may withhold a sufficient amount from any payment or payments otherwise due to Contractor as in City's sole discretion may be necessary to protect City against actual or threatened Loss in the event of any of the following:
- A. Third-Party Claims. Third-party claims or stop notices filed or reasonable evidence indicating probable filing of such claims or stop notices;
 - B. Defective Work. Defective Work not remedied;
 - C. Nonpayment. Failure of Contractor to make proper payments to its Trade Contractors, Design Professionals or others for services, labor, Materials or Equipment;
 - D. Inability to Complete. The following circumstances have occurred: (i) City has evidence of grounds for reasonable doubt that the Work can be completed for the balance of payments then unpaid to Contractor, and (ii) Contractor has failed to provide to City, within fifteen (15) Days of request by City, adequate security, in the form of escrowed funds or demand letter or credit, satisfactory to City assuring City that funds will be available for payment of sums in excess of the Contract Price that may be reasonably needed to complete the Work within the Contract Time;
 - E. Violation of Law. Failure of Contractor or its Trade Contractors or Design Professionals to comply with any lawful or proper direction concerning the Work given by any representative of City authorized to have given such instruction;
 - F. Penalty. Any claim or penalty asserted against City by virtue of Contractor's failure to comply with Applicable Laws;
 - G. Failure to Meet Contract Time. Any liquidated damages which may accrue as a result of Contractor failing to substantially complete the Work within the Contract Time;

- H. Set Off. Any reason specified elsewhere in the Contract Documents as grounds for a retention or that would legally entitle City to a set-off, credit, or recoupment; or
- I. Other Breach. Any breach of this Agreement or any provision of the other Contract Documents.

14.4 Disbursement of Withheld Amounts.

- A. Losses by City. City, in its reasonable discretion, after providing the notice to Contractor required by this Agreement, may apply any withheld amount to the payment of any Loss that is the cause of a withholding of funds. Contractor agrees and hereby designates City as its agent for such purposes, and any payment so made by City shall be considered as a payment made under this Agreement by City to Contractor. City shall not be liable to Contractor for any such payment made in good faith and following reasonable investigation. Payments may be made without a prior judicial determination of City's actual rights with respect to such Loss. City shall render to Contractor an accounting of any funds disbursed on behalf of Contractor.
- B. Notice of Grounds. Prior to applying such amounts as stated herein above, City shall afford Contractor an opportunity to present good cause, if any, why the Loss in issue is not a valid or just basis for withholding against Contractor.
- C. Continuous Performance. Provided City pays the undisputed portion, if any, of funds withheld in good faith, Contractor shall maintain continuous and uninterrupted performance of the Work during the pendency of any disputes or disagreements with City over withholding of disputed funds.

14.5 Correction of Statement and Withholding of Payment. No inaccuracy or error in any Application for Payment provided by Contractor shall operate to release Contractor from the error, or from damages arising from the Work, or from any obligation imposed by the Contract Documents. City retains the right to subsequently correct any error made in any previously Approved Application for Payment, or progress payment issued, by adjustments to subsequent payments.

14.6 Deposits in Lieu of Withholding.

- A. Substitution of Securities. At the request and expense of Contractor, a substitution of securities may be made as found in Government Code Section 16430 and as authorized by the Public Contract Code Section 22300 in lieu of monies retained by City to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract

- Documents for each Application for Payment shall be deposited by Contractor with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow agreement until Final Payment is due in accordance with the Contract Documents. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. Contractor shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.
- B. Escrow Deposit. Alternatively, at the request and expense of Contractor, City shall deposit retention directly with the Escrow Agent. Contractor may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by Contractor.
 - C. Escrow Agreement. A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by Contractor, City and Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention form provided by City. The terms of any such escrow agreement are incorporated into the requirements of this Agreement.
- 14.7 Effect of Progress Payments.
- A. Withholding. Neither the payment, the withholding nor the retention of all or any portion of any progress payment claimed to be due and owing to Contractor shall operate in any way to relieve Contractor from its obligations under the Contract Documents. Contractor shall continue diligently to prosecute the Work without reference to the payment, withholding or retention of any progress payment. City shall pay all sums that are due and owing and not in dispute. The partial payment, withholding or retention by City in good faith of any disputed portion of a progress payment, whether ultimately determined to be correctly or incorrectly asserted, shall not constitute a breach by City of this Agreement and shall not be grounds for an adjustment of the Contract Price or Contract Time.
 - B. Payments by Contractor. Contractor shall not include in its Applications for Payment sums on account of any Trade Contractor's or Design Professional's portion of the Work that it does not intend to pay to such Trade Contractor or Design Professional. Upon receipt of payment from City, Contractor shall pay the Trade Contractor or Design Professional performing Work on the Project, out of the amount paid to Contractor on account of such Trade Contractor's or Design Professional's Work, the amount to which said Trade Contractor or

Design Professional is entitled in accordance with the terms of its contract. A withholding by City pursuant to the Agreement and General Condition and that is consistent with Applicable Law shall not relieve Contractor of its obligation to promptly satisfy, from its own funds if necessary, sums due to Trade Contractors and Design Professionals who have properly performed Work that is included in Contractor's Application for Payment. Contractor shall, by appropriate agreement with each Trade Contractor or Design Professional, require each Trade Contractor or Design Professional to make payments to its subcontractors and suppliers in a similar manner. City shall have no obligation to pay or be responsible in any way for payment to a Trade Contractor or Design Professional of Contractor.

- C. No Acceptance. No progress payment or partial or entire use or occupancy of the Project by City shall constitute an Approval or Acceptance of Work not in accordance with the Contract Documents.
- D. Warranty. Submission of an Application for Payment shall constitute a representation and warranty by Contractor that: (i) title to Work covered by an Application for Payment will pass to City either by incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first; (ii) Work covered by previous Applications for Payment are free and clear of liens, stop notices, claims, security interests or encumbrances; and (iii) no Work covered by an Application for Payment has been acquired by Contractor, or any other person performing or furnishing Work at the Site, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Contractor or such other person.

14.8 Final Payment.

- A. Retention. A sum equal to five percent (5%) of all Costs of Work and Contractor Fees, during the Construction Phase, otherwise due to Contractor as progress payments shall be withheld by City from each progress payment and retained until such time as Final Payment for the Construction Phase is due.
- B. Final Payment Due. Final Payment shall not become due until sixty (60) Days after Acceptance, Final Completion and satisfaction by Contractor of all conditions to Final Payment, including, without limitation, submission to City of the following:

- (1) an Application for Final Payment and affidavit signed by an officer of Contractor that payrolls, bills for Materials and Equipment, and other indebtedness connected with the Project for which City or City's property or funds might be liable, (excepting those payrolls, bills and other debts in connection with Work for which Contractor has not been paid by City under the Contract Documents) have been paid or otherwise satisfied,
 - (2) consent of surety, if any, to Final Payment,
 - (3) a certificate that insurance required by the Contract Documents is in force following Final Completion of the Work,
 - (4) conditional releases and waivers of lien, stop notice and bond rights upon final payment, complying with Applicable Laws, executed on behalf of itself and all Trade Contractors and Design Professionals;
 - (5) all record and "as-built" drawings of the Project;
 - (6) all operations and maintenance manuals;
 - (7) warranties have been provided by Contractor and Material providers and Trade Contractors; and
 - (8) any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion.
- C. Acceptance of Final Payment. Acceptance of Final Payment by Contractor shall constitute a waiver of all claims by Contractor against City excepting only those Claims that have been submitted by Contractor in the manner required by the Contract Documents prior to or at the time of Contractor's submission to City of its Application for Final Payment.
- D. Delay in Certificate of Occupancy. If Contractor has satisfied all of the requirements of the Contract Documents pertaining to Substantial and Final Completion of the Work, save and except for obtaining the issuance of a certificate of occupancy, then the City's obligation to make payment upon an Application for Final Payment that has been properly prepared and submitted in accordance with the Contract Documents shall not be excused or postponed because the City, acting in its regulatory capacity, has not, for reasons other than the negligence of Contractor or its Trade Contractors or Design Professionals or the failure of Contractor to comply with the Contract Documents, failed to issue a certificate of occupancy for the Project.

Section 15 Accounting Records

- 15.1 Access. Contractor shall keep, and shall include in its contracts with its Trade Contractors and Design Professionals, provisions requiring its Trade Contractors and Design Professionals to keep, full and detailed accounts in accordance with the requirements of the Contract Documents and exercise such controls as may be necessary for proper financial management of the Work. Such accounting and control systems shall comply with prevailing custom and practice for similar Projects and be satisfactory to City and shall include preservation of such records for a period of four (4) years after Final Completion of the Work, or for such longer period as may be required by law.
- 15.2 Trade Contractors, Design Professionals. Contractor shall allow, and shall include in its contracts with its Trade Contractors and Design Professionals provisions requiring its Design Professionals and Trade Contractors to allow, City or its authorized representative(s) and accountants, within twenty-four (24) hours after requested by City, to inspect, audit or reproduce any and all records relating to the Project for the purpose of verifying Contractor's costs and payments, including, without limitation, costs of Trade Contractors or Design Professionals for Work performed on a time and materials basis or relating to Charges or Claims. Such records shall include all information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project, including without limitation the following: agreements; purchase orders; leases; contracts; commitments; arrangements; notes; schedules; daily diaries; superintendent reports; drawings; receipts; vouchers; memoranda; accounting records; job cost reports, job cost files (including documentation covering negotiated settlements); back charge logs; general ledgers; documentation of cash and trade discounts earned, insurance rebates and dividends; any documents customarily maintained by contractors performing Work on a cost plus a fee basis; other documents that City otherwise deems necessary to substantiate charges or Claims related to the Project.
- 15.3 Withholding. Contractor's compliance with this Section shall be a condition precedent to maintenance of any arbitration or legal action by Contractor against City. In addition to other provisions for withholding set forth in the Contract Documents, City shall have the right, in its sole discretion to withhold from any payment to Contractor an additional sum of up to ten percent (10%) of the total amount set forth in Contractor's current, unpaid Application(s) for Payment, until Contractor has substantially complied with any outstanding and unsatisfied request by City for audits under this Section. Upon Contractor's

compliance with this Section, any additional monies withheld pursuant to this Section shall be released to Contractor.

- 15.4 Enforcement. Contractor hereby consents and agrees that any failure by Contractor to provide access to records as provided in this Section shall be specifically enforceable by issuance of a preliminary and/or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony, to compel Contractor to permit access, inspection, audit and/or reproduction of the records or to require delivery of the records to City for inspection, audit and/or reproduction.

Section 16 Indemnity

- 16.1 General Indemnity. To the fullest extent allowed by law (including, without limitation California Civil Code Section 2782.8), Contractor hereby agrees to defend, indemnify, and hold harmless City, its board and City Council members, commissioners, officers, agents, employees, representatives, insurers and volunteers (hereinafter collectively referred to as "Indemnities") through legal counsel acceptable to City, from and against any and all losses, costs, liabilities, claims, damages, actions, judgments, settlements, expenses, defense costs, reasonable attorneys' fees, costs, fines and penalties ("Losses") that arise out of, pertain to or relate to, any of the following:
- A. any act or omission (negligent, reckless, misconduct or otherwise) of Contractor, or by its Trade Contractors or Design Professionals;
 - B. performance or nonperformance of any portion of the services pursuant to the Contract Documents or Work by Contractor, or by its Trade Contractors or Design Professionals;
 - C. performance or nonperformance by Contractor or its Trade Contractors or Design Professionals or its subcontractors, or its consultants, of any of the obligations under this Agreement or the other Contract Documents;
 - D. the design or construction or operations activities of Contractor, or its Trade Contractors or Design Professionals, either on the Site or on other properties, in connection with or related to the performance of or the preparation to perform the Work;

- E. the payment or nonpayment by Contractor, or by any of its Trade Contractors or Design Professionals, for Work performed on or off the Site for the Project; or any personal injury, property damage or economic Losses to third persons or entities associated with the performance or nonperformance by Contractor, or any of its Trade Contractors or Design Professionals; or
 - F. any alleged violation or infringement of patent rights, copyrights or other intellectual property rights.
 - G. Notwithstanding the foregoing, nothing contained herein shall be construed as obligating Contractor to indemnify any Indemnitee for Losses resulting from its sole negligence, active negligence or willful misconduct of the Indemnitee. Contractor shall pay City for any costs incurred in enforcing the defense and/or indemnity obligations under this provision. Nothing in this Section shall be construed to give rise to any implied right of indemnity in favor of Contractor against City or any other Indemnitee.
- 16.2 Survival. The provisions of Section shall survive complete performance or termination of this Agreement.
- 16.3 Severability. The invalidity of any portion of this Section shall not affect or render unenforceable any other portions thereof.

Section 17 Insurance

Prior to commencing work, Contractor must procure, maintain and pay for insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance by Contractor or Contractor's agents, representatives, employees or sub consultants pursuant to this Agreement. Contractor must obtain insurance that, at a minimum, meets the requirements for insurance set forth in the Contractor Insurance Requirements.

Section 18 Bonds

- 18.1 Bond Forms. Prior to commencing any construction of the Work, Contractor shall file with City a good and sufficient labor and material payment bond (Payment Bond) and performance bond (Performance Bond) in the amount of one hundred percent (100%) of the Contract Price. Such Bonds shall be on forms satisfactory to and Approved by City, signed by both Contractor and surety and properly notarized. Should the Payment or Performance Bonds required hereunder or any surety on such Bonds become or be determined by City to be insufficient, it shall be replaced within ten (10) Days by a bond that fully complies with the requirements of this Section. No further payments to Contractor for Work performed shall be made or become due until Contractor has fully complied with the requirements of this Section.

- 18.2 Duration. The Payment Bond shall remain in effect until Final Completion of the Work and all claims by Contractor, Trade Contractors, and Design Professionals, have been satisfied. The Performance Bond shall remain in effect for the duration of the period of all warranties required by the Contract Documents and shall assure faithful performance of all of Contractor's obligations under the Contract Documents, including, without limitation, all obligations that survive Final Completion or termination, such as but not limited to Contractor's obligations under its warranties, guarantees, commissioning and defense and indemnification.
- 18.3 Surety companies issuing Payment and Performance Bonds pursuant hereto shall be, on the date the Performance and Payment Bonds are issued and at all times while the Bonds are in effect, be a California admitted surety or listed in the latest published United States Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" and have a current A.M. Best Rating of no less than A:6.
- 18.4 Premiums. The premiums for the Performance and Payment Bonds are included in the Contract Price to be paid as a Cost of Work.
- 18.5 Obligees. The Performance and Payment Bonds shall name City as obligee.
- 18.6 Changes. Change Orders, Field Orders, Modifications, Scope Changes and other changes in the Work and adjustments to the Contract Price or Contract Time shall in no way release or exonerate Contractor or its sureties from their obligations and notice thereof shall be waived by such sureties. The amounts of the Performance and Payment Bonds provided by Contractor shall be increased as and when Change Orders are executed to reflect increases in the Contract Price due to Change Orders.
- 18.7 Communications. City shall have the right to communicate with Contractor's sureties with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Such communications shall not create or be interpreted as creating any contractual relationship between City and any such surety.

Section 19 Change Orders

- 19.1 Changes. City has the right, in its sole discretion, to make whatever Changes it deems necessary or desirable to the Work. No Change ordered by City shall entitle Contractor to an adjustment increasing the Contract Price or Contract Time unless it constitutes a Scope Change or Compensable Delay.

- 19.2 Change Orders. A Change Order is a written order signed by City and Contractor, and issued after execution of this Agreement, authorizing an adjustment in the Contract Price and/or Contract Time in accordance with the procedures and requirements of this Agreement and the General Conditions. The Contract Price and Contract Time can be adjusted only by Change Order. No action, conduct, omission, prior failure or course of dealing by City shall act to waive, modify, change or alter the requirement that Change Orders must be in writing signed by City and that such written Change Orders are the exclusive method for effecting any adjustment to the Contract Price and Contract Time.
- 19.3 Negotiation of Price. City and Contractor shall each use their best efforts to agree in good faith upon the amounts of any adjustment to the Contract Price and Contract Time by Change Order. In the event they are unable to so agree, the amount of such adjustment shall be reasonably and unilaterally determined by City in accordance with the General Conditions.
- 19.4 No Abandonment. Contractor acknowledges that it is within the contemplation of the parties hereto that Changes (including, without limitation, Scope Changes and deletions of Work) may be made to the Project and in recognition of that fact agree that under no circumstances shall any requests by City for such Changes, regardless of their individual or cumulative number, value or size, entitle Contractor to terminate this Agreement or constitute a grounds for asserting that there has been an abandonment, cardinal change or rescission of this Agreement.

Section 20 Default

- 20.1 Default by Contractor.
- A. Notice of Default. Without limitation to any of City's other rights or remedies at law or in equity, City shall have the right to terminate this Agreement in the event that Contractor fails or refuses to perform any of the obligations set forth in this Agreement, the General Conditions or the other Contract Documents, and fails to cure such default in the manner required hereafter.
- B. Opportunity to Cure Default. Contractor shall cure any default in performance of its obligations under the Contract Documents within seven (7) Days after receipt of written notice of such default from City; provided, however, that if the breach cannot reasonably be cured within such time then Contractor will commence to cure the breach within seven (7) Days and will diligently and continuously prosecute such cure to completion within a reasonable time period. If Contractor fails to cure such default within the time period provided above in this Section, then City shall, prior to exercise of its rights and remedies

for default, notify Contractor in writing of Contractor's failure to cure and shall afford Contractor an additional seven (7) Days to complete its cure. No further written notice shall be required of City as a condition of its exercise of its rights or remedies under law or in equity, including, without limitation, its rights and remedies below.

- C. Emergencies. City shall have the right to shorten the periods of time set forth in this Section in the event that the default involves an emergency. Such shortening of the periods of time set forth above shall in all cases be reasonable based on the circumstances of the emergency.

20.2 City's Rights and Remedies Upon Default.

- A. Remedies Upon Default. In the event that Contractor fails to cure any breach of this Agreement within the time periods set forth above, then City may pursue any remedies available under law or equity, including, without limitation, the following:

- (1) Delete Certain Work. City may, without terminating this Agreement, delete certain portions of the Work, reserving to itself all rights to recover Losses related thereto.
- (2) Perform and Withhold. City may, without terminating this Agreement, engage others to perform the Work or portion of the Work that has not been performed by Contractor and withhold the cost thereof to City from future payments to Contractor, reserving to itself all rights to recover Losses related thereto.
- (3) Suspend this Agreement. City may, without terminating this Agreement and reserving to itself all rights to recover Losses related thereto, where reasonably required to protect against Loss to City or to the public, without terminating this Agreement order a suspension of all or any portion of this Agreement for as long a period of time as City determines, in its sole discretion, appropriate, in which event City shall have no obligation to adjust the Contract Price or Contract Time, and shall have no liability to Contractor for adjustment to the Contract Price or Contract Time, or for Losses, if City directs Contractor to resume Work.
- (4) Terminate this Agreement. City may terminate all or any part of this Agreement for cause according to the notice provisions set forth in this Agreement, reserving to itself all rights to recover Losses related thereto.

- (5) Invoke the Performance Bond. Provided that City has declared Contractor to be in default, City may, with or without terminating this Agreement and reserving to itself all rights to recover Losses related thereto, exercise its rights under the Contractor's performance bond.
- B. Rights Cumulative. All of City's rights and remedies under this Agreement are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as "material" shall not be construed as implying that other breaches not so designated are not material nor shall such designations be construed as limiting City's right to terminate or the exercise of its other rights or remedies for default to only material breaches. City shall determine whether there has been noncompliance with the Contract Documents so as to warrant exercise by City of its rights and remedies for default. Should Contractor disagree with the City's determination relative to non-compliance and material breaches Contractor shall submit its Claim or dispute in accordance with Section 23. No termination or action taken by City after termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all Losses suffered by City.
- C. Monies. Unless the Contractor's surety undertakes the completion of the Work in accordance with the terms of this Agreement and its Bonds, in the event of a termination or suspension of all or a portion of the Work due to a default by Contractor, City shall have the right, without releasing Contractor or its sureties from liability for failure to fulfill this Agreement, to withhold all or a portion of the monies owing or retained until Final Completion of the Work. Any cost over and above the Contract Price arising from the suspension of operations of this Agreement and the completion of the Work shall be paid by Contractor's sureties. Contractor will be paid any surplus monies remaining after all Contract Disputes have been resolved and finally determined.
- D. Delays by Sureties. Without limitation to any of City's other rights or remedies under the law or in equity, City has the right to suspend Contractor's sureties' right to perform the Work if such sureties fail to perform their obligations under this Agreement or the Bonds.
- E. Contractor Obligations. Upon receipt of a notice of termination for default, Contractor shall, unless the notice states otherwise, perform each of the obligations set forth in Section 22, below.

F. Damages to City.

- (1) Reservation of Remedies. City will be entitled to all damages available under the law, and all rights in equity, in the event of Contractor's breach of this Agreement or the other Contract Documents.
- (2) Deductions. If City suffers a Loss due to Contractor's nonperformance, then such Loss shall be deducted from the amounts withheld. Should the amount withheld exceed the amount deducted, the balance will be paid to Contractor or its designee upon completion of the Project. If the Loss incurred by City exceeds the amount withheld, Contractor shall be liable to City for the difference and shall promptly remit same to City.

Section 21 Suspension

- 21.1 Suspension by City for Convenience. City may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for a continuous period of up to one hundred and twenty (120) Days, with such period of suspension to be computed from the date of the City's written order. Upon receipt of a suspension order as described in this Section, Contractor shall, at City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the suspension order during the period of Work stoppage. Within the above-stated period of time, or such extension to that period as is agreed upon by Contractor and City, City shall either cancel the suspension order or it shall have the right, without incurring a liability to Contractor for lost profits or consequential damages, to delete the Work covered by such suspension order by issuing a Change Order.
- 21.2 Resumption. If a suspension order issued is canceled or expires, Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Price and/or the Contract Time necessarily caused by such suspension and permitted under the Contract Documents.
- 21.3 Suspension Order Required. The provisions of this Section shall not apply if a suspension order is not issued by City. A suspension order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.
- 21.4 Compensable Delay. A Delay to Substantial Completion due to a suspension ordered by City pursuant to this Section shall constitute a Compensable Delay.

Section 22 Termination

22.1 Termination by City Without Cause. City shall have the option, at its sole discretion for its convenience and without cause, to terminate this Agreement in part or in whole by giving thirty (30) Days' written notice to Contractor as provided herein. Contractor agrees to accept such sums as allowed under this Section as its sole and exclusive compensation and waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect, incidental Losses or damages, of any kind.

A. Contractor Obligations. Upon receipt of notice of termination without cause, Contractor shall, unless the notice directs otherwise, do the following:

- (1) Immediately discontinue performance to the extent specified in the notice;
- (2) Place no further orders or subcontracts for Materials, Equipment, services or facilities, except as may be necessary for completion of such portion of its obligations as is not discontinued;
- (3) Provide to City a description, in writing no later than fourteen (14) Days after receipt of the notice of termination, complete copies of all subcontracts, purchase orders and contracts that are outstanding, including any change orders, amendments and modifications thereto, status of payments and balance owing, the status of performance and Claims by Trade Contractors, together with such other information as City may determine necessary in order to decide whether to accept assignment of, or request Contractor to terminate, the subcontract, purchase order or contract;
- (4) Promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and
- (5) Thereafter continue only such performance as may be necessary to preserve and protect Work already completed or in progress and to protect Materials and Equipment on the Site or in transit thereto.

B. Final Billing. Following termination without cause and within forty-five (45) Days after receipt of a complete and timely billing from Contractor seeking payment of sums authorized by this Section, City shall pay to Contractor as its sole and exclusive compensation for performance under this Agreement the following:

- (1) The Costs of Work and Contractor's Fee earned and payable as of the date of termination, which sum shall not exceed an amount that is equal to an allocable portion of the Contract Price and Contractor Fee calculated by multiplying City's determination of the percentage of the Work properly performed by Contractor as of the date of termination times the Contract Price and Contractor Fee, less sums previously paid to Contractor.
 - (2) Reasonable Costs of Work of Contractor and Trade Contractors for (i) demobilizing, and (ii) administering the close out of its participation in the Project (including, without limitation, all billing and accounting functions) for a period (unless otherwise mutually agreed) of no longer than forty- five (45) Days after receipt of the notice of termination.
 - (3) Previously unpaid Costs of Work of any items delivered to the Site which were fabricated for subsequent incorporation in the Work.
 - (4) At City's sole discretion, City may pay, or not pay, Contractor a share, or no share, of any projected savings if City elects to exercise its right to terminate this Agreement without cause.
- C. Trade Contractors. Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts with its Trade Contractors and Design Professionals permitting termination for convenience by Contractor on terms that are consistent with this Agreement and that afford no greater rights of recovery against Contractor for termination than are afforded to Contractor under this Agreement.
- D. Termination, Savings. City shall not have the right to terminate for convenience if the sole reason that City is exercising such right is to avoid payment of savings to Contractor that would have been payable in the absence of such a termination. Subject only to the limitation stated in this Section, City shall have the right to terminate for convenience for any reason as it determines in its sole discretion to be in its best interests or for no reason.
- 22.2 Contractor's Rights and Remedies.
- A. Contractor's Remedies. Contractor may terminate this Agreement for cause only upon the occurrence of one of the following:

- (1) The Work is stopped for one hundred twenty (120) consecutive Days, through no act or fault of Contractor, any Trade Contractor or Design Professional, or any employee or agent of any of them, due to issuance of an order of a court or other Governmental Authority (other than City) having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
 - (2) City fails to make payment of sums that are not in good faith disputed by City and fails to cure such default within (i) thirty (30) Days after receipt of notice from Contractor notifying City of the default; and (ii) an additional seven (7) Days' notice to City notifying it of its intention to terminate this Agreement.
- B. Continuous Performance. Provided that Contractor is paid undisputed sums due under this Agreement, Contractor shall not stop, delay or interrupt continuous performance of the Work by reason of any dispute or disagreement with City, including, without limitation, any disputes or disagreements over payments of funds that are disputed in good faith by City. Subject to the provisions of this Section, Contractor may interrupt continuous performance of the Work if City fails to pay funds that are not disputed in good faith within thirty (30) Days after City's receipt of written notice from the Contractor.
- C. Conversion. In the event of termination for cause by Contractor, City shall pay Contractor as its sole compensation the sums provided for in Section 22.1.B, above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, Loss of anticipated profits, Loss of revenue, lost opportunity, or other consequential, direct, indirect, incidental Losses or damages, of any kind.

Section 23 Claims and Dispute Resolution

All Claims and any resolution of disputes shall follow the procedures outlined in Article 16 of the General Conditions, in addition to any other requirements or provisions otherwise provided in this Agreement.

Section 24 Governmental Powers

This Agreement is entered into by City in its proprietary capacity only and nothing in this Agreement shall be deemed directly or indirectly to restrict or to impair in any manner or respect whatsoever any of City's regulatory governmental powers or rights, or the exercise thereof by City, with respect to the Work or the Project.

Section 25 Confidentiality

- 25.1 Confidential Information. Contractor shall treat all information and data furnished to it by City or City or otherwise obtained or prepared by Contractor concerning the Project as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in order to perform its obligations to City under this Agreement or in connection with any governmental filings or applications relating to the design or construction of the Project. Contractor shall not engage in or permit any publicity with respect to the Project, City or Contractor's services hereunder including, without limitation, referring to the same in advertising or promotional brochures or materials or granting interviews to broadcast, print or other media, without the prior written Approval of City, which may be granted or withheld in City's sole discretion. Contractor shall instruct all of its employees, Trade Contractors and Design Professionals of this obligation, include this provision in its contracts with such parties and shall use its best efforts to ensure full compliance.
- 25.2 Survival. The provisions of this Section shall survive complete performance or termination of this Agreement.

Section 26 Miscellaneous Provisions

- 26.1 Compliance with Applicable Law. At its sole cost and expense, Contractor shall cause its Trade Contractors and Design Professionals to give all notices and comply with all Applicable Laws and lawful orders of any public authority with respect to the Work, including those laws, ordinances, rules, regulations and lawful orders relating to safety, prevailing wage, Hazardous Substances and equal employment opportunities; pay all local, state and federal taxes; and pay all benefits, insurance, taxes and contributions for Social Security and Unemployment Insurance which are measured by wages, salaries or other remuneration paid to Contractor's employees. Upon City's request, Contractor shall furnish evidence satisfactory to City that any and all of the foregoing obligations have been fulfilled. Without limiting the foregoing, Contractor shall comply, and shall require its Trade Contractors and Design Professionals to comply with all applicable Federal or State prevailing wage requirements, including, without limitation, California Labor Code Section 1776 and Davis-Bacon Act in accordance with the sources of funding for this Project, which is stricter or higher and comply with both reporting requirements.
- 26.2 Department of Industrial Relations Registration and Prevailing Wage:
- A. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with

- limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- B. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
 - C. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
 - D. As of April 1, 2015, contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner (State of California, Division of Labor Standards Enforcement).
 - E. Please see the DIR website for complete details and actions. It is the responsibility of the contractor to ensure all DIR requirements and regulations are met and stay current.
- 26.3 Titles for Convenience. The table of contents and the headings of articles and Sections are for convenience only and shall not modify rights and obligations created by this Agreement.
- 26.4 Successors and Assigns. This Agreement shall be binding on successors, assigns and legal representatives of and persons in privity of contract with City or Contractor. Contractor shall not assign, sublet or transfer an interest in this Agreement without advance written Approval of City. Assignment, subletting or transfer will not release Contractor from any of its obligations to City.
- 26.5 Conflicts. In the event of any inconsistency, conflict or ambiguity between or among the Contract Documents, the documents shall govern in the following order of precedence (the first order of precedence under clause (1) being the highest)
- (1) fully executed Change Orders or GMP Addendums (provided, however, that nothing contained in a Change Order shall be interpreted as modifying the General Conditions unless such Change Order expressly identifies by number the Section of the General Conditions to be modified)
 - (2) the Agreement and its Exhibits (other than the General Conditions);
 - (3) approved Submittals; and
 - (4) the General Conditions.
- 26.6 Interpretation. Contractor and City acknowledge that the terms of this Agreement and the General Conditions have been mutually negotiated and that

such documents shall not be interpreted against either City or Contractor on the basis that either party was responsible for or in control of the drafting of such documents.

26.7 Survival. All provisions of this Agreement which by their nature continue beyond the termination or completion of performance under this Agreement, including, without limitation, those obligations pertaining indemnification, insurance, confidentiality and ownership of documents, shall survive and continue in force after either termination or completion of performance by Contractor.

26.8 Entire Agreement. The Contract Documents represent the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by Change Order. Nothing contained in the Contract Documents shall be for the benefit of, create any contractual relationship with, or give rise to a cause of action in favor of any third party.

Section 27 Governing Law; Jurisdiction

This Agreement shall be governed and construed by and in accordance with the laws of the United States and the State of California without reference to general conflicts of law principles. If suit is brought by a Party to this Agreement, the Parties agree that trial of such action shall be vested exclusively in the State courts of San Diego County, California or in the United States District Court, Southern District of California.

Section 28 Severability

If any part of any provision of this Agreement or any other agreement, document, or writing given pursuant to or in connection with this Agreement is finally determined to be invalid or unenforceable under applicable law, that part or provision shall be ineffective to the extent of such invalidity only, and the remaining terms and condition shall be interpreted so as to give the greatest effect to them.

Section 29 Notices

All notices under this Agreement shall be in writing and, unless otherwise provided in this Agreement, shall be deemed validly given if sent by certified mail, return receipt requested, or via recognized overnight courier service, addressed as follows (or to any other mailing address which the Party to be notified may designate to the other Party by such notice). All notices properly given as provided for in this section shall be deemed to be given on the date when sent.

Should City or Contractor have a change of address, the other Party shall immediately be notified as provided in this section of such change.

LISENSEE:

[INSERT NAME OF ENTITY].

[ADDRESS]

[ADDRESS]

Attn: [NAME OF PERSON]

CITY:

CITY OF ESCONDIDO

City Hall, Second Floor.

201 N. Broadway, Escondido, CA 92025

Attn: Utilities Director

Either Party may change its address by notice to the other Party as provided herein. Communications shall be deemed to have been given and received on the first to occur if (i) actual receipt at the offices of the Party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the Party to whom the communication is to be sent, as designated above.

IN WITNESS WHEREOF the Parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY OF ESCONDIDO

Date: _____

Paul McNamara, Mayor

CONTRACTOR

Date: _____

Name

Title

APPROVED AS TO FORM:

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

By: _____

Exhibits A – K

Due to the number of pages of Exhibits A-K, the following link has been provided to review the document electronically on the City's web site:

<https://www.escondido.org/mfro-information.aspx>

A hardcopy of the Attachment is available for review in the Escondido City Clerk's Office during normal business hours. To obtain a copy, please contact the City Clerk's Office at (760) 839-4617.



FUTURE CITY COUNCIL AGENDA ITEMS

Updated March 27, 2019

*AGENDA ITEMS AND CITY COUNCIL MEETING DATES ARE SUBJECT TO CHANGE.
CHECK WITH THE CITY CLERK'S OFFICE AT 839-4617*

April 10, 2019
4:30 p.m.

PROCLAMATIONS	
	Earth Day: April 22, 2019
	Certificate of Recognition for Rotary of Escondido After 5 Club
PRESENTATIONS	
	Earth Day Poster Contest Awards
	Escondido School District Bond Program
CONSENT CALENDAR	
	<p>Agreement with San Diego Gas & Electric (SDG&E) for El Norte Parkway Bridge 20C Conversion at Keylime and Kaile to Underground Existing Overhead Utilities to Underground (J. Procopio)</p> <p><i>The City will be advertising for bids to add a second bridge on El Norte Parkway over the Escondido Creek, bringing the street to its ultimate Major Road width of 82', underground existing overhead utilities at the bridge, and adding medians and landscaping on El Norte Parkway between El Norte Hills Place and East Valley Parkway. This agreement will allow the City to install infrastructure through the new bridge and SDG&E to follow with installation of cabling to activate the underground system, removing the only remaining overhead utilities on El Norte Parkway.</i></p>
	<p>Adoption of the Final 2018 Road Maintenance and Rehabilitation Account (RMRA) Street List (J. Procopio)</p> <p><i>The 2018 Street Rehabilitation and Maintenance project is currently underway, however, staff has selected streets within the project and requests the City Council adopt the list of streets to be funded with 2018 RMRA funding.</i></p>
PUBLIC HEARINGS	
	<p>General Plan Amendment, Conditional Use Permit, and Grading Exemption for a Residential Care Facility at 1802 N. Centre City Parkway (PHG 17-0025) (B. Martin)</p> <p><i>The project is a request for a three-story residential care facility with up to 96 beds within the single-family residential R-1-10 zone. A Conditional Use Permit is required for the development of a care facility within the underlying residential zoning designation. The project also includes a request for a Grading Exemption for a retaining wall exceeding 10 feet in height towards the eastern area of the project site. A General Plan Amendment is requested to allow for a third story where the current Suburban land-use designation allows structures up to two stories in height.</i></p>

April 10, 2019
Continued

CURRENT BUSINESS

Library Security Improvements

(J. Axelrod)

Presentation on security improvements made at the Escondido Public Library.

Discussion of Animal Control Services

(J. Epp and C. Carter)

Annual Appointments to Library Board of Trustees to Fill Regular Vacancies

(Z. Beck)

Terms will expire on March 31, 2019 for two members on the Library Board of Trustees, Gary Knight and Mayra Salazar.

FUTURE AGENDA ITEMS

April 17, 2019

NO MEETING (Spring Break)

Weekly Activity Report



March 28, 2019

East Valley Parkway Project Wins Awards!

The East Valley Parkway/Valley Center Road Widening Project was selected as the 2019 Outstanding Roadway/Highway Project by the American Society of Civil Engineers San Diego. The project was also selected for two awards by the American Public Works Association – San Diego Chapter: The 2019 Honor Award and Award of Excellence in the Bridge Category.



Cruisin' Grand is Back for its 20th Year

Cruisin' Grand's 2019 season kicks off next week, April 5 and is celebrating its 20th year as the region's premier weekly classic car cruise. Opening night kicks off with Willy's Night & Good Guys; the event continues through September 27. For more information, click the image below.



Large Disc Golf Tournament Returns to Kit Carson Park

This Friday – Sunday (March 29 – 31) Kit Carson Park will be hosting the San Diego Aces Disc Golf Tournament. During this time, you will see higher volumes of players and spectators in Kit Carson Park as well as additional traffic on the surrounding streets. The park will be open to all visitors as normal. The City of Escondido is excited to welcome this tournament to Kit Carson Park!

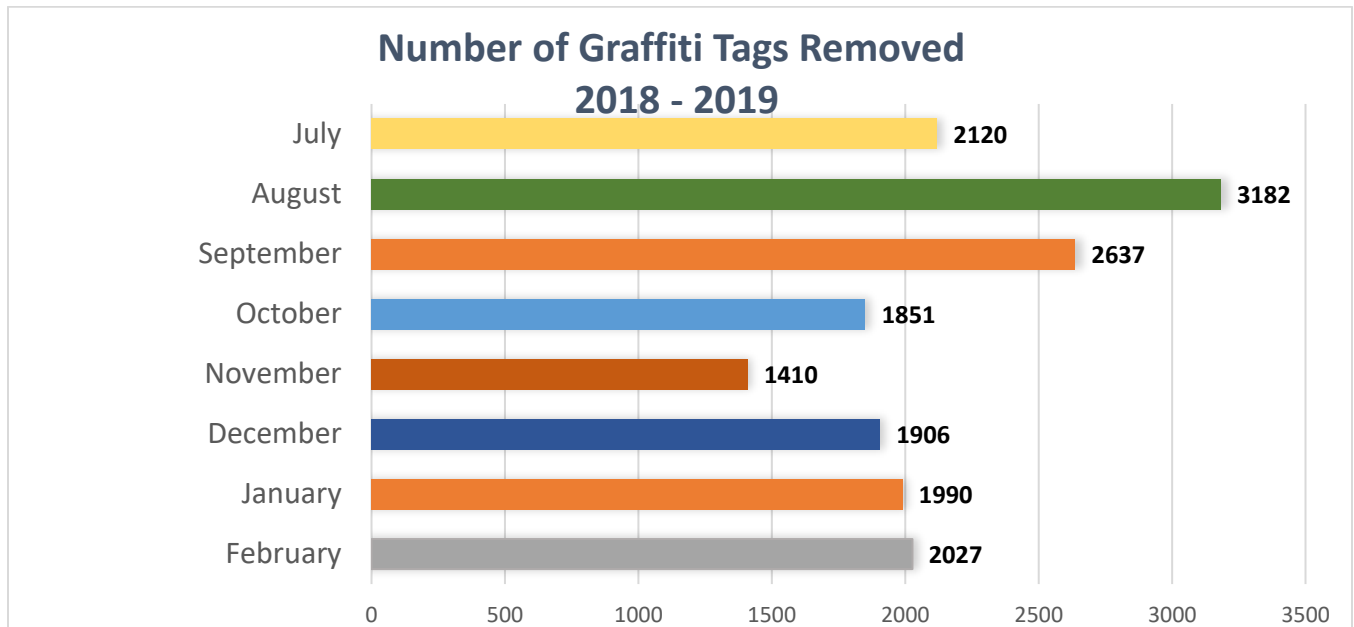
Regional Youth Soccer Tournament Returns to Escondido

Cal South State Cup regional youth soccer tournaments will host games on March 30 & 31 at Ryan Park. Teams will be traveling in from all over Southern California to lodge, shop, and dine in the Escondido Area this weekend for bracket play games. Escondido Soccer club will be prepping the fields and setting up traffic control on Hidden Trails Road. There is a \$5.00 fee per car for non-Escondido residents for parking. Proceeds of these fees go to scholarship players and field maintenance with in the Escondido Soccer Club.

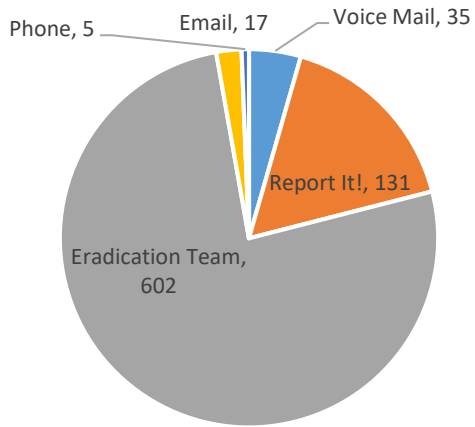


BY THE NUMBERS

Public Works

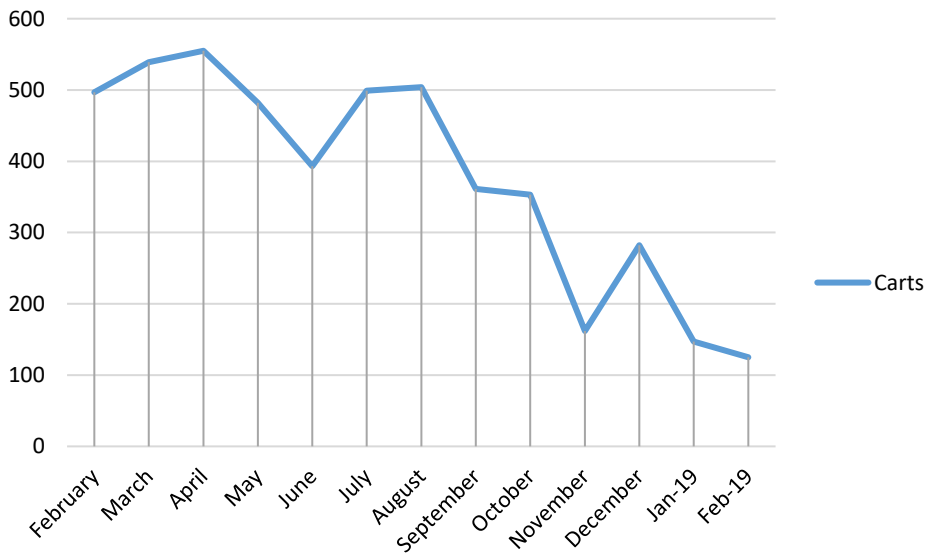


How Graffiti Was Reported - February 2019



■ Voice Mail
 ■ Report It!
 ■ Eradication Team
 ■ Email
 ■ Phone

NUMBER OF SHOPPING CARTS REMOVED



Code Enforcement

246 Total Active Cases

36 New Cases

41 Cases Closed

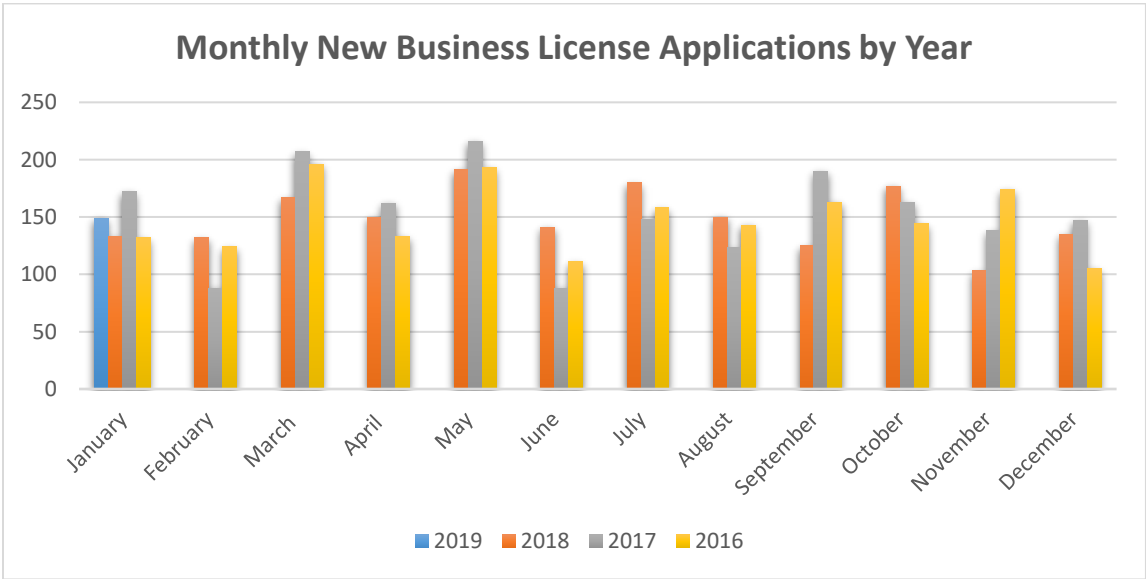
40 Voluntary Compliance

32 Notices Issued

0 Citations Issued

Total Code Cases (Year To Date)	463
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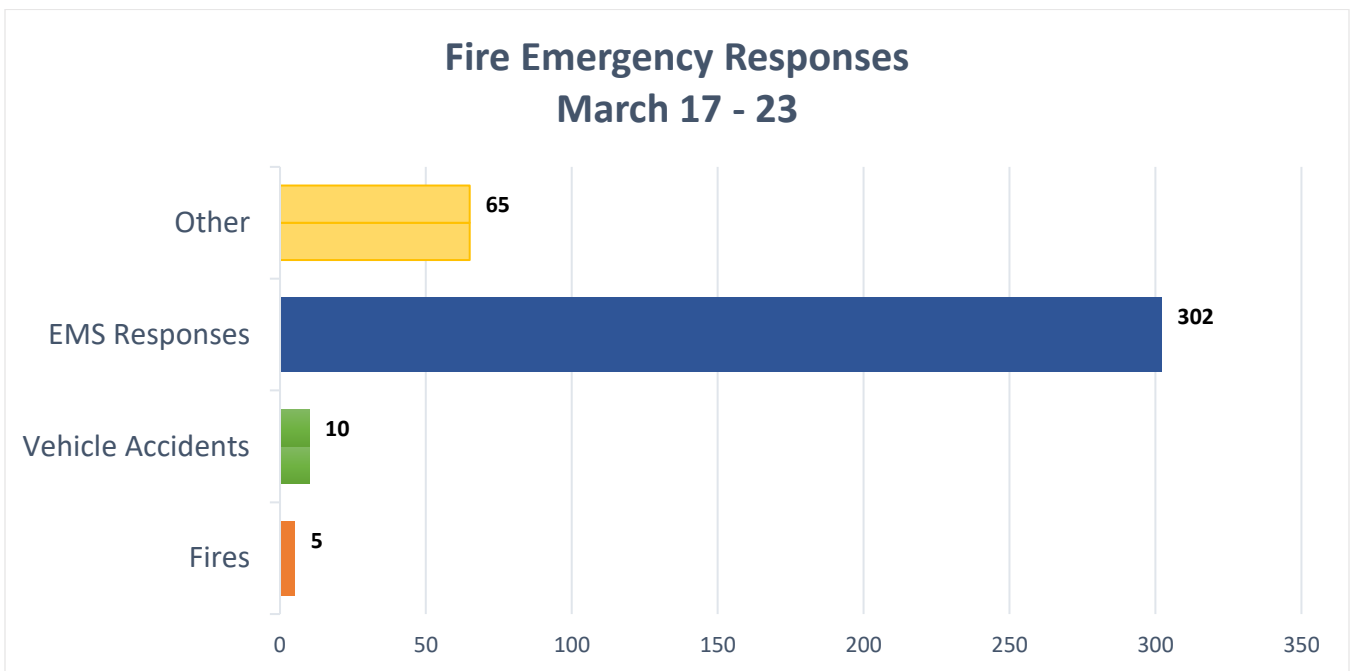
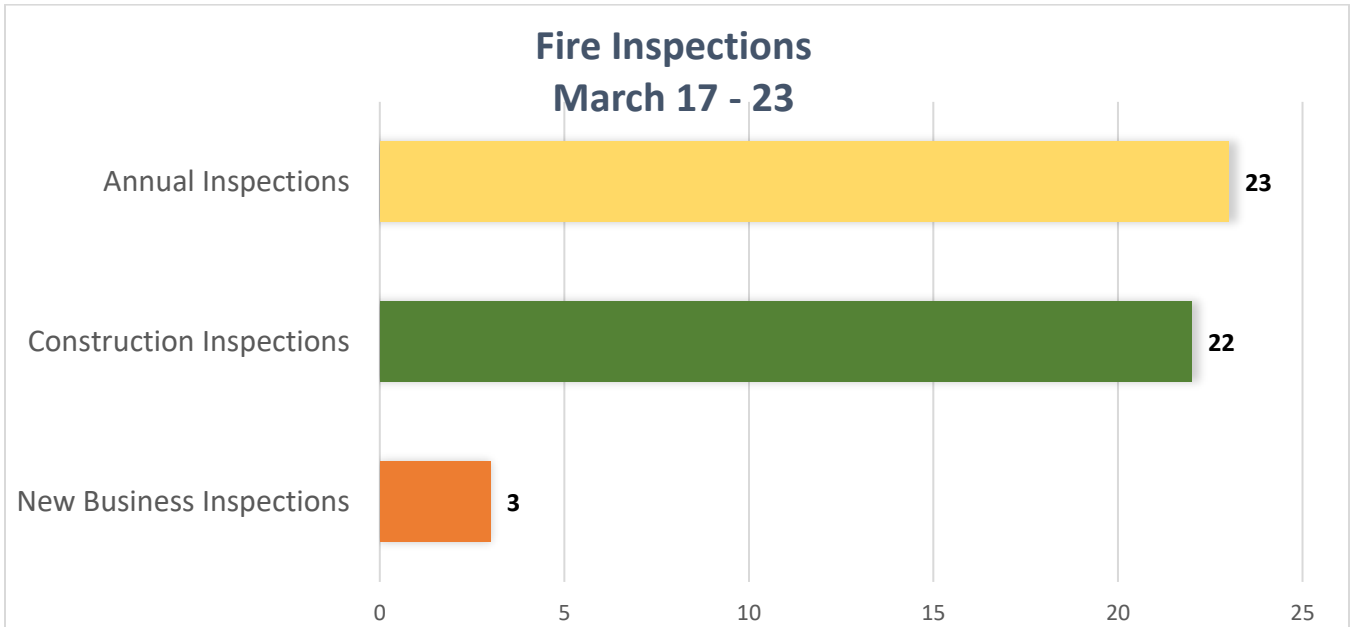
Business Licenses



Graffiti Restitution

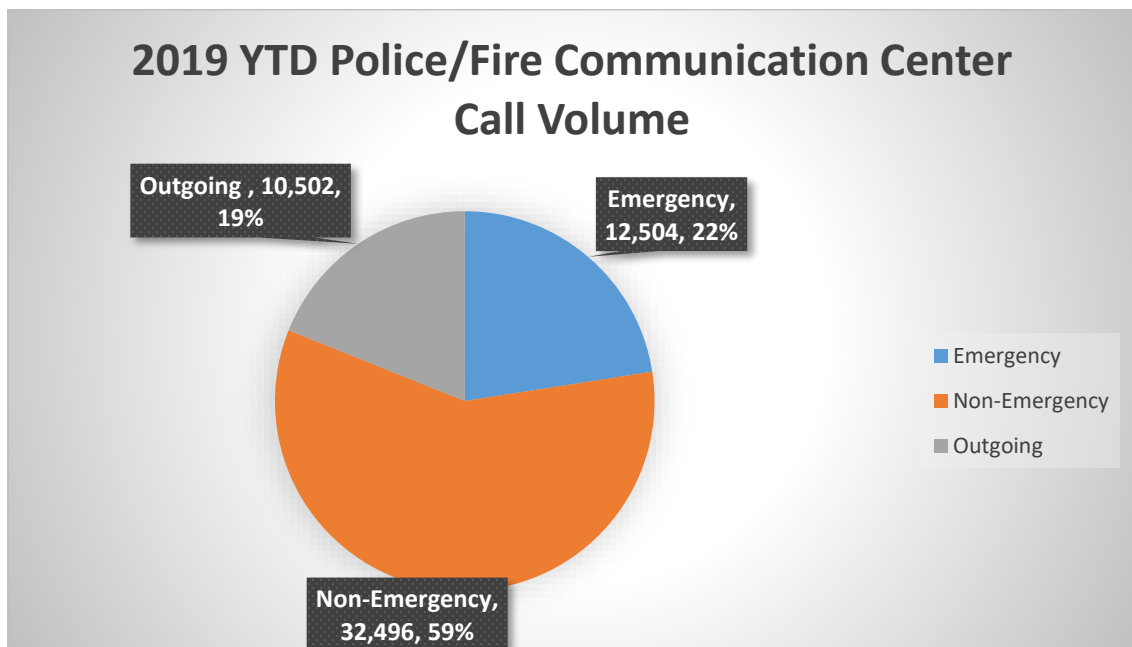
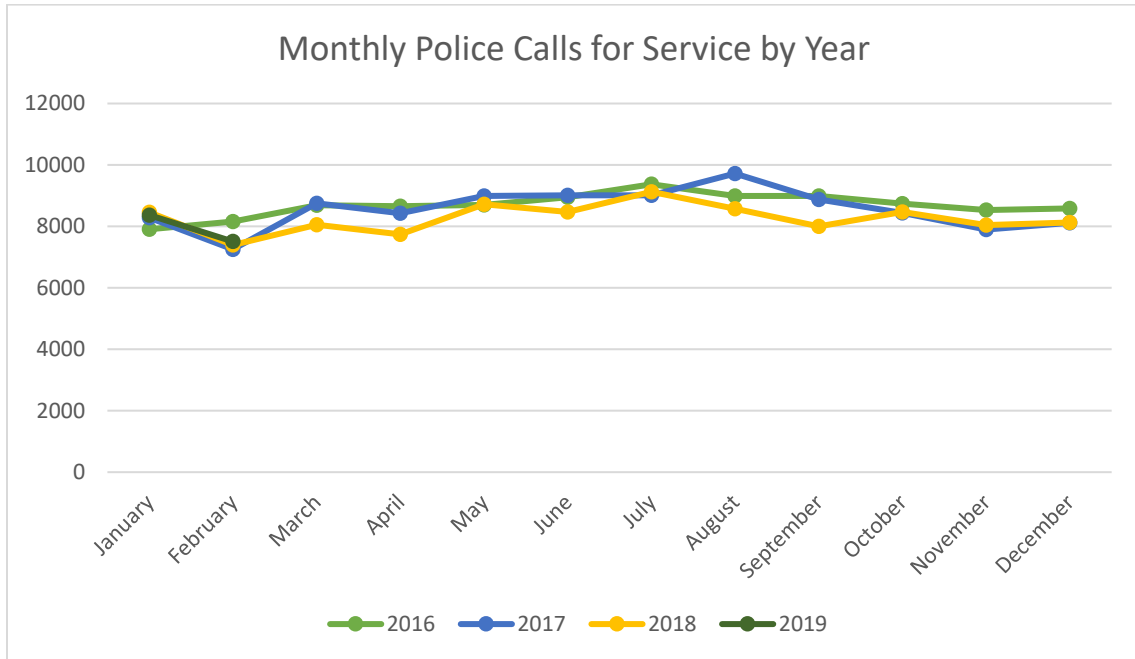
Collected This Week	Collected Year to Date
\$80	\$1570.88

Fire

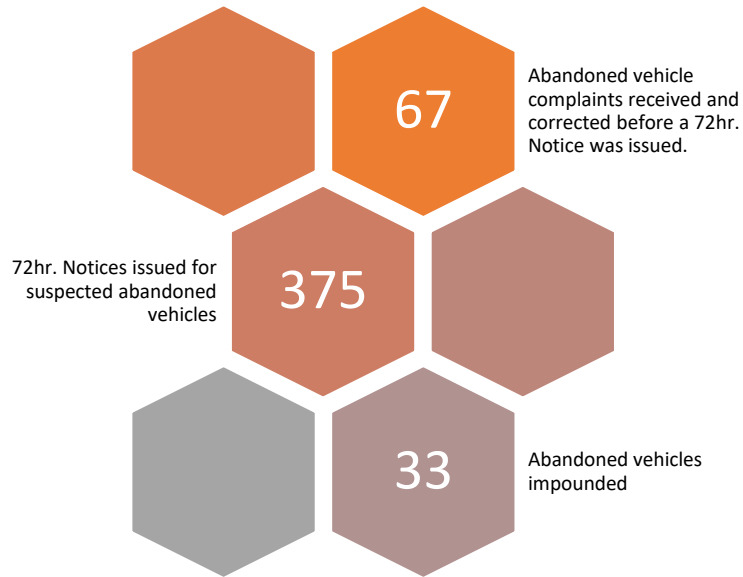


Total Emergency Responses (Year To Date)	4,010
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Police

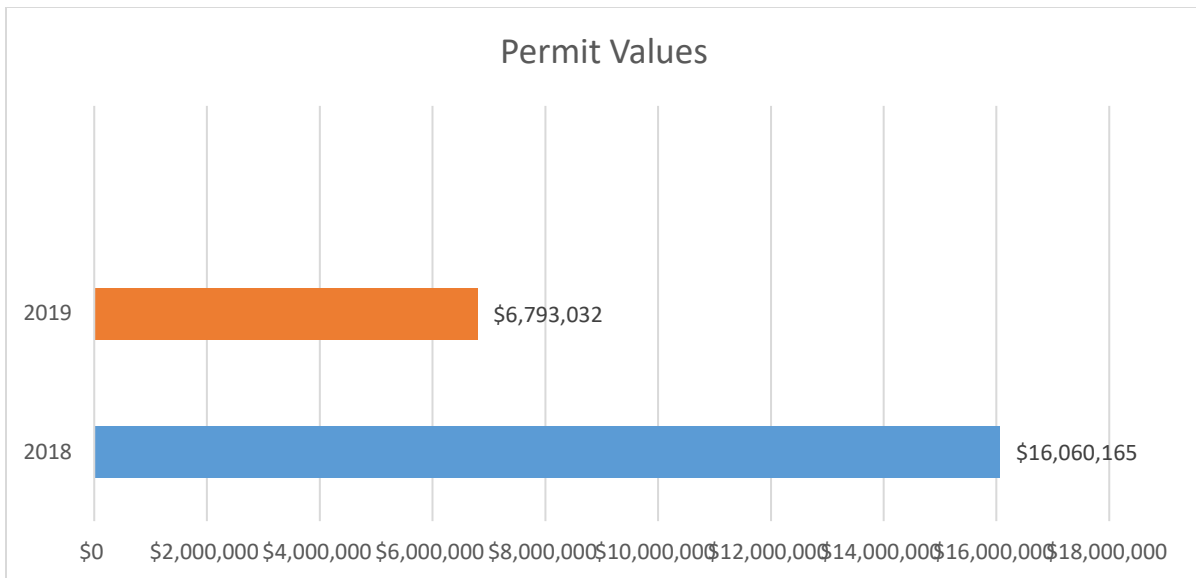


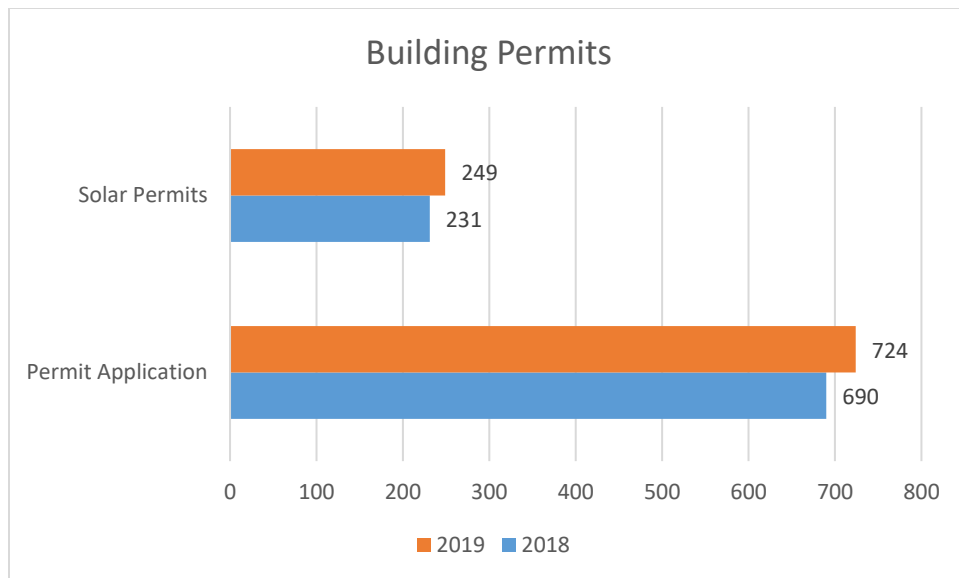
February Abandoned Vehicle Data



Building Division:

**Data reflects activity through March 24 of each year.*





POLICE DEPARTMENT

Incidents

Officer Choked by Suspect

On March 19, 2019 at about 5:40 p.m., an officer patrolling the Escondido transit center attempted to stop a male riding a bicycle on a sidewalk. What should have been nothing more than a warning or a citation given by the officer quickly escalated when the suspect tried to flee and then fought the officer. During the ensuing struggle, the officer called for help via police radio. The suspect went so far as to choke the officer in his attempt to escape. Fortunately, the officer was able to gain control of the suspect as additional officers arrived to help take the suspect into custody. Luis Soto (34-year-old resident of Vista) on a felony charge of resisting arrest. The officer sustained minor injuries, but was able to return to work.

Officer Bitten by Pit Bulls

On March 22, 2019 at about 9:50 a.m., officers were on a call for service in the 400 block of W. 10th Ave. During the call an officer entered the yard of an adjacent residence. Two pit bulls suddenly charged and bit the officer. The officer was able to get away from the dogs without harming them. The officer sustained lacerations that required stitches. The San Diego Humane Society investigated the incident. The dogs remained with their owner.

Officer Bitten by Theft Suspect

On March 23, 2019 at around 3:30 p.m., officers responded to a shoplifting call at the Westfield-North County Target store. The first officer on-scene attempted to stop two adult theft suspects as they exited the store. An adult male suspect resisted arrest, bit the officer, and also bit an off-duty law enforcement officer who tried to help in the arrest. Both theft suspects were taken into custody. Douglas Diaz (42-year-old resident of Vista) was charged with petty theft and felony resisting arrest causing injury. Patricia Vergara (40-year-old resident of Vista) was arrested on an active arrest warrant for theft from a merchant. The officer sustained minor injuries.

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.

- 5 arrests
- 13 citations
- 45 extra patrols

FIRE DEPARTMENT

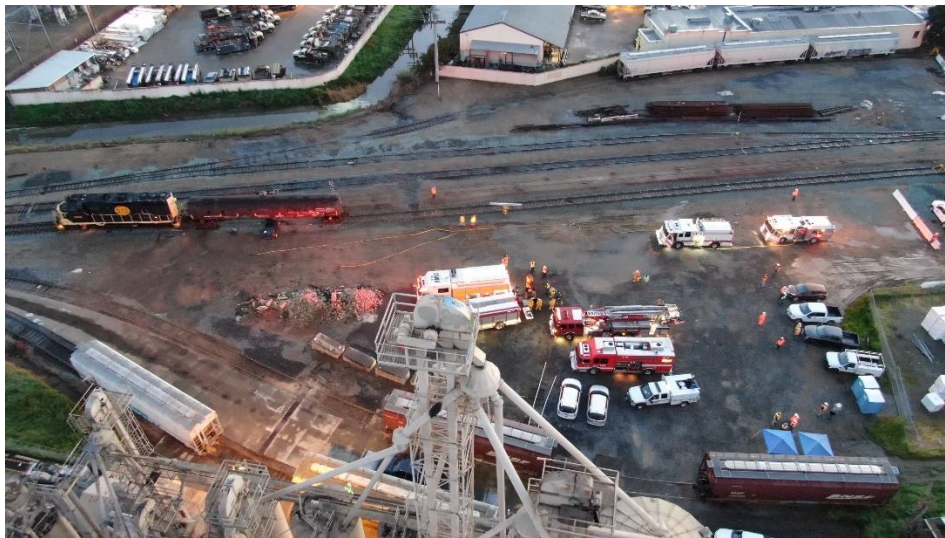
News

On Thursday, March 14, 2019, the Escondido Fire Department participated in career day at Mission Middle School. The Engine and Ambulance crews from Fire Station 7 gave presentations to approximately 60 7th and 8th grade students interested in a career with the Fire Service. The crews explained the hiring process, requirements and benefits of a job in the Fire Service before giving a tour of the Fire Engine and Ambulance.



On Wednesday evening, March 20th, Escondido Fire and PD participated in an emergency exercise at a rail yard in Escondido coordinated by North County Transit District (NCTD) and Pacific Sun Railroad. The exercise scenario was a simulated freight rail incident along the Escondido rail corridor that included an automobile collision and a simulated hazardous material leak. The following Emergency agencies from across the county participated in the exercise:

- California Public Utilities Commission
- Camp Pendleton Fire Department
- City of San Diego Fire Department – Hazardous Materials Team
- County of San Diego Environmental Health/Hazardous Materials Division
- Federal Railroad Administration
- Pacific Sun Railroad (A WATCO Co.)
- Rancho Santa Fe Fire District
- San Diego County Office of Emergency Services
- San Diego Law Enforcement Coordination Center
- San Diego Sheriff's Office
- San Marcos Fire Department
- U.S. Department of Homeland Security/Transportation Security Administration



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.

Commercial / Office:

1. Escondido Research and Technology Center (ERTC) – West (Developer: James McCann) 2181 Citracado Parkway – 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. The grading permit is ready to be issued once Planning confirms information from the applicant that assures adequate parking is provided. The applicant is working with the City to establish a parking management program to facilitate adequate parking throughout the Hospital Campus. City staff provided comments on the parking program on March 26, 2019.
2. Escondido Research and Technology Center (ERTC) – East (Developer: James McCann) 2130 Citracado Parkway – Building plans for the first 71,656 SF medical office building in this approved medical complex area across from Palomar Hospital were submitted into plan check on October 9, 2018. Fire and Esgil have approved the plans. Planning has a hold on the permit until the parking issues below are resolved.

A Specific Plan Amendment (SPA) will be required to move the temporary parking lot on the medical building site (above) to another location within ERTC. The SPA application was submitted on November 13, 2018, and proposes the construction of a new temporary parking lot at the southern end of the ERTC development on Lots 10-15 and a permanent parking lot on Lot 1. Fire is requesting paving for all driveways in the proposed temporary parking lot. A comment letter regarding parking counts and storm water requirements was sent to the applicant in mid-December. The applicant provided a draft MOU document on January 4, 2019 (intended to be signed by applicant, PPH and City) explaining the phasing and proposed parking improvements. Revised parking lot plans for both the permanent and temporary lots were received on January 8, 2019. Planning met with the applicant on January 30, 2019, to discuss the plans and management of the proposed temporary parking lot. The plot plan and grading exemption for Lot 1 has been scheduled for a Zoning Administrator meeting on March 21, 2019.

3. Toyota of Escondido Certified Used Car Facility (Developer: Stephen Myers, Toyota of Escondido) 990 N. Broadway – A Plot Plan to assemble five commercial lots including a vacant used car business into an automotive sales and service facility for Toyota. The proposal includes the demolition of a vacant residence and a small expansion of an existing service building. The project application was submitted on January 7, 2019. Planning staff conducted staff-level design review on January 31, 2019. Comments from Planning, Engineering, Utilities, Fire and Traffic were sent to the applicant on February 5, 2019. Planning met with the applicant on February 28, 2019, to discuss proposed revisions to the plans. A revised Plot plan was resubmitted March 4, 2019. Project review is complete and the plans are being prepped for approval.

Industrial

1. Escondido Self-Storage Facility (Developer: Brandywine Homes, Inc.) 2319 Cranston Dr. – Updated building plans were resubmitted into plan check on July 24, 2018. Esgil and Fire have approved the plans. Planning provided comments on the building plans on September 19, 2018. The final map was approved by City Council on September 19, 2018, and has recorded. The grading permit has been approved and the final improvement plan mylars have been signed. The building plans have been approved by Esgil and Fire. The Planning approval is still outstanding and awaiting minor plan revisions to be returned by applicant. Planning met with the project architect on January 29, 2019, to go over the requested revisions.
2. Citracado Business Park (Developer: Dentt Properties) 2207 Harmony Grove Road – A proposed specific plan for two industrial warehouse/office buildings (145,930 SF and 125,930 SF) with the buildings to be separated by the future extension of Citracado Parkway. The application was submitted on August 14, 2018. All departments have completed their initial review and comments were sent to the applicant on September 17, 2018. SDG&E also has provided comments regarding the high voltage power lines that traverse the site. The applicant's traffic consultant submitted revised methodology and distribution to Engineering on October 19, 2018. A meeting with the applicant to review the various departmental comments occurred on October 29, 2018. Another round of comments related to the proposed specific plan have also been provided. The developer recently indicated a revised submittal including the remaining environmental documents will likely be ready in about a week.

City Projects

1. Micro-Filtration Reverse Osmosis (Developer: City of Escondido Utilities Department) SE corner Ash/Washington – The City Council approved a contractual agreement with Black and Veatch for engineering services on April 4, 2018. A Request for Qualifications to solicit a Design/Build firm was released the first week of September 2018. On January 16, 2019, the City Council expressed continued support for the MFRO, but directed staff to investigate moving the facility to another location. Utilities staff are investigating the feasibility of moving the MFRO to city property located at 901 W. Washington Avenue. An on-site meeting with the selected design-build and environmental contractors occurred on January 28, 2019. Preliminary geotechnical and survey work is underway. Helix Environmental Planning will be preparing the draft environmental documents. The AB 52 consultation letter will be sent to interested tribes next week. A Design Build Agreement has tentatively been scheduled for City Council consideration on April 3, 2019. The proposed Design Build Agreement with Filanc+BC Joint Venture provides for design and pre-construction services.
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. Additional information has been compiled and analyzed by the City's biological consultants based on recent conversations with the agencies. The biological consultant and staff met with the wildlife agencies on November 28, 2018 to discuss a modified approach to fulfilling mitigation requirements. Written information summarizing what was

discussed at the meeting was transmitted to the agencies on December 4, 2018. City staff recently concluded a revised assessment of potential biological impacts and is coordinating a meeting with the agencies to present the findings.

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. A neighborhood meeting to discuss the project with interested residents was held on January 30, 2019. Public review of the draft Mitigated Negative Declaration (MND) closed on February 11, 2019, and no public comments were received. The Planning Commission provided a recommendation on the project on March 12, 2019. A City Council hearing has tentatively been scheduled for April 10, 2019.

Residential

1. 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>

The responses to comments have generated related revisions to the project design. The applicant's engineer submitted a revised tentative map on October 26, 2018. Generally, the amount of grading and the area of disturbance has decreased, while the overall number of 550 residential lots has remained the same. Engineering met with the project engineer and applicant on January 31, 2019, to discuss their comments on the revised tentative map. The revised tentative map and exhibits have been posted on-line at the link above. The applicant met with Traffic Engineering during the week of February 25th to discuss off-site mitigation. The applicant also met with staff and the biological consultant on March 11, 2019.

2. 18 lots at 701 San Pasqual Valley Rd (Developer: Bob Stewart) – Staff comments on the revised tentative map were issued the last week of July 2017. The applicant has occasionally engaged in discussions with various departments since that time, but has declined a staff offer to schedule a comprehensive meeting with all city departments. Another set of revised plans were submitted the week of November 26, 2018. Planning, Engineering and Utilities comments on the revised plans were issued on February 25, 2019.
3. 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 applicant submitted rough grading plans, drainage improvement plans and utility relocation plans for all three villages on May 7, 2018. There have been three rounds of plan checks on the rough grading plans since the original submittal and a permit-ready letter for rough grading was issued on August 31, 2018 and revised on September 4, 2018. Landscape plans were submitted on June 5, 2018, and a second submittal was received on October 2, 2018. The

applicant submitted the final map and other improvement plans on July 9, 2018. Additional comments on the improvement plans, utility location plans, storm drain plans and all technical studies were provided by Engineering on September 11, 2018. Country Club Lane street improvement plans were submitted for first plan check on October 9, 2018, and Engineering comments were provided on November 21, 2018. A tree removal permit to remove trees on the former golf course property was issued by Planning on December 19, 2018. Fourth plan check for the Village 1 rough grading, improvement plans and landscape plans were submitted January 18, 2019, and Engineering comments are expected to be issued this week. Third plan check for final map and improvement plans for Village 3 submitted. Engineering comments were returned on March 12, 2019.

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>

4. North Avenue Estates (Developer: Casey Johnson) 34 lots at North Ave./Conway Dr. –The City Council approved the project on January 10, 2018. LAFCO approved the annexation application on October 1, 2018, and the annexation has recorded. The new homebuilder, Taylor Morrison Homes submitted a Precise Development Plan to Planning on December 14, 2018. Grading plans, final map and improvement plans were submitted for review on December 7, 2018. Engineering comments were returned on January 18, 2019 and additional comments were sent on January 25, 2019. Engineering met with the applicant's engineer on January 31, 2019 to discuss drainage issues. The Certified Tentative Map was submitted for substantial conformance review on February 7, 2019. Planning and Engineering comments on the Certified TM were issued on February 25, 2019. A revised Certified TM was submitted on February 27, 2019. A revised Precise Development Plan was submitted on March 14, 2019. Final engineering plans were resubmitted on March 21, 2019.
5. Aspire (106 condo units on Municipal Lot 1) (Developer: Addison Garza, Touchstone Communities) – The proposal consists of a six-story mixed-use development across from City Hall 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 the most recent resubmittal of the project plans was received on May 10, 2018. Fire is awaiting confirmation that Maple Street will support the weight of their apparatus. A Traffic Impact Analysis has been provided and Planning is awaiting submittal of the rest of the environmental documentation for review. A meeting with the applicant occurred on September 12, 2018, to discuss remaining project issues. A purchase and sale agreement for the project site (Parking Lot 1) was approved by the City Council on September 19, 2018. Concerns regarding parking have been expressed; and the applicant's parking consultant submitted a parking study on January 17, 2019.
6. The Ivy (95 condo units at 343 E. 2nd) (Developer: Addison Garza, Touchstone Communities) - The condo project was initially submitted for entitlement processing for a 95-unit development on June 23, 2017. On February 8, 2019, the applicant submitted a revised project under state and city density bonus law that increases the number of dwelling units in return for the provision of 11 Very Low Income housing units. The increased density (now 127 units) was accommodated by adding another story to the development resulting in a five-story residential building up to 63 feet in height. While the building footprint is nearly identical to the previous design, the proposal also adds 1,175 square feet of commercial space on the ground floor at

the corner of Second Avenue/Ivy Street. Utilities and Fire comments on the revised development plan were issued on March 12, 2019.

7. 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. The Planning Commission voted 6-0 to recommend approval of the project on February 12, 2019. The City Council approved the project on March 20, 2019, with a vote 5-0.
8. 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. Multiple meetings with the applicant have taken place since the project submittal to discuss project design issues. A constraints map to identify fire access routes and locations of existing utilities has been approved by staff and the applicant utilized that map to submit a revised project on November 21, 2018. Staff comments from Planning, Engineering, Utilities and Fire were returned to the applicant on December 27, 2018. A follow-up meeting with Planning occurred on January 15, 2019, and revised project plans were submitted on February 12, 2019. City staff provided comments on March 25, 2019.
9. 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 Daley Ranch – This proposed residential and resort hotel annexation and specific plan project was received on March 2, 2018. The project submittal has been deemed incomplete and a letter from staff requesting additional project related information was sent to the applicant on April 4, 2018. Requested information includes annexation exhibits, proposed general plan amendment text, a proposed Transfer of Development Rights Program, environmental initial study, and a fiscal impact analysis. Planning met with the applicant on May 17, 2018 to discuss items listed in the letter. A follow-up meeting to discuss engineering issues occurred on June 27, 2018. The applicant met with Escondido Fire and Valley Center Fire on August 1, 2018 to discuss fire protection issues. Significant fire-related issues to be addressed include the steepness of the project entry road, secondary emergency access and Fire Department response times. A follow-up meeting with the applicant to discuss these issues occurred on October 11, 2018.

A project webpage containing draft documents and plans has been added to the Planning Division's website at the following link:

[Sager Ranch Resort Specific Plan - City of Escondido](#)

10. Nutmeg Condo General Plan Amendment (Developer: Jim Simmons, CCI) 137 townhome condo units on 7.7 acres on both sides of Nutmeg between I-15 and Centre City Parkway – This proposed multi-family residential development includes a GPA from Office to Urban III (up to 18 du/acre) as well as a specific alignment plan for Nutmeg and a vacation of approximately one acre of public right-of-way for use in the project. The project application was received on June 15, 2018. Initial comments from Planning, Fire, Engineering, Utilities and Traffic Engineering were provided to the applicant on July 13, 2018. A Notice of Preparation for the project EIR was sent out on August 29, 2018, and the comment period closed on October 1, 2018. A Scoping Meeting occurred on September 6, 2018. The applicant submitted revised plans and studies on October 16, 2018. Engineering, Utilities and Fire provided comments on

the revised plans on November 13, 2018. Follow-up meetings with the applicant occurred on November 28, 2018 and February 6, 2019. Traffic Engineering provided comments on the Traffic Impact Analysis on December 10, 2019. Staff comments on the first screen check draft of the EIR were issued on January 14, 2019. The applicant team met with Engineering and resubmitted revised plans and the second screen check draft of the EIR on February 6, 2019. Partial comments on the second screen check EIR were issued on March 11, 2019, with the remaining comments delivered on March 18, 2019.

11. Oak Creek (Builder: KB Homes) 65 single-family residential lots on approximately 44 acres at Felicita Road and Hamilton Lane – The original developer, New Urban West, has secured permits from CDFW, ACOE and RWQCB. The Zoning Administrator approved a modification to the Precise Development Plan to revise the architecture on October 25, 2018. Grading, drainage and storm water management plans were submitted for first plan check on July 25, 2018. Fire and Engineering issued comments on the rough grading plan on September 4, 2018. Second plan check submittals for rough grading and off-site improvements were received on October 23, 2018. Fence and wall plans were submitted the second week of December. The model homes were submitted into plan check the last week of October and still require a Precise Grading Plan to be submitted. Second plan check submittal for the final map and third submittal for the on-site improvements is expected to be received this week. On-site remediation of hazardous materials has been completed in three of the four identified areas and a clearance letter from DTSC will be required prior to issuance of a grading permit. Planning has approved the entry guardhouse and project identification signs. Third plan check of final map submitted March 1, 2019. Planning is coordinating with the developer on vegetation removal. A fifth plan check of the rough grading plan (in PDF form) has been received and Engineering comments were issued on March 11, 2019. The bond and fee letter was issued a month ago. The City is currently waiting for DTSC clearance to ensure toxic substances are cleared from the site.
12. Mercado 3-Story Mixed Use Building (Developer: Curtis Lively) 5 residences and 2 commercial suites on 0.14-acre at 510 W. 2nd Avenue – A Plot Plan for five two-story residential units on top of 2,375 SF of commercial floor area and a parking garage was submitted July 13, 2018. Staff review comments were provided to the applicant who then submitted revised plans. Additional Planning and Engineering comments were sent to the applicant on September 27, 2018, and a revised project submittal was received on December 11, 2018. Comments from Fire, Utilities and Planning on the revised plans were sent to the applicant on January 2, 2019. The applicant submitted revised plans including a reduction of commercial space to 1,750 square feet on February 20, 2019. Utilities has provided comments. Planning staff completed design review on March 21, 2019, with no major recommended changes.
13. 555 West Grand Mixed-Use Building (Developer: Ed McCoy) 32 condo units in three floors over a parking garage – This 32-unit mixed-use development with 610 SF of office/flex space was submitted as a planned development application on August 27, 2018. The project is seeking a reduction in parking and open space standards. Initial multi-department comments were sent to the applicant on September 26, 2018. The applicant met with Fire, Engineering, Planning and Utilities staff on October 16, 2018 to discuss the staff comments. Engineering has agreed to accept a public utilities easement along Quince Street in lieu of a dedication of public right-of-way. This easement along with a revision to provide vehicular access from Second Avenue has been incorporated into revised project plans and was submitted with an updated Traffic Impact Analysis on March 13, 2019.

14. Villa Portofino (Developer: Chris Post, ATC Design Group) 15 apartment units in a three-story building with parking garage at 2690 S. Escondido Blvd. – This 15-unit multi-family residential project on a 0.52-acre parcel between S. Escondido Blvd and Cranston Drive was submitted as a Plot Plan application on November 28, 2018. A comment letter was issued on December 20, 2018. Comments included the need to evaluate the building construction type for fire purposes and consider the design standards in the South Centre City Specific Plan. Planning staff have had several follow-up conversations with the applicant team and are awaiting revised plans.
15. Palomar Heights (Developer: Ninia Hammond, Integral Communities) Demolition and redevelopment of the old Palomar Hospital site with 424 multi-family units in 33 buildings – A proposed Tentative Map, Planned Development, Specific Plan Amendment and EIR to redevelop the 13.8-acre former hospital site. Up to 5,500 square feet of recreation or commercial space could be included. The project application was submitted on December 24, 2018. The initial plan submittal was presented to the Board of the Downtown Business Association on January 9, 2019, the Economic Development Committee of the Chamber of Commerce on January 10, 2019 and the Old Escondido Neighborhood Group on February 20, 2019. Engineering and Planning comments on the initial project submittal were sent to the applicant on February 12, 2019. A contract for a developer-funded planning consultant to work on this project as an extension of Planning staff was approved by the City Council on February 13, 2019. Planning Engineering and Fire met with the applicant team on February 27, 2019 to go through proposed revisions to the site plan and building designs. Comments from that meeting were provided to applicant team on March 5, 2019.
16. Henry Ranch (Builder: Joe Martin, Trumark Homes) An approved development of 97 single-family residential homes on 74.35 acres at the eastern terminus of Lincoln Avenue – The Tract 920 development proposal was originally approved in 2007 and an extension of the associated Development Agreement was approved in 2016. Trumark Homes acquired the property in 2018 and intends to complete the subdivision. A revised substantial conformance plan for the Certified Tentative Map was submitted January 15, 2019 and approved the last week of January. Final Map, grading plans and improvement plans were submitted for initial review on February 12, 2019, with staff comments expected to be provided by March 25, 2019. A demolition permit for the former packinghouse structures was submitted on February 14, 2019. Planning and Engineering provided comments on the demo permit on February 20, 2019, including the need to lead based paint and asbestos clearance as well as an erosion control plan. Architectural plans were submitted for Design Review on February 15, 2019, and comments were issued on March 14, 2019. A vegetation removal permit was issued on March 21, 2019. Final engineering comments were returned on March 25, 2019.
17. Accessory Dwelling Units – Planning staff is currently working on two applications for accessory dwelling units. Five accessory dwelling units have been approved so far this year. 24 accessory dwelling units were approved in 2018. Three accessory dwelling units were approved in 2017.

Building Division:

1. The Building Division issued 74 permits (including 26 solar photovoltaic) with a total valuation of \$1,111,548.
2. Our building inspectors responded to 181 inspection requests. 147 customers visited the Building counter during the week.
3. *No change from the previous.* The Meadowbrook three-story apartment building with underground garage at 2081 Garden Valley Glen is preparing the building for final inspection. Building approved temporary gas and electric release on 1/22/19.
4. *No change from the previous.* The Westminster Seminary at 1725 Bear Valley Pkwy so far has received final inspection approval and Temporary Certificates of Occupancy for all buildings except for Buildings B and H. Final building inspection was conducted for building B on 3/4/19 and the contractor is working on the corrections.
5. *No change from the previous.* The Emmanuel Faith Church at 639 E 17th Ave received final inspection corrections on 3/4/19 and they are working on the inspection corrections.
6. *No change from the previous.* The Veterans Village project at 1540 S Escondido Blvd received final Fire approval on 3/15/2019. The contractor is working on Building corrections for final occupancy.
7. The Latitude 2 apartment project at 650 Center City Pkwy has received Temporary Certificate of Occupancy for Buildings 2-4 and Building final approval for buildings 1-4.
8. *No change from the previous.* The new two story church sanctuary building at 1864 N. Broadway has received rough framing approval.
9. The Citron multifamily project at 2516 S Escondido Blvd has received Fire final approval for building 9 and gas meter release for building 10.
10. The new 105 room hotel at 200 La Terraza has received a final building inspection and are working on the corrections.

ENGINEERING DEPARTMENT

Capital Improvements

1. 2018 Street Rehabilitation and Maintenance Project – This year's program will focus in residential areas south of Felicita and east of I 15 with major work on Citricado Parkway, Escondido Boulevard, Del Lago Boulevard, Centre City Parkway, Felicita Road, and Bear Valley Parkway. The replacement of concrete curb, gutter, and sidewalk is continuing along Bear Valley Parkway between Beethoven Road and Canyon Road neighborhoods. Asphalt repairs are underway along Sonata Neighborhood this week. For more information on the

City's Street Maintenance Program including a comprehensive list of streets to be treated follow the link

<https://www.escondido.org/city-of-escondido-street-maintenance-program.aspx>).

2. Valley Parkway/Valley Center Road Widening Project: Calendar Day 409 –. Work on the water main began with the replacement of a temporary concrete kicker. The landscape up-lighting installation began on Tuesday of this week.
3. Transit Center Pedestrian Bridge Project – *No changes from that reported last week*: Transit Center Pedestrian Bridge and Spruce Street Channel Improvement Project bid opening was held January 24. The preconstruction meeting will be scheduled upon receiving a signed contract. Safety training for City staff working within North County Transit District right-of-way is set for next week.
4. Missing Link Project – Delivery and installation of the remaining traffic signal poles for the Woodward Avenue/Broadway intersection was completed on Friday of last week. Signal activation was completed on Tuesday of this week. The signal contractor is on site this week activating bike path signals at Maple Street, Escondido Boulevard, Orange Street and Centre City Parkway. With these signals and the Rapid Flash pedestrian/ bike signal on Quince activated the remaining section of the bike path will be opened along the flood control channel. The mid- block pedestrian crossing on Broadway cannot be activated until the electric meter pedestal can be activated in late April.
5. HSIP Traffic Signal Project – *No changes from that reported last week*: The project will provide new traffic signals at Valley Parkway/Date Street and El Norte Parkway/Fig Street intersections. The project is funded by the Highway Safety Improvements Projects. The Notice to Proceed has been issued and the traffic signal poles have been ordered. The construction of the surface improvements will begin on May 6. All submittals have been reviewed and approved.
6. Tulip Street Improvements Phase IV – The construction of the project began on Monday March 11th with the clearing of vegetation. The project has 70 working days for completion.
7. Multi Neighborhood Street Light L.E.D. Retrofit Project – *No changes from that reported last week*: The project will upgrade 644 existing high pressure sodium lights with energy efficient L.E.D. fixtures. The project boundaries are Lincoln Avenue to the north, 13th Avenue to the south, Ash Street to the east, and Upas Street to the west. The winning bid came in below the engineer's estimate which will allow for the installation of an additional 100 lights. The project preconstruction meeting was held on Thursday, February 21. The new light fixtures have an anticipated delivery date of April 17. The work to install will commence immediately after delivery.
8. Storm Drain Pipe Lining and Rehabilitation Project Phase1 – *No changes from that reported last week*: The project consists of 14 work zones and 3 Bid Alternate locations for the videoing, grouting, repairing, and lining of existing corrugated metal pipes (CMP) within the City's inventory. The project bid opening was January 10, 2019. Four Engineering contractors supplied bids. The apparent low bidder was Sancon Engineering Inc. with a bid of \$841,310.00. The Engineers estimate for the project was \$746,734.00. The preconstruction meeting was held on Wednesday of this week.

9. High Visibility Pedestrian Crossing Signals - New Rectangular Rapid Flashing Beacons (RRFB) were installed at the Rose Street crosswalk by Rose Elementary School and on Quince Street at the bike trail crossing. RRFBs are solar-powered and pedestrian-activated flashing beacons to increase driver awareness of pedestrian/bike crossing. The Rose Elementary School crosswalk improvement is on the annual Traffic Management Project list funded through the Transportation and Community Safety Program.

Private Development

1. Centre City Shopping Center – *No changes to from that reported last week*: The project has been walked and a punch list has been provided. The traffic signal contractor has completed all punch list items identified. The project is located at 425 West Mission Avenue.
2. Tract 932 - Canyon Grove Shea Homes Community – *No changes from that reported last week*: Engineering will be finishing additional houses this week. Of the 179 home lots developed since the start of construction on February 11, 2016, only 30 remain unoccupied.
3. Latitude II Condominiums by a Lyon Homes Partnership: Washington Avenue at Centre City Parkway – Work is ongoing for the construction of the storm water basins located along the Centre City Parkway frontage.
4. Tract 934 – *No changes from that reported last week*: Is a 5 lot subdivision located at 1207 Gamble Street. The construction of the underground utilities is idled this week.
5. Veterans Village – *No changes from that reported last week*: The project has been walked and a punch list has been provided. One building will be released for occupancy this week.
6. KB Homes Oak Creek Project - *No changes from that reported last week*: The contractor is nearing completion of the remedial grading to remove unsuitable material from within the project. This work is focused on 4 specific areas. The project is located at the intersection of Hamilton Lane and Miller Avenue.
7. Escondido Self Storage - *No changes from that reported last week*: The grading of the project is idled. Offsite utility construction has begun along Brotherton Road. The project is located at the southwest corner of Brotherton Road and Cranston Drive.
8. Citron Development - The release of one additional building was completed this week.
9. ATT Facility Tank Relocation – Dewatering of the excavation is the order of the work this week.
10. North American Self Storage – The offsite water line construction is set to begin next week along Metcalf Street, between Mission Avenue and the 78 overpass. The water line work at Mission Avenue will be done during as night time operation. The project is located at 852 Metcalf Street.

GRANT APPLICATIONS

None this week.

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