



**JUNE 5, 2019**  
**CITY COUNCIL CHAMBERS**  
**5:00 P.M. Closed Session; 6:00 P.M. Regular Session**  
**201 N. Broadway, Escondido, CA 92025**

MAYOR	<b>Paul McNamara</b>
DEPUTY MAYOR	<b>Consuelo Martinez</b>
COUNCIL MEMBERS	<b>Olga Diaz</b> <b>John Masson</b> <b>Michael Morasco</b>
CITY MANAGER	<b>Jeffrey Epp</b>
CITY CLERK	<b>Zack Beck</b>
CITY ATTORNEY	<b>Michael McGuinness</b>
DIRECTOR OF COMMUNITY DEVELOPMENT	<b>Bill Martin</b>
DIRECTOR OF ENGINEERING SERVICES	<b>Julie Procopio</b>

**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

**June 5, 2019  
5:00 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/RRB)**

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

- a. **Property:** Municipal Parking Lot #1 (APN 229-421-26)  
**City Negotiator:** Jeffrey Epp, City Manager  
**Negotiating Parties:** Touchstone Communities  
**Under Negotiation:** Price and Terms of Agreement

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

- a. The City Council will consider issues related to potential litigation arising out of the Escondido Redevelopment Agency's Traffic Impact Fund loan approved in the 2019-20 Recognized Obligation Payments Schedule (ROPS).

**ADJOURNMENT**



# Council Meeting Agenda

**June 5, 2019  
6:00 P.M. Meeting**

## **Escondido City Council Mobilehome Rent Review Board**

### **CALL TO ORDER**

**MOMENT OF REFLECTION:**

**FLAG SALUTE**

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

### **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/RRB)**

**2. [APPROVAL OF WARRANT REGISTER \(Council\)](#)**

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

- 330575 – 330812, dated May 15, 2019
- 330813 – 331117, dated May 22, 2019

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

3. **APPROVAL OF MINUTES: Regular Meeting of May 8, 2019**

4. **REQUEST FOR AUTHORIZATION TO PROCESS A GENERAL PLAN AMENDMENT TO CHANGE THE PLANNED OFFICE STANDARDS TO ALLOW STRUCTURES UP TO FIVE (5) STORIES IN HEIGHT TO ACCOMMODATE TWO (2) PROPOSED HOTELS AND A COMMERCIAL OFFICE DEVELOPMENT LOCATED AT 2200 and 2220 E. FELICITA AVENUE -**

Request the City Council approve processing the proposed General Plan Amendment to allow structures up to five (5) stories in height within the Planned Office land-use designation.

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

5. **BID AWARD FOR THE EL NORTE PARKWAY IMPROVEMENT PROJECT -**

Request the City Council approve awarding the bid to Hazard Construction Company, determined to be the lowest responsive and responsible bidder; authorize the Mayor and City Clerk to execute a Public Improvement Agreement in the amount of \$2,894,844; and authorize a Second Amendment to the Consulting Agreement with TY Lin International in the amount of \$25,810 for bridge construction support services for the El Norte Improvement Project.

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

RESOLUTION NO. 2019-78

6. **CONSULTING AGREEMENT AND BUDGET ADJUSTMENT FOR THE TRUNK SEWER MAIN REPLACEMENT PROJECT -**

Request the City Council approve authorizing the Mayor and City Clerk to execute a Consulting Agreement with Infrastructure Engineering Corporation in the amount of \$298,630 for the design of the Trunk Sewer Main Replacement Project and approve a budget adjustment in the amount of \$200,730.

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

RESOLUTION NO. 2019-80

7. **AWARD PURCHASE CONTRACT FOR BODY-WORN CAMERAS, ACCESSORIES, LICENSES, VIDEO STORAGE SOLUTION, AND ACCESS FOR PROSECUTION PARTNERS FOR THE POLICE DEPARTMENT -**

Request the City Council approve awarding the bid to Axon Enterprises, Inc. determined to be the lowest responsive and responsible bidder and authorize the Deputy City Manager to execute a three-year contract with Axon Enterprises, Inc. in the amount of \$404,836.02 for body-worn camera equipment, accessories, licenses, video storage, and access for prosecution partners for the Police Department.

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

RESOLUTION NO. 2019-84

8. **FISCAL YEAR 2018 OPERATION STONEGARDEN GRANT AND BUDGET ADJUSTMENT -**

Request the City Council approve accepting Fiscal Year 2018 Operation Stonegarden Grant funds in the amount of \$10,000 from the California Office of Emergency Services through the County of San Diego; authorize the Chief of Police or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds.

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

**9. FISCAL YEAR 2018 STATE HOMELAND SECURITY GRANT PROGRAM AND BUDGET ADJUSTMENT -**

Request the City Council approve authorizing the Escondido Police Department to accept Fiscal Year 2018 State Homeland Security Grand funds in the amount of \$116,516; authorize the Chief of Police or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds.

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

**10. FISCAL YEAR 2019 DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL LOCAL LAW ENFORCEMENT GRANT AND BUDGET ADJUSTMENT -**

Request the City Council approve authorizing the Chief of Police to accept a \$60,000 grant award from the California Department of Alcoholic Beverage Control (ABC); authorize the Chief of Police or his designee to execute contract documents on behalf of the City; and approve budget adjustments needed to spend grant funds.

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

RESOLUTION NO. 2019-85

**11. STATEWIDE PARK DEVELOPMENT AND COMMUNITY REVITALIZATION PROGRAM APPLICATION AND BUDGET ADJUSTMENT -**

Request the City Council approve authorizing the Director of Communications and Community Services or her designee to submit an application to the California Department of Parks and Recreation for \$8.5 million in Statewide Park Development and Community Revitalization Program funds for improvements to the Escondido Creek Trail including its extension to Citracado Parkway, and if awarded, authorize the Director of Communications and Community Services or her designee to accept the grant funds, complete a budget adjustment, and complete grant documents on behalf of the City of Escondido (City) to receive, track and spend these funds. It is also requested that the City Council authorize a \$40,000 budget adjustment of Park Development Fees to fund community outreach to facilitate the scope and design of the project.

Staff Recommendation: **Approval (Communications and Community Services Department: Joanna Axelrod)**

RESOLUTION NO. 2019-87

**CONSENT RESOLUTIONS AND ORDINANCES (COUNCIL/RRB)**

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

**PUBLIC HEARINGS**

**12. SHORT-FORM RENT INCREASE APPLICATION FOR CASA DE AMIGOS MOBILEHOME PARK**

Request the City Council consider for approval the short-form rent increase application submitted by Casa De Amigos Mobilehome Park, and if approved, grant an increase of 75 percent of the change in the Consumer Price Index, or 2.783 percent (an average of \$18.41) for the period of December 31, 2017 to December 31, 2018.

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

RRB RESOLUTION NO. 2019-02

**13. ONE-YEAR ACTION PLAN FOR FISCAL YEAR 2019-2020 HOME FUNDS FOR AFFORDABLE HOUSING ACTIVITIES, CDBG FUNDS FOR COMMUNITY DEVELOPMENT PROGRAMS, AND ESG FUNDS FOR HOMELESS PRIORITIES -**

Request the City Council approve the HOME, CDBG, and ESG budgets and allocations; authorize the Director of Community Development and City Clerk to execute contracts with service providers as appropriate; approve the Fiscal Year 2019-2020 One-Year Action Plan; and approve the submittal to the U.S. Department of Housing and Urban Development. ***This item was continued from May 22, 2019.***

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

A) RESOLUTION NO. 2019-55 B) RESOLUTION NO. 2019-56

**CURRENT BUSINESS**

**14. APPROVAL OF FINANCING AGREEMENT WITH THE CALIFORNIA IBANK FOR CONSTRUCTION OF LINDLEY RESERVOIR TANK REPLACEMENT PROJECT -**

Request the City Council approve authorizing the Director of Utilities, on behalf of the City, to sign an Installment Sale Agreement (a type of Financing Agreement) with the California Infrastructure and Economic Development Bank (IBank) for \$15 million in funding for the Lindley Reservoir Tank Replacement Project.

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

RESOLUTION NO. 2019-75

**WORKSHOP**

**15. UPDATE ON THE RECYCLED WATER EXPANSION AND POTABLE REUSE PROGRAM -**

Request the City Council receive and file a report by the Utilities Director concerning the Recycled Water Expansion and Potable Reuse Program.

Staff Recommendation: **Receive and File (Utilities Department: Christopher W. McKinney)**

**FUTURE AGENDA**

**16. 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](http://www.escondido.org).

- [WEEKLY ACTIVITY REPORT -](#)

## ORAL COMMUNICATIONS

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

## ADJOURNMENT

### UPCOMING MEETING SCHEDULE

Date	Day	Time	Meeting Type	Location
June 12	Wednesday	5:00 & 6:00 PM	Regular Meeting	Council Chambers
June 19	Wednesday	5:00 & 6:00 PM	Regular Meeting	Council Chambers
June 26	Wednesday	5:00 & 6:00 PM	Regular Meeting	Council Chambers
July 3	-	-	No Meeting	-

## TO ADDRESS THE COUNCIL

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

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

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](http://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 5:00 in Closed Session and 6:00 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

June 5, 2019

File No. 0400-40

SUBJECT: Approval of Warrants

DEPARTMENT: Finance Department

RECOMMENDATION:

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

330575 – 330812, dated May 15, 2019

330813 – 331117, dated May 22, 2019

FISCAL ANALYSIS:

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

May 9 – May 15, 2019, is \$2,092,500.24

May 16 – May 22, 2019, is \$2,191,158.13

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 ESCONDIDO**  
**May 8, 2019**  
**4:30 P.M. Meeting Minutes**

**Escondido City Council**

**CALL TO ORDER**

The Regular Meeting of the Escondido City Council was called to order at 4:30 p.m. on Wednesday, May 8, 2019 in the City Council Chambers at City Hall with Mayor McNamara presiding.

**MOMENT OF REFLECTION**

Zack Beck, City Clerk, led the Moment of Reflection.

**FLAG SALUTE**

Deputy Mayor Martinez led the flag salute.

**ATTENDANCE:**

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

Also present were: Jay Petrek, Assistant City Manager; Gary McCarthy, Senior Deputy City Attorney; Bill Martin, Director of Community Development; Julie Procopio, Director of Engineering Services; Zack Beck, City Clerk.

**PROCLAMATIONS**

Todd Lotzgeselle, Meter Reader Supervisor, accepted the proclamation for Water Awareness Month and Drinking Water Week.

**PRESENTATIONS**

Elisa Marrone, Environmental Program Specialist, presented the Be Water Smart Poster Contest Awards.

**ORAL COMMUNICATIONS**

**Alejandro Sanchez, Escondido**, expressed concerns regarding affordable housing conditions and issues.

**Joe Britton**, Public Affairs Manager for San Diego Gas & Electric, introduced himself and was available for questions.

**CONSENT CALENDAR**

Moved by Councilmember Masson and seconded by Deputy Mayor Martinez to approve the Consent Calendar with the exception of item 5. Motion carried unanimously.

- 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:

- 329929 – 330195 dated April 24, 2019

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

- 3. APPROVAL OF MINUTES: None Scheduled**

- 4. TREASURER'S INVESTMENT REPORT FOR THE QUARTER ENDED MARCH 31, 2019 -**  
Request the City Council receive and file the Quarterly Investment Report.

Staff Recommendation: **Receive and File (City Treasurer's Office: Douglas W. Shultz)**

- 5. CITY OF ESCONDIDO'S INVESTMENT POLICY -**  
Request the City Council approve the City of Escondido's May 2019 Investment Policy.

Staff Recommendation: **Approval (City Treasurer's Office: Douglas W. Shultz)**

RESOLUTION NO. 2019-57

Douglas W. Shultz, City Treasurer, was available to answer questions.

**MOTION:** Moved by Councilmember Diaz and seconded by Councilmember Masson to approve the City of Escondido's May 2019 Investment Policy and adopt Resolution No. 2019-57. Motion carried unanimously.

- 6. RENEW SIGNATURE AUTHORIZATIONS FOR INVESTING CITY FUNDS IN THE LOCAL AGENCY INVESTMENT FUND -**

Request the City Council approve renewing authorization to invest monies, not required for immediate cash flow needs, in the Local Agency Investment Fund (LAIF) which is administered by the State Treasury in accordance with Section 16429.1 of California Government Code.

Staff Recommendation: **Approval (City Treasurer's Office: Douglas W. Shultz)**

RESOLUTION NO. 2019-63

- 7. CONSULTING AGREEMENT FOR MIDWAY DRAINAGE IMPROVEMENTS -**  
Request the City Council approve authorizing the Mayor and City Clerk to execute a Consulting Agreement with NV5 in the amount of \$164,900 to complete a drainage study for the East Valley Parkway and Midway Drive Drainage Improvement Project.

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

RESOLUTION NO. 2019-68

- 8. APPROVAL OF CALPERS INDUSTRIAL DISABILITY FOR POLICE OFFICER RAYMOND SOLORIO -**

Request the City Council approve the California Public Employees' Retirement system (CalPERS) Industrial Disability Retirement for Police Officer Raymond Solorio.

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

RESOLUTION NO. 2019-70

**9. ANNUAL STATE MANDATED INSPECTION COMPLIANCE REPORT -**

Request the City Council approve acknowledging receipt of an Annual State Mandated Inspection Compliance Report. The report reflects that the Escondido Fire Department has conducted 100% of the inspections of certain structures as required by state law.

Staff Recommendation: **Approval (Fire Department: Rick Vogt)**

RESOLUTION NO. 2019-72

**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.)

**10. AMENDMENT TO DOWNTOWN SPECIFIC PLAN - DENSITY TRANSFER PROGRAM (PHG 17-0024 AND ENV 19-0004) -**

Approved on May 1, 2019 with a vote of 5/0

ORDINANCE NO. 2019-06 (Second Reading and Adoption)

**CURRENT BUSINESS**

**11. DALEY RANCH CONSERVATION BANK CREDIT SALES STRATEGY -**

Request the City Council approve implementing a strategy for increasing Daley Ranch conservation habitat credit sales by offering a five percent price reduction to purchasers of negotiated habitat credits from competing mitigation banks for the sale of comparable Daley Ranch habitat credits and proactively approaching developers who require habitat mitigation and informing them of opportunities to save five percent by purchasing conservation credits in Daley Ranch.

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

RESOLUTION NO. 2019-59

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

**Colleen MacKinnon**, Representative for the Friends of Daley Ranch, voiced support for this item.

**MOTION:** Moved by Councilmember Morasco and seconded by Deputy Mayor Martinez to approve implementing a strategy for increasing Daley Ranch conservation habitat credit sales by offering a five percent price reduction to purchasers of negotiated habitat credits from competing mitigation banks for the sale of comparable Daley Ranch habitat credits and proactively approaching developers who require habitat mitigation and informing them of opportunities to save five percent by purchasing conservation credits in Daley Ranch and adopt Resolution No. 2019-59. Motion carried unanimously.

**WORKSHOP**

**12. FISCAL YEAR 2019/20 PRELIMINARY OPERATING BUDGET STATUS -**

Request the City Council review the proposed Fiscal Year 2019/20 General Fund Preliminary Operating Budget status, consider public feedback and comment, and authorize staff to return with the Fiscal Year 2019/20 General Fund Operating Budget on June 12, 2019.

Staff Recommendation: **Provide Direction (Finance Department: Sheryl Bennett)**

Sheryl Bennett, Deputy City Manager/Administrative Services, Joan Ryan, Assistant Director of Finance, Jodi Coco, Budget Manager, and Michelle Collett, Senior Accountant, presented the staff report utilizing a PowerPoint presentation.

**Marilyn Gallejo, Escondido**, recommended a youth and natural resources program comprised of the City of Escondido, local youth, and local agencies.

**COUNCIL PROVIDED DIRECTION TO STAFF.**

**13. FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM AND FISCAL YEAR 2019/20 CIP BUDGET STATUS -**

Request the City Council review the proposed Fiscal Year 2019/20 Five-Year Capital Improvement Program Budget status and authorize staff to return with the final 2019/20 Capital Improvement Program and Budget on June 12, 2019.

Staff Recommendation: **Provide Direction (Finance Department: Sheryl Bennett)**

Sheryl Bennett, Deputy City Manager/Administrative Services, Joan Ryan, Assistant Director of Finance, Jodi Coco, Budget Manager, and Michelle Collett, Senior Accountant, presented the staff report utilizing a PowerPoint presentation.

**COUNCIL PROVIDED DIRECTION TO STAFF.**

**FUTURE AGENDA**

**14. 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**

Councilmember Morasco attended the National Day of Prayer event on May 2, 2019; toured Henry Avocado grove; and received a progress report from the California Center for the Arts, Escondido.

Deputy Mayor Martinez will attend the League of California Cities on Monday, May 13 and met with the Board of Trustees for the California Center for the Arts, Escondido.

Councilmember Masson toured Henry Avocado grove.

Mayor McNamara attended the SANDAG Transportation Committee meeting.

**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](http://www.escondido.org).

- **WEEKLY ACTIVITY REPORT -**



**ORAL COMMUNICATIONS**

**ADJOURNMENT**

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

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

## CITY COUNCIL STAFF REPORT

**Consent Item No. 4**

**June 5, 2019**

**File No. 0830-20**

**SUBJECT:** Request for Authorization to Process a General Plan Amendment to Change the Planned Office Standards to Allow Structures up to Five (5) Stories in Height to Accommodate Two (2) Proposed Hotels and a Commercial Office Development Located at 2200/2220 E. Felicita Avenue

**DEPARTMENT:** Community Development Department, Planning Division

**RECOMMENDATION:**

It is requested the City Council authorize the processing of the proposed General Plan Amendment to allow structures up to five (5) stories in height within the Planned Office land-use designation.

**PROJECT DESCRIPTION:**

The Planning Division received a proposal from Emerald Alliance Corp. (Hassan Assi) to develop an approximately 6.98-acre property to accommodate up to two (2) hotels and an additional commercial office building located on the southeastern corner of Felicita Avenue and Gamble Lane/Citracado Parkway. The subject vacant property is located within the Planned Office land-use designation with an underlying zoning designation of RE-20 (Residential Estate, 20,000 SF min. lot size) as depicted in Attachment 1. The project proponent is requesting the City initiate a General Plan Amendment to allow structures up to five (5) stories within the Planned Office designation where structures currently are limited to a maximum height of three (3) stories. This change would permit the processing of a land-use development application consisting of Master and Precise Development Plan, Zone Change from RE-20 to Planned Development-Commercial, and a Parcel Map. Authorizing this request to proceed with the General Plan Amendment is not an approval of the proposed project nor a guarantee of approval of the proposed project or General Plan Amendment. Rather, City Council only provides direction to City staff to begin the City review process.

**FISCAL ANALYSIS:**

For the purposes of this agenda item, the City Council only would be providing direction to staff on the processing of the prospective amendment to the General Plan. Authorization to process the amendment application will have no direct fiscal or staff impacts. The privately initiated amendment application would be processed using existing staff resources with costs to be paid by the project proponent. Any corresponding development applications (e.g., Zone Change and Planned Development) would be processed concurrently with the proposed General Plan Amendment request.

**ENVIRONMENTAL REVIEW:**

The action before the City Council is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15262, Feasibility and Planning Studies. This Agenda

Report item involves the consideration of processing a General Plan Amendment and land-use development application. This general direction does not have a legally binding effect on any possible future discretionary action.

BACKGROUND:

California Government Code Section 65358(a) provides, "If it deems it to be in the public interest, the legislative body may amend all or part of an adopted general plan. An amendment to the general plan shall be initiated in the manner specified by the legislative body." In accordance with its legislative discretion, the City of Escondido has established a set of General Plan Amendment Procedures to provide a process for preliminary review of proposed amendments. The purpose of which is intended to screen and/or prioritize land-use development applications for review and identify applications the City Council has no interest in pursuing.

Based on the above, after receiving a General Plan Amendment authorization request, the City Council will consider which projects, if any, will be authorized to proceed with a formal amendment application. The decision does not in any way presume approval of the amendment or project. It only authorizes staff to process the application, but the City retains its discretion to consider the application in accordance with all applicable laws, including the California Environmental Quality Act and the City's zoning laws and ordinances. Consideration of the application will be in accordance with the City's Municipal Code and regulations. The City is allowed to approve up to four (4) General Plan Amendments per year. There is no limit on the number of General Plan Amendment requests that may be initiated or processed.

The applicant indicated in their attached letter (Attachment 2) that the proposed amendment to the General Plan to allow structures up to five (5) stories in height is warranted because of the limited development area of the property. Currently, there is an existing stream course and sensitive habitat that bisects the property. By incorporating these features into the overall project design, important environmental resources may be preserved and significant impacts avoided. Attachment 3 consists of a preliminary concept site plan that shows the location of the stream and how it would be incorporated into the overall project. By setting aside horizontal space for the stream course and habitat, the net lot size is reduced and additional height is necessary to help provide the minimum number of rooms to support the type of hotel(s) planned. Because the project site is situated at a lower elevation than the adjacent Interstate 15, the applicant also feels the additional stories would not create any significant visual or compatibility impacts along this view corridor. In consideration of the request and the site's location adjacent to some residential areas, City staff would work with the applicant through the permitting process to utilize building location, orientation, and design techniques to reduce the bulk and mass of the project. As mentioned previously in the report, authorizing this request is not an approval of the proposed project. Rather, City Council only provides direction to City staff to begin the city review process, which will result in duly noticed public hearings before the Planning Commission and City Council.

The subject property also is located within the larger General Plan Felicita Corporate Office Target Area (GP Figure II-29, page II-75) that generally encompasses approximately 87 acres of land surrounding the Interstate 15 and Felicita Road Interchange area. The Target Area currently is developed with a mix of low intensity medical offices, single-family homes, churches, agricultural and vacant lots. The general principles of the Target Area is to promote opportunities and incentives for increasing employment densities, with development to include high quality and unified design elements that are sensitive to adjacent to single zoning. Increased building heights and intensities shall be located closer to the freeway in areas that are more distanced from lower density residential with compatible buffers provided. The general description for the General Plan land-use designation for Planned Office (Figure II-6, page II-25) includes office and related support office uses in a campus-like setting, along with limited support retail and services, as well as compatible public uses integrated into a development. The applicant feels that proposed hotel development is appropriate for the site and consistent with the General Plan land-use designation because there are limited hotel options within Escondido along the Interstate 15 corridor; a portion of the site is reserved for commercial office land-use; build-out of the site would generate a variety of employment opportunities and Transient Occupancy Taxes; and the development would serve as a catalyst for additional development throughout the surrounding Planned Office Target Area.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

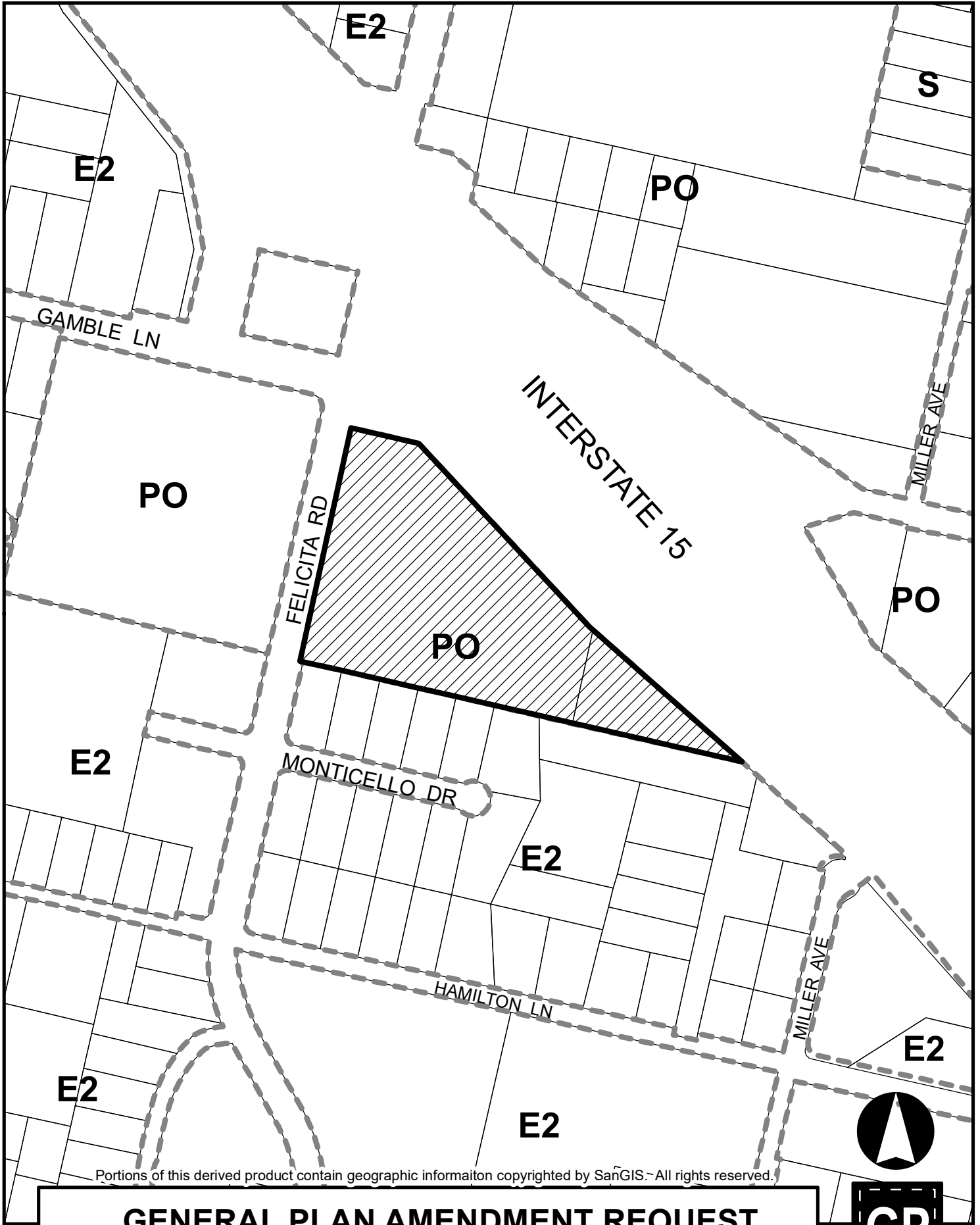
*Bill Martin*, Director of Community Development  
5/29/2019 7:54 p.m.

*Jay Paul*, Senior Planner  
5/30/2019 8:23 a.m.

ATTACHMENTS:

1. Attachment 1 – Location/General Plan Map
2. Attachment 2 – Privately Initiated General Plan Amendment Request Letter (5.21.19)
3. Attachment 3 – Concept Site Plan/Rendering

ATTACHMENT 1



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**GENERAL PLAN AMENDMENT REQUEST**  
**APN 238-102-4100 AND -4500**



GENERAL PLAN

# ATTACHMENT 2

## Case Design Group

*Hotel & Restaurant Design*

232 SE Oak St.  
Portland, Or 97214  
Suite 101  
503 863 4235

### General Plan Amendment Request:

**DATE:** 5/21/2019

**TO:** City of Escondido CA

We are proposing to develop the subject property at 2200 Felicita Road. (APN: 238-102-41 &43) as a comprehensive planned development consisting of three commercial buildings, including one to two hotels up to five stories in height.

The General Plan land-use designation is PO (Planned Office) which limits building height to three stories.

The property is bisected by existing drainage features that include sensitive habitat areas which in turn limits the available development area of the site.

After over a year of study and design, and input from various resource agencies, we have been able to identify some suitable construction locations on the site that would reduce potential impacts to these sensitive areas.

However, in order to achieve the preservation of these sensitive areas and support a viable project, a smaller building footprint is necessary to support the proposed development. This smaller footprint will require additional stories to support the number of rooms required to attract the type of hotel(s) planned.

**Therefore, we are requesting an Amendment to the General Plan.**

The proposed site is lower than the adjacent I-15 freeway, and the elevation difference between the site and the freeway would reduce potential impacts from the taller buildings proposed.

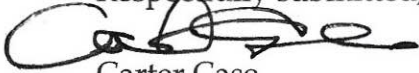
In addition, the appropriate site design features, preservation of the on-site habitat, appropriate building design and landscape buffers would reduce potential visual and compatibility impacts from adjacent uses.

We believe the project would have a positive impact to the Felicita Corporate Office Target Area that is planned for the properties around

the interchange to be a catalyst for future commercial/office development.

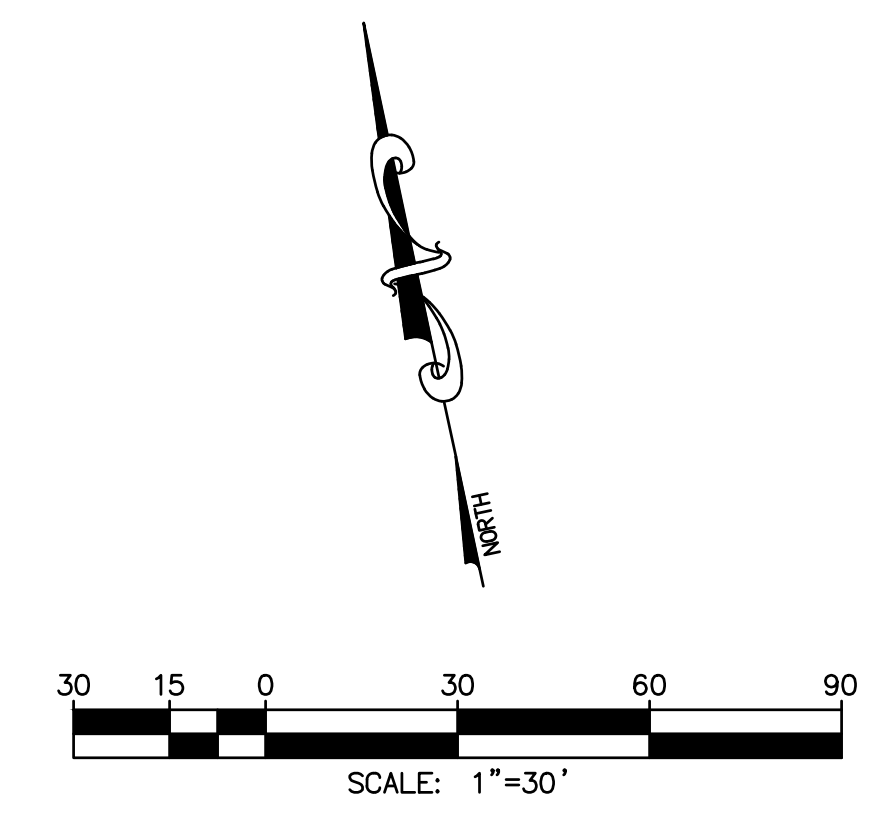
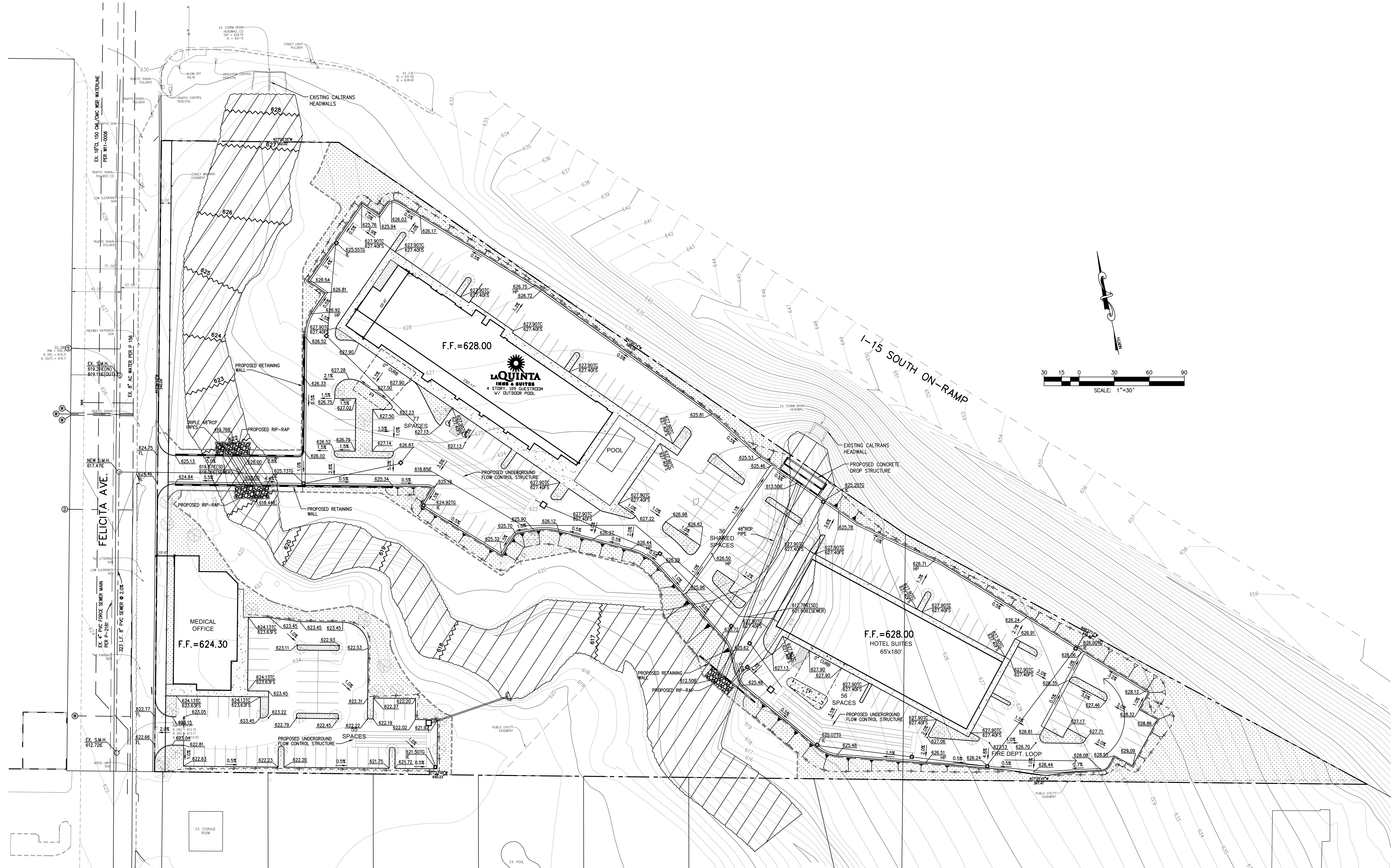
**Therefore, we are requesting the City Council to authorize the processing of the General Plan Amendment**

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carter Case', written over the text 'Respectfully submitted,'.

Carter Case  
Case Design Group  
Applicant

**ATTACHMENT 3**  
**CONCEPTUAL GRADING PLAN**





**ATTACHMENT 3**





# CITY COUNCIL STAFF REPORT

**Consent Item No. 5**

**June 5, 2019**

**File No. 0600-10, A-3297**

SUBJECT: Bid Award for the El Norte Parkway Improvement Project

DEPARTMENT: Engineering Services Department, Design/Capital Improvement Section

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2019-78 awarding the bid to Hazard Construction Company, determined to be the lowest responsive and responsible bidder, authorizing the Mayor and the City Clerk to execute a Public Improvement Agreement in the amount of \$2,894,844, and authorizing a Second Amendment to the Consulting Agreement with TY Lin International in the amount of \$25,810 for bridge construction support services for the El Norte Parkway Improvement Project.

FISCAL ANALYSIS:

This Project is fully funded with an Active Transportation Grant, Traffic Impact Fees, and TransNet funds.

BACKGROUND:

The El Norte Parkway Improvement Project will construct a second bridge over the Escondido Creek Channel, adding one lane in each direction and bringing El Norte Parkway to its ultimate width. The Project will also add landscaped medians along El Norte Parkway between El Norte Hills Place and East Valley Parkway and underground remaining overhead utilities. A signalized pedestrian crossing and trailhead entry sign will be installed where the Escondido Creek Trail crosses El Norte Parkway.

On May 23, 2019, six (6) sealed bids were received in response to the advertised request for bids on this Project. The bid results are listed below:

Hazard Construction Company	\$2,894,844.00
Southland Paving, Inc.	\$3,027,856.75
Beador Construction Company, Inc.	\$3,276,300.00
Wright Construction Engineering Corp.	\$3,323,872.25
Blue Pacific Engineering & Construction	\$3,408,502.00
Weir Construction Corporation	\$3,617,876.34

Hazard Construction Company meets the qualifications outlined in the bid necessary to complete this project. Staff recommends that the bid submitted by Hazard Construction Company be considered the lowest responsive and responsible bid, and that the contract be awarded in the amount of \$2,894,844 to Hazard Construction Company. This bid amount is approximately 8 percent lower than the Engineer's estimate of \$3,135,600.

Staff also recommends a Second Amendment, in the amount of \$25,810, to TY Lin International's Consulting Agreement to add construction support services, including responding to contractor requests for clarification of the bridge design and review of shop drawings. The original contract in the amount of \$51,100 was executed by the City Manager for design of the new bridge. The First Amendment, in the amount of \$11,820, was also approved by the City Manager to make design revisions that would reduce construction costs, revise bridge railing to match the City's newly established standard architectural railing, and make other design improvements to improve safety and visibility in the area of the bridge. The City Council's approval of the Second Amendment is requested because the total of all amendments exceeds 25-percent of the original contract amount.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Julie Procopio*, Director of Engineering Services  
5/30/2019 9:04 p.m.

ATTACHMENTS:

1. Resolution No. 2019-78
2. Resolution No. 2019-78 – Exhibit "1": Public Improvement Agreement with Hazard Construction Company
3. Resolution No. 2019-78 – Exhibit "2": Second Amendment to Consulting Agreement with TY Lin

RESOLUTION NO. 2019-78

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AWARDING THE BID FOR THE EL NORTE PARKWAY IMPROVEMENT PROJECT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A PUBLIC IMPROVEMENT AGREEMENT WITH HAZARD CONSTRUCTION COMPANY, AND AUTHORIZING A SECOND AMENDMENT TO THE CONSULTING AGREEMENT WITH TY LIN INTERNATIONAL

WHEREAS, the City Council has allocated funding in the adopted Capital Improvement Program Budget for the El Norte Parkway Improvement Project (“Project”); and

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

WHEREAS, pursuant to said notice, six (6) sealed bids for the project were opened and evaluated on May 23, 2019; and

WHEREAS, Hazard Construction Company was determined to be the lowest responsive and responsible bidder; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to award a contract to Hazard Construction Company in the amount of \$2,894,844.00; and

WHEREAS, additional design services are requested of TY Lin International to support the construction in the amount of \$25,810.

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

1. That the above recitations are true.
2. That the Mayor and the City Clerk are authorized to execute, on behalf of the City, a Public Improvement Agreement with Hazard Construction Company in substantially similar form to that which is attached and incorporated to this Resolution as Exhibit "1," and subject to final approval as to form by the City Attorney.
3. That City Manager is authorized to execute, on behalf of the City, a Second Amendment to the Consulting Agreement with TY Lin International, which is attached and incorporated to this Resolution as Exhibit "2," and subject to final approval as to form by the City Attorney.

**PUBLIC IMPROVEMENT AGREEMENT**

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

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

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

**EL NORTE PARKWAY IMPROVEMENT PROJECT**

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

- 3. CITY shall pay to the CONTRACTOR, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the Project documents, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
- 4. The Work shall proceed in accordance with Article 2 of the General Conditions, and shall be completed within **one hundred and twenty (120) working days** from the date specified in the Notice to Proceed.
- 5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage(s), in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to CITY as fixed and liquidated damages, and not as a penalty, the



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

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

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

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



in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.

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

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

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

By: \_\_\_\_\_  
Zachary Beck, City Clerk

By: \_\_\_\_\_  
Paul McNamara, Mayor

APPROVED AS TO FORM:

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

By: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

(CORPORATE SEAL OF CONTRACTOR, if  
corporation)

By: \_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

(Second signature required only for corporation)

By: \_\_\_\_\_  
Signature\*\*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Contractor's License No.

\_\_\_\_\_  
Tax ID/Social Security No.

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

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

## SECTION A-00610 - FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENT,

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

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

### EL NORTE PARKWAY IMPROVEMENT PROJECT

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

NOW THEREFORE, if Contractor shall perform all the requirements of said contract required to be performed on his part, at the times and in the manner specified herein, then this obligation shall be null and void, otherwise, it shall remain in full force and effect.

PROVIDED, that

- (1) Any alterations in the work to be done or the materials to be furnished, which may be made pursuant to the terms of the Contract, shall not in any way release Contractor or Surety thereunder;
- (2) Any extensions of time granted under the provisions of Contract shall not release either Contractor or Surety from their respective obligations to Owner;
- (3) Notice of any such alterations or extensions of the Contract is hereby waived by Surety;
- (4) Any payments (including progress payments) made on behalf of Owner to Contractor after the scheduled completion of the work to be performed pursuant to the Contract shall not release either Contractor or Surety from any obligations under the Contract or this Faithful Performance Bond, or both, including any obligation to pay liquidated damages to Owner; and
- (5) To the extent Owner exercises its rights pursuant to this Bond, Owner shall be entitled to demand performance by the surety and be further entitled to recover, in addition to all other remedies afforded by law, its reasonably incurred costs to complete the work, attorney's fees and consultant costs, as well as actual costs incurred by OWNER for the

increased dedication/commitment of time of OWNER employees to the Project. These costs shall be in addition to the penal sum of the bond.

SIGNED AND SEALED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone No.

(SEAL)

BY \_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

(SEAL AND NOTARIAL ACKNOWLEDGEMENT OF SURETY)

APPROVED AS TO FORM:

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

By: \_\_\_\_\_

**SECTION A-00620 - LABOR AND MATERIAL BOND**

KNOW ALL MEN BY THESE PRESENT,

That \_\_\_\_\_ Hazard Construction Company \_\_\_\_\_ as Contractor, and \_\_\_\_\_ as Surety, are held and firmly bound unto the CITY OF ESCONDIDO, hereinafter called Owner, in the sum of \_\_\_\_\_ dollars, for the payment of which sum well and truly to be made, we bind ourselves our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

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

**EL NORTE PARKWAY IMPROVEMENT PROJECT**

NOW THEREFORE, if said Contractor, or subcontractor, fails to pay for any materials, equipment, or other supplies, or for rental of same, used in connection with the performance of work contracted to be done, or for amounts due under applicable State law for any work or labor thereon, or for amounts due under the Unemployment Insurance Code, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such labor, said Surety will pay for the same in an amount not exceeding the sum specified above, and, in the event suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court. This bond shall inure to the benefit of any persons, companies or corporations entitled to file claims under applicable State law.

PROVIDED, that any alterations in the work to be done or the materials to be furnished, which may be made pursuant to the terms of said contract, shall not in any way release either said Contractor or said Surety thereunder, nor shall any extensions of the time granted under the provisions of said contract release either said Contractor or said surety, and notice of such alterations or extensions of the contract is hereby waived by said Surety.

SIGNED AND SEALED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone No.

(SEAL)

BY \_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

(SEAL AND NOTARIAL ACKNOWLEDGEMENT OF SURETY)

APPROVED AS TO FORM:

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

By: \_\_\_\_\_

**SECTION A-00630 - CITY OF ESCONDIDO BUSINESS LICENSE**

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

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

City of Escondido Business License No. \_\_\_\_\_

Expiration Date \_\_\_\_\_

Name of Licensee \_\_\_\_\_

\_\_\_\_\_

**SECTION A-00660 - WORKERS' COMPENSATION INSURANCE CERTIFICATE**

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

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_  
Signature



**SAMPLE NOTICE**

**(REQUIRED UNDER GENERAL CONDITIONS, ARTICLE 6.1.B)**

**TO THE PEOPLE ON THIS STREET OR AFFECTED STREETS:**

WITHIN THE NEXT FEW DAYS, WORK WILL BE STARTED ON THE FOLLOWING PROJECT:

**EL NORTE PARKWAY IMPROVEMENT PROJECT**

The work may cause some inconvenience, but will be of permanent benefit.

We shall appreciate your cooperation in the following matters:

1. Please be alert when driving or walking in the construction area.
2. Tools, materials and equipment are attractive to children. For the safety of the children, please keep them away.
3. Please report all inconvenience to the superintendent on the job, or to the City of Escondido Field Engineering Inspection Office, 760-839-4664. The name and phone number of the Contractor are given below.

This work is being performed for the City of Escondido by:

The project superintendent's name and contract information is:

We will endeavor to complete this work as rapidly as possible and with a minimum of inconvenience to you.



CITY OF ESCONDIDO  
SECOND AMENDMENT TO CONSULTING AGREEMENT

This "Amendment" is made this \_\_\_\_\_ day of \_\_\_\_June\_\_\_\_\_, 20\_19\_.

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

And:                TY Lin International  
                      404 Camino del Rio South, Suite 700  
                      San Diego, CA, 92108  
                      Attn: Jay Holombo Ph.D., P.E.  
                      619-692-1920  
                      ("CONSULTANT")

Witness that whereas:

- A.     CITY and CONSULTANT entered into an agreement on January 14, 2014 ("Agreement"), wherein CITY retained CONSULTANT to provide services for update of prepared plans, specifications and estimates for the El Norte Parkway Bridge; and
  
- B.     CITY and CONSULTANT desire to amend the Agreement to include additional work, which is defined in "Attachment A" to this Amendment, which is incorporated by reference;

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

- 1.     The CONSULTANT will furnish the services described in "Attachment A" to this Amendment.
  
- 2.     CITY will compensate the CONSULTANT in an additional amount not to exceed \$25,810, pursuant to the conditions contained in "Attachment A" to this Amendment.

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

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

CITY OF ESCONDIDO

Date: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey Epp, City Manager

Date: \_\_\_\_\_

TY Lin International

\_\_\_\_\_  
Signature  
Clark Fernon, P.E.  
Unit Manager - So Cal/Nevada

*(The above signature should be notarized)*

APPROVED AS TO FORM:

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

By: \_\_\_\_\_

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

## Attachment A

# Scope of Work for Additional Design Services for the El Norte Parkway Improvement Project

### **Scope of Work:**

The Consultant shall complete additional design services for this project. Prepared documents shall include the following items:

### **Additional Work Tasks:**

1. Attend meetings/teleconferences upon request of the City to expedite the completion of Items 1-3 above.
2. Update Drawing P-2485, Plan Sheets 1-11 to be compliant with 2018 Caltrans Standard Plans.
3. Update existing project specifications to be compliant with 2018 Caltrans Standard Specifications and Special Provisions.
4. Compile design data for City representative's files.
5. Revise design of removable median per project Addendum to accommodate City of Escondido water main Air-vac valve assembly.
6. Provide structural design clarification upon City request, respond to structure related requests for information (RFI's), submittal/shop drawing review, and provide backup structural calculations as requested.
7. Incorporate approved redline structure changes made during construction, prepare and submit As-built drawings on mylar sheets.

Additional Work Task shall be paid using the Contractor's approved proposal, included herein. Work shall continue to be completed on a time and material, not to exceed basis.



engineers | planners | scientists

May 28, 2019

Mathew Souttere, P.E.  
Public Works Department, Engineering Division  
City of Escondido  
201 N. Broadway  
Escondido, CA 92025

Attention: Mr. Mathew Souttere, P.E.

**Subject: El Norte Parkway Bridge over Escondido Creek Widening  
Design Update and Support During Construction**

Please review this proposal to update the design of the El Norte Parkway Bridge over Escondido Creek Widening. The proposed improvements include widening the bridge with a parallel structure, removal of the existing median barrier and construction of a removable median slab.

Design of the El Norte Parkway Bridge Widening was performed by T.Y. Lin International (TYLI) in 2014. At that time, draft plans, specifications and estimates (PS&E) were submitted to the City. Although Caltrans construction standards including Standard Specifications, Standard Plans and Standard Special provisions have been updated, Caltrans bridge design standards, with exception to various design guidance memos, have not. Current Caltrans Bridge Design Standards including the AASHTO LRFD Bridge Design Specifications, 6<sup>th</sup> Edition with California Amendments, 2014 and the Caltrans Seismic Design Criteria, Version 1.7, 2013 will be used for the design updates.

**SCOPE OF SERVICES**

Our proposed scope of services is described in the following tasks:

- Task 1.1 Project Conference Calls:** Attend conference call meetings (tot. 3) with the City of Escondido.
- Task 1.2 Update Plans and Specifications :** Update plans and specifications based on 2018 Standard Plans, Specifications and Standard Special Provisions and current Caltrans Bridge Design Specification at the time of this proposal. These design specifications include the AASHTO LRFD Bridge Design Specifications, 6<sup>th</sup> Edition with California Amendments and the Caltrans Seismic Design Criteria, Version 1.7. Design updates include design of steel brackets to support SDG&E electrical conduit.
- Task 1.3 Final Plans and Specifications:** Respond to comments from the City and update plans and specifications. Print mylar copies and submit Final plans and specifications to the City. Now that the project is advertised, mylars shall be printed to include revisions labeled as "Addendum B."
- Task 1.4 Resident Engineer's Files:** Compile data for Resident Engineer including quantity calculations, designer's notes, as-built plans and supporting technical reports. Prepare a working-day schedule and a four-scale plot.
- Task 2.1 Design Clarifications of Addendum B:** Review structure related contractor requests for information and submittals, including independent structural

calculations when required. The following contractor submittals will be reviewed by the design team:

- Precast girder shop drawings and calculations
- Precast slab shop drawings

**Task 2.2 As-built Drawings:** Incorporate redline markups developed during construction and prepare as-built drawings.

## **SERVICES NOT INCLUDED**

The following services are not included within the scope of this proposal:

- Utility and cathodic protection design.
- Field inspection services.

## **ENGINEERING FEES**


The bridge engineering services as described above will be provided on a lump sum basis with a total fee not to exceed \$25,810, per the detailed breakdown shown in Exhibit "A" Level of Effort Estimate. Invoices will be submitted monthly based on services completed through the end of the billing period. The rates shown in Exhibit "A" are valid until December 31st, 2019. After this date, the rates contained therein increase by 4% per year

Additional services will not be performed until TYLI has received written authorization for the additional work and budget necessary to perform that work.

Thank you very much for considering our firm for these services. We look forward to working with you and the rest of the team on the completion of this important project.

Sincerely,

**T.Y. LIN INTERNATIONAL**



---

Jay Holombo, P.E.  
Project Manager

Attachment "A"  
**FEE PROPOSAL**  
**T.Y. Lin International**

**Project:** El Norte Parkway Bridge over Escondido Creek Widening  
**Scope:** Design Update and Support During Construction  
**Client:** City of Escondido  
**Date:** 5/28/2019

EXHIBIT A  
 Level of Effort Estimate

<b>Design Update and Support During Construction</b>										
<b>Labor</b>		<i>CLASSIFICATION</i>							<b>LABOR</b>	
		<b>Principal Br Engr</b>	<b>Senior Br Engr</b>	<b>Br Engr II</b>	<b>Assist Br Engr</b>	<b>Sr Struc CAD Tech</b>	<b>Struc CAD Tech</b>	<b>Admin Assist</b>		
<b>Task</b>	<b>Description</b>	<b>\$260.00</b>	<b>\$195.00</b>	<b>\$145.00</b>	<b>\$125.00</b>	<b>\$144.00</b>	<b>\$115.00</b>	<b>\$75.00</b>		
1.1	Project Conference Calls (tot. 3)		8.0						8.0	\$1,560.00
1.2	Update Plans and Specifications		4.0	32.0			32.0		68.0	\$9,100.00
1.3	Final Plans and Specifications		2.0	4.0			8.0		14.0	\$1,890.00
1.4	Resident Engineer's Files		2.0	8.0			4.0		14.0	\$2,010.00
2.1	Design Clarifications of Addendum B		8.0	40.0			8.0		56.0	\$8,280.00
2.2	As-built Drawings			4.0			16.0		20.0	\$2,420.00
<b>Labor Subtotals:</b>			24.0	88.0			68.0		180.0	<b>\$25,260.00</b>
<b>Other Direct Costs</b>		<b>Units</b>	<b>Quantity</b>	<b>Unit Cost</b>						<b>Amount</b>
Auto Mileage		Miles	100	\$0.55						\$55.00
Plan Printing		EA	100	\$1.00						\$100.00
Mylar Prints		EA	13	\$15.00						\$195.00
Delivery		LS	2	\$100.00						\$200.00
									<b>Total ODCs:</b>	<b>\$550.00</b>
									<b>Grand Total:</b>	<b>\$25,810.00</b>

## CITY COUNCIL STAFF REPORT

**Consent Item No. 6**

**June 5, 2019**

**File No. 0600-10, A-3302**

**SUBJECT:** Consulting Agreement and Budget Adjustment for the Trunk Sewer Main Replacement Project

**DEPARTMENT:** Utilities Department, Construction and Engineering Division

**RECOMMENDATION:**

It is requested that the City Council:

1. Adopt Resolution No. 2019-80, approving a Consulting Agreement (Agreement) with Infrastructure Engineering Corporation in the amount of \$298,630 for the design of the Trunk Sewer Main Replacement Project, and authorizing the Mayor and City Clerk to execute the Agreement; and
2. Approve a budget adjustment in the amount of \$200,730.

**FISCAL ANALYSIS:**

This Agreement will be funded from the Trunk Main Expansion / Auto Parkway-HARRF Capital Improvement Program (CIP) Project (#801913). The requested budget adjustment will add \$200,730 to the Trunk Main Expansion / Auto Parkway-HARRF CIP Project (#801913) from two other CIP projects:

1. \$160,730 from the Trunk Main / CC Parkway–Auto Parkway CIP Project (#804808); and
2. \$40,000 from the Wastewater CIP Reserve.

**BACKGROUND:**

The City of Escondido's (City) trunk sewer main is an integral part of the City's sewer infrastructure system. This pipeline was originally constructed in 1959 and served as the outfall that ran from the City's wastewater treatment facility, which was previously located at the Public Works Yard. Once the Hale Avenue Resource Recovery Facility (HARRF) was constructed, the pipeline was repurposed to serve as a trunk sewer main in the City's collection system. The trunk sewer main consists of 24-inch and 27-inch reinforced concrete pipe, and short sections of asbestos cement pipe. The trunk sewer main conveys raw sewage from approximately 30 percent of the City of Escondido to the HARRF. Extreme rain events over the past two years further degraded the condition of the already aging pipeline and emergency action was required to replace sections of the pipeline at imminent risk of failure. The project under consideration here will replace five remaining sections that were not replaced as part of the emergency projects. The segments included in the project total approximately 5,000 linear feet, from Norlak Avenue to the HARRF.



The five primary segments include:

1. Approximately 1,100 linear feet (LF) of pipeline in Norlak Avenue and through the existing Public Works Yard;
2. Approximately 2,300 LF of pipeline in North Hale Avenue between Interstate 15 and South Auto Parkway;
3. Approximately 820 LF of pipeline in South Hale Avenue and within the Casa Grande Mobile Estates;
4. Approximately 700 LF of pipeline that runs from the Casa Grande Mobile Estates, across Harmony Grove Road, and within the Escondido Church of God property; and
5. Approximately 90 LF of pipeline that runs from the Green Tree Mobile Estates to the connection point at the HARRF.



- Replaced by previous CIP Project
- Replaced with recent Emergency Projects
- To Be Replaced with this Project

The existing alignment of the trunk sewer is not completely within the public right-of-way. Various segments cross private property, including two auto dealerships, a church, and a residential development. The pipeline also passes underneath a mobile home, which adds an additional challenge to the current pipe alignment. An evaluation of alternative alignments for these areas will be performed as a task under this Consulting Agreement. The Consulting Agreement scope of work also includes: a geotechnical investigation; potholing; environmental documentation; sewer bypass plan; development of detailed engineering plans and specifications; and engineering support during the bid phase.

A Request for Proposal (RFP) was sent to engineering firms specializing in design of water and wastewater projects. Four proposals were received and reviewed by City Staff for responsiveness,

Trunk Sewer Main Replacement Project  
June 5, 2019  
Page 3

understanding of the work, proposed project approach, scope of work, relevant experience, project team, schedule, and proposed fee. The Infrastructure Engineering Corporation team was selected based on their extensive experience of similar projects, proposed project approach, and fee.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Christopher W. McKinney*, Director of Utilities  
5/29/2019 5:18 p.m.

ATTACHMENTS:

1. Budget Adjustment
2. Resolution No. 2019-80
3. Resolution No. 2019-80 – Exhibit “A” – Consulting Agreement for Design Professionals



RESOLUTION NO. 2019-80

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 INFRASTRUCTURE ENGINEERING CORPORATION FOR DESIGN PROFESSIONAL SERVICES FOR THE TRUNK SEWER MAIN REPLACEMENT PROJECT

WHEREAS, the City of Escondido desires to design the Trunk Sewer Main Replacement Project (“Project”); and

WHEREAS, City of Escondido staff solicited proposals from engineering firms specializing in design of water and wastewater projects; and

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

WHEREAS, the proposal from Infrastructure Engineering Corporation was determined to be the best value proposal; and

WHEREAS, City of Escondido staff have completed negotiations with Infrastructure Engineering Corporation and the Director of Utilities recommends that the Consulting 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 in an amount not to exceed \$298,630.

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

1. That the above recitations are true.
2. That the City Council accepts the recommendation of the Director of Utilities to award the Consulting Agreement for Design Professionals to Infrastructure Engineering Corporation.
3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, an Agreement with Infrastructure Engineering Corporation. A copy of the Agreement is attached as Exhibit "A" and is incorporated by this reference.



CITY OF ESCONDIDO  
CONSULTING AGREEMENT FOR DESIGN PROFESSIONALS

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

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Between: CITY OF ESCONDIDO  
a Municipal Corporation  
201 N. Broadway  
Escondido, California 92025  
Attn: Nelson Nuezca  
760-839-6290 ext. 7034  
("CITY")

And: Infrastructure Engineering Corporation  
14271 Danielson Street  
Poway, CA 92064  
Attn: Robert Weber  
858-413-2400  
("CONSULTANT")

Witness that whereas:

- A. It has been determined to be in the CITY's best interest to retain the professional services of a consultant to provide detailed design including preparation of construction drawings and specifications for the Trunk Sewer Main Replacement Project; and
- B. The CONSULTANT is considered competent to perform the necessary professional services for CITY;

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

- 1. Services. The CONSULTANT will furnish all of the services as described in "Attachment A" which is attached and incorporated by this reference.
- 2. Compensation. The CITY will pay the CONSULTANT in accordance with the conditions specified in "Attachment A," in the sum of \$298,630. Any breach of this Agreement will relieve CITY from the obligation to pay CONSULTANT, if CONSULTANT has not corrected the breach after CITY provides notice and a reasonable time to correct it.
- 3. Scope of Compensation. The CONSULTANT will be compensated for performance of tasks specified in "Attachment A" only. No compensation will be provided for any other tasks without specific prior written consent from the CITY.

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

- (3) Both the General Liability and the Automotive Liability policies must name the CITY specifically as an additional insured under the policy on a separate endorsement page. The CITY includes its officials, employees, and volunteers. The endorsement must be ISO Form CG2010 11/85 edition or its equivalent for General Liability endorsements and CA 20-01 for Automobile Liability endorsements.
  - (4) The General Liability policy must include coverage for bodily injury and property damage arising from CONSULTANT's work including its ongoing operations and products-completed operations hazard.
  - (5) The General Liability policy must be primary and noncontributory and any insurance maintained by CITY is excess.
- d. In executing this Agreement, CONSULTANT agrees to have completed insurance documents on file with the CITY within fourteen (14) days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.
9. Indemnification. CONSULTANT (which in this paragraph 9 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless the CITY from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any claim of liability arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. However, CONSULTANT's responsibility for defense costs shall not exceed the percentage of CONSULTANT's fault.
  10. Anti-Assignment Clause. The CONSULTANT may not assign, delegate or transfer any interest or duty under this Agreement without advance written approval of the CITY, and any attempt to do so will immediately render this entire Agreement null and void.
  11. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.
  12. Independent Contractor. CONSULTANT is an independent contractor and no agency or employment relationship, either express or implied, is created by the execution of this Agreement.
  13. Merger Clause. This Agreement and its Attachments, if any, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and any of its Attachments, the provisions of this Agreement must prevail.
  14. Anti-Waiver Clause. None of the provisions in this Agreement will be waived by CITY because of previous failure to insist upon strict performance, nor will any provision be waived by CITY because any other provision has been waived, in whole or in part.
  15. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.
  16. Choice of Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in San Diego County, California.



17. Multiple Copies of Agreement/Counterparts. Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
18. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the CITY.
19. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below. Each party agrees to promptly send notice of any changes of this information to the other party, at the address first above written.
20. Business License. The CONSULTANT is required to obtain a City of Escondido Business License prior to execution of this Agreement.
21. Compliance with Applicable Laws, Permits and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. CONSULTANT shall obtain any and all licenses, permits, and authorizations necessary to perform services set forth in this Agreement. Neither CITY, nor any elected nor appointed boards, officers, officials, employees, or agents of CITY shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
22. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. CONSULTANT affirms that as an employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. CONSULTANT agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.
23. 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.
24. 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.

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: \_\_\_\_\_

Infrastructure Engineering Corporation

\_\_\_\_\_  
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.

## SCOPE OF WORK

### PROJECT APPROACH/SCOPE

The City's Trunk Sewer Main is currently aligned through residential, commercial, and industrial areas, and each of these pose different challenges during design. Getting the project kicked off in the right direction will help guide the project to success. IEC recommends the following preliminary design tasks which will provide the framework for final design which is described further below.

### PRELIMINARY DESIGN

#### 1. Utility Research and Data Collection

Utility research is a critical task for pipeline projects. Comprehensive research and data collection at the onset of the project is imperative to reduce the risk of potential claims or unexpected conditions during construction. IEC adheres to a methodical utility research program that begins upon receipt of the Contract and continues through completion of final design. We have successfully designed many new and replacement pipelines using these utility research procedures and have a track record of avoiding conflicts with existing utilities. The following is a synopsis of our utility research program:

- Assign one (1) member of the Design Team to serve as "Project Utility Coordinator". This individual is responsible for tracking and documenting utility requests and responses throughout the project.
- Contact USA DigAlert to obtain a pre-planning list of utility agencies with existing utilities in the vicinity of the proposed alignment.
- Contact utility agencies on the pre-planning list to make them aware of the potential project and formally request their system maps and record drawings. The request is emailed or mailed via Certified Mail-Return Receipt Requested.
- Obtain from the City all water, sewer, storm drain, and other as-built improvement plans relevant to the project.
- Upon receipt of utility information, the Project Utility Coordinator will review it for responsiveness and completeness. Follow up phone calls or in-person visits to agencies are performed as necessary.
- Field reconnaissance is conducted by experienced IEC team members to validate the accuracy of the record data, or to identify recently constructed existing features that are not shown on record drawings. Where necessary, site meetings with utility company personnel are conducted to resolve uncertainties associated with inaccurate or incomplete record drawings.
- After drafting the existing utilities into the design drawings and developing horizontal and vertical alignments for the trunk sewer, each agency on the pre-planning list is sent a set of plans for a conflict check at major design milestones (60% and 100%). Revisions are made where necessary to avoid conflicts.
- Where additional information is necessary, potholing is recommended – see below for a description of the potholing task.

#### 2. Sizing Study

The Sizing Study is to determine the appropriate size for the segments of trunk sewer to be replaced. The original sewer constructed in 1959 was made of 24- and 27-inch reinforced concrete pipe (RCP). This pipe was in service for many years until segments began failing over the last few years and required emergency replacement. The failing segments were replaced with 30- and 36-inch PVC pipe; these sizes were based upon earlier designs which

## SCOPE OF WORK

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were never implemented. The City's 2012 Wastewater Master Plan recommended 27-inch for some of these segments, but as water use generally decreases, this size may be greater than what is needed.

The proposed tasks for the Sizing Study involve analyzing existing flow data for the sewer segments feeding into the trunk sewer. It is assumed all flow data would be provided by the City. Using this data, IEC will perform Microsoft Excel based hydraulic calculations to determine the required capacity for each segment of the trunk sewer and make recommendations for the diameter of the sewer.

IEC will prepare a technical memorandum which will summarize the tasks associated with the Sizing Study and provide recommendations for the replace-in-place alternatives (alternative alignments will be evaluated in the task below). A Draft Sizing Study TM will be submitted in PDF format for one (1) round of City review. A Final Sizing Study TM will be submitted in PDF format after incorporation of the City's comments.

As an option for the City, IEC can utilize the City's existing hydraulic model to perform analysis for determination of pipe size recommendations. In addition, IEC can provide flow monitoring services if existing data needs to be supplemented or updated. See more information under "Optional Tasks".

### 3. Alternative Alignment Evaluation

The existing alignment of the trunk sewer is not completely within the public right-of-way (ROW). Various segments cross private property including auto dealerships, a church, and various residential development, and in one location the sewer crosses directly beneath a mobile home. Of the sewer segments on private property that are identified to be replaced by the Request for Proposal (RFP), each could possibly be moved into the ROW. This would provide for better access for long-term maintenance. IEC has identified 3 alternative alignments that would each move a portion of sewer into the ROW. IEC will perform an evaluation of each of the alternative alignments to assess feasibility, hydraulics, cost, and other implications in order to determine the best long-term option for the City. Below is a discussion of each of the alternative alignments IEC would evaluate.

The existing alignment near Auto Park Way and Hale Avenue crosses two auto dealerships (the alignment also crosses a third dealership, but this segment has been recently replaced and is outside the scope of this project). When the sewer main was constructed in 1959, the alignment was in the ROW, but as the area was developed, the road alignment changed to accommodate the dealerships, and the sewer remained in place. On Figure 1, two conceptual alignments are shown which would move the alignment into the current ROW.

## SCOPE OF WORK



**FIGURE 1**

The first alternative (alignment in red) would involve strictly open-trench construction, while the second alternative (alignment in yellow) is a combination of methods, using trenchless construction to cut the corner of the intersection. Due to the high traffic volumes in this area, trenchless construction may prove to be a cost-effective method of getting through the intersection at Hale Avenue and Auto Park Way. IEC has experience with a wide range of trenchless construction options including horizontal directional drilling (HDD), jack and bore, and microtunneling. We have developed focused, comprehensive performance specifications for various trenchless methods on numerous projects - see the inset for some of the key considerations. Although open-trench may prove to be better option for the City, both alignments and replace-in-place option will be vetted as part of the alternative's evaluation. If the existing alignment is the preferred option, coordination and communication will be required between the City and the dealerships to replace-in-place.

### TRENCHLESS CONSTRUCTION CONSIDERATIONS

- Performance requirements: Strict performance standards on line and grade are included in the specifications.
- Subsurface Utilities: Identification, and if necessary, relocation of subsurface utilities that may conflict with the launching and receiving pits are clearly indicated on the plans.
- Staging Areas: Staging area, including area for boring fluid handling, and area for pipe to be laid out are clearly indicated on the plans.
- Coordination of work plans between the trenchless subcontractor and the prime contractor: Typically the prime contractor prepares the launching and receiving pits for the trenchless subcontractor's use. A requirement is included in the specifications that the trenchless subcontractor must review and approve of the prime contractor's proposed plan for excavating, shoring, and stabilizing the bottom of the pit. This helps to mitigate potential coordination issues between the contractors that could delay the project or diminish the quality of the trenchless work.

The second area where relocation may be feasible is at the Casa Grande Mobile Estates, where the alignment passes beneath a mobile home. Figure 2 shows an alternative alignment continuing south on Hale Avenue and then west to where the existing trunk sewer crosses Harmony Grove Road. This alignment accomplishes both moving the alignment out from under the mobile home and into the ROW. However, the existing grades along this alignment create some issues. Preliminary evaluation shows the sewer main may be more than 20 feet deep at the intersection of Harmony Grove Road and Hale Avenue – this suggests tunneling may be a cost-effective and more constructible option to avoid excessively deep trenches. Hydraulics are also a concern as this alignment is approximately 150 feet longer than the existing alignment, and the slope of the existing sewer is already relatively flat. A clear downside of this alignment alternative is it replaces approximately 400 feet of trunk sewer which was part of the recent emergency replacements. Given the importance of moving the alignment out from under the mobile home, and that these segments are on private property, the trade-off is likely a long-term benefit and better accessibility for maintenance. In any case, detailed evaluation of these and other considerations along with discussion of alternatives with the City's collection staff will guide IEC in developing a recommendation which is best for the City, with the primary goal of moving the alignment from under the mobile home. As this is a gravity sewer main, ensuring separation for other utilities and no conflicts in the vertical profile will also be key during preliminary design.

## SCOPE OF WORK



**FIGURE 2**

A third alignment alternative is also shown on Figure 2. Instead of connecting to the existing manhole in Harmony Grove Road, this alignment continues south on Hale Avenue where it would enter the HARRF. This additional stretch on Hale Avenue moves the existing alignment out of the Green Tree Mobile Estates mobile home park and the Church of God Escondido property on Harmony Grove Road and into the ROW, potentially reducing the environmental impacts. However, sewer depth, construction cost, and hydraulics are a concern for this alignment, as well as the feasibility of trenching through the HARRF to reach the existing connection point. Discussions with collection staff will be key to determining the feasibility of this alternative as well as having access to the HARRF as-builts. This alignment also replaces a nearly 940 foot stretch of recently replaced sewer main, however, IEC believes evaluation of this alternative during preliminary design is worthwhile as it may provide a long-term benefit to access, operations, and maintenance.

IEC will prepare a technical memorandum which will summarize alignment alternatives (including the replace-in-place option) and the tasks included in the evaluation (including sizing of the alternate alignments), and provide recommendations for the final alignment. This TM will also discuss the following items:



## SCOPE OF WORK

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- The alignment passes in front of the North County Transit District (NCTD) bus operation's center on Norlak Avenue. While the construction does not directly impact NCTD property, bus ingress and egress to the facility may be impacted with proper coordination. IEC will start this coordination during preliminary design so any requirements can be incorporated early.
- The alignment passes through the City of Escondido Public Works Yard. Causing Public Works operations to be impacted or delayed due to this project is unacceptable. IEC will engage with the City at project kickoff to determine phasing, work hours, and other means to ensure operations are not impacted. Any restrictions on the Contractor or required coordination will be explicitly called out on the plans and specifications so that construction of this segment of sewer does not cause any operational disruptions.
- Based upon discussions with the City, the existing siphon crossing the Escondido Creek channel was emptied and inspected as part of the recent emergency replacements, and the siphon was found to be in good condition. As a result, the siphon was not identified as needing replacement as part of this project. This will be formally documented for City records in the TM.

A Draft Alternative Alignment Evaluation TM will be submitted in PDF format for one (1) round of City review. A Final Alternative Alignment Evaluation TM will be submitted in PDF format after incorporation of the City's comments.

### 4. 30% Design

The 30% design of the trunk sewer will be initiated as soon as the City provides feedback concerning the alignment alternatives. The 30% design will include civil plan and profile drawings showing the horizontal alignment for all segments to be replaced - the vertical profile will be developed during 60% design. The 30% Drawings will be accompanied by a Preliminary Design Report (PDR) which will summarize the design parameters for the trunk sewer including alignment, sizing, and other key considerations and recommendations developed during preliminary design (the TM's will be included as appendices). The PDR will also include an engineer's estimate of the probable construction cost developed to a 30% design level. A draft PDR will be submitted in PDF format for one (1) round of City review. A Final PDR will be submitted in PDF format after incorporation of the City's comments. The 30% Drawings will be submitted in PDF format, accompanied by two (2) full size drawing sets delivered to the City. Comments to the 30% Drawings will be incorporated into the 60% Design.

Other tasks associated with the 30% Design are the following:

#### **A. Geotechnical Investigation**

A project-specific geotechnical investigation will be required regardless of the alignment. This will include reviewing background information such as available geologic and geotechnical reports from previous projects and other geologic mapping, as well as a comprehensive field investigation. IEC recommends performance of twelve (12) borings spaced along the alignment. The exact locations of the borings will be determined after the alignment is finalized. For the purposes of this proposal, it is assumed the maximum depth of any boring is fifteen (15) feet, though a few borings may need to be deepened if pursuing alternative alignments. Based upon information provided by the City, a separate project to replace a City brine line encountered rock near the Escondido Creek channel which resulted in a large change order during construction. To limit the chance of encountering unknown conditions, IEC also recommends performing 2 seismic lines to evaluate the presence and rippability of rock near the trunk sewer alignment.

## SCOPE OF WORK

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Laboratory testing will be performed on obtained samples and documented in the Geotechnical Report. Groundwater levels will be assessed, if encountered, and well as assessment of other potential geologic hazards and development of recommendations for site preparation and earthwork, excavations, shoring, backfill, and corrosivity of the on-site soil in respect to concrete. The Final Geotechnical Report will be submitted in PDF format. Due to permitting, the Final Geotechnical Report may be completed after submission of the 30% drawings, in which case the results will be incorporated into the 60% design.

Borings will be located, if possible, in the ROW but outside the limits of the traveled way, such as the roadway shoulder. This allows costs to be reduced as the City requires hot-mix patching of borings in paved surfaces. If hot-mix patching is unavoidable, an additional cost of \$5,000 per location will be required. It is also assumed that permit fees, assuming the only required permits are a subsurface exploration permit from the County of San Diego Department of Environmental Health (DEH) and a ROW encroachment permit from the City, will be limited to \$2,250.

### **B. Survey**

A detailed survey of the final project alignment will be prepared using a combination of aerial photogrammetry and field topographic mapping. Horizontal and vertical control for the mapping will be based on NAD83, Zone 6 CCS and NAVD88 datums, respectively. ROW and adjoining property lines will be drafted along with City easements for the existing trunk sewer – easement info is assumed to be provided by the City. The field mapping will include dipping sewer manholes and storm drain facilities.

### **C. Potholing**

Potholing will be used as necessary to determine the location of key utilities that may impact the design of the trunk sewer. Identifying the utilities for which potholing is recommended will occur as the 30% design progresses. The actual number of potholes that will be recommended is unknown, but for the purposes of this proposal, IEC assumes eight (8) potholes up to ten (10) feet deep each are included.

A Final Potholing Report will be submitted in PDF format. Due to permitting, the Final Potholing Report may be completed after submission of the 30% drawings, in which case the results will be incorporated into the 60% design.

## **FINAL DESIGN**

### **1. Plans, Specifications, and Estimate (PS&E)**

IEC will prepare a bid-ready set of construction contract documents, including plans (or drawings), technical specifications, and an engineer's estimate of the probable construction cost (estimate). Included in the plans will be the following:

- **Bypassing Plan:** IEC will develop a sewer bypassing plan with the intention to allow sewage to flow during construction. The plan will show specific locations for interception and reintroduction of sewage into the sewer system. In some cases, temporary storage and/or transport of sewage may be necessary. In addition to the plans, a detailed performance specification for bypassing will be developed which will include minimum requirements for the Contractor's bypassing operations and equipment. IEC has developed similar plans for high-risk/high-profile areas such as coastal residential neighborhoods where sewer spills are not acceptable.

## SCOPE OF WORK

- Sequencing/Phasing Plan:** IEC will develop a general sequencing and phasing plan which will organize construction in an efficient manner. Some of the factors which will dictate the plan include, but are not limited to, anticipated sewer flows, City operations, bypassing, coordination with various agencies and property owners, and community and environmental impacts. IEC has extensive experience coordinating with numerous project stakeholders, and ensuring the contract documents address the issues appropriately.

The plans will be prepared on 24" x 36" sheets using the City's border template (to be provided by the City). The plans will be prepared using AutoCAD Civil 3D. See the adjacent inset for a list of anticipated drawings. The drawings will be submitted for City review at the 60%, 90%, and 100% design milestones, each followed by a round of City review. Each drawing set will be submitted in PDF format, accompanied by two (2) full size drawing sets delivered to the City. After receipt of the City's comments to the 100% Drawings, the bid-ready, signed Final Drawings will be printed on Mylar and delivered to the City.

ANTICIPATED DRAWING LIST	
QUANTITY	DESCRIPTION
4	Title, General Sheets and Keymap
8	Civil Plan and Profile Sheets (at 40 scale)
3	Civil Detail Sheets
2	Traffic Control Sheets (Caltrans ROW only)

The specifications and estimate will be also be submitted at the 60%, 90% and 100% milestone for City review. The specifications and estimate will be submitted in PDF format.

### 2. Caltrans Permitting

No segments of trunk sewer identified to be replaced cross the Caltrans ROW; those segments within the Caltrans ROW were replaced as part of the recent emergency repairs. However, construction of the northern most sewer segment on Hale Avenue is close enough to Interstate 15 that traffic control for construction will impact the Caltrans ROW. As a result, a Right-of-Entry (ROE) permit from Caltrans is required for construction. Since this process can take several months, it is recommended that IEC obtain this permit prior to bidding the project.

IEC has obtained Caltrans ROE permits on many projects. We understand the process and know how to get approvals with a minimum amount of back and forth. More typically we obtain permits for work which directly impacts Caltrans ROW. Since no improvements for this project will be constructed in the Caltrans ROW, this processed should be straight-forward, however Caltrans has detailed requirements, and does not compromise. Among the Caltrans requirements for processing and approving a ROE permit are:

- Final Plans:** At the 100% design milestone, the project will be clearly defined and no major changes are anticipated. As such, IEC will prepare a separate "Final" drawing set which will only include work near the Caltrans ROW. These plans will be signed and used to obtain the ROE entry permit. If alignment changes occur after this point, revisions to the ROE permit will need to be made which may have cost and schedule implications.
- Traffic Control Plans:** Traffic control plans will be prepared by IEC which will include only areas of construction where traffic control measures will extend into the Caltrans ROW. These plans will be signed and used to obtain the ROE entry permit, and included in the contract documents. It is assumed the Contractor will be responsible for traffic control plans and City permitting along the remaining portions of the alignment.

## SCOPE OF WORK

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- **Environmental Documentation:** Caltrans requires completed, approved, and filed environmental documents to process the ROE permit. Delays related to preparation of the environmental documentation may also affect the Caltrans permitting process. The tasks related to Environmental Documentation are discussed below.
- **Stormwater Documents:** Caltrans requires, as applicable, a Water Pollution Control Plan (WPCP) or Storm Water Pollution Prevention Plan (SWPPP).

The Caltrans ROE entry permit will be made a part of the Final Contract Documents by reference and the Contractor will be responsible for coordinating with Caltrans and meeting their requirements for activities within their ROW.

### ENVIRONMENTAL

#### 1. Initial Study/Mitigated Negative Declaration

Preliminary review of the anticipated California Environmental Quality Act (CEQA) requirements for this project suggest it may be difficult to identify a single Statutory or Categorical Exemption that would apply to the entire project. This is due to the project alignment being outside the public ROW and potentially being over one (1) mile in length (depending on evaluation of alternative alignments). As a result, for the purposes of this proposal, IEC has assumed that an Initial Study and Mitigated Negative Declaration (IS/MND) is required. Should the project qualify for an exemption or Negative Declaration, the scope of this Task would be reduced accordingly.

Helix Environmental Planning (Helix) will prepare the Environmental Documentation. Helix specializes in environmental consulting and has extensive experience with linear projects similar to the Escondido Truck Sewer. The Environmental tasks will include a cultural resources records search and Sacred Lands File search, but no technical reports are proposed as it is anticipated that the project can be constructed in a manner that would avoid impacts to sensitive biological resources, waters of the U.S., and/or waters of the State. The Draft IS/MND will be submitted in PDF format, accompanied by five (5) hard copies, for City review. The Public Review Version of the IS/MND will be submitted upon incorporation of appropriate revisions. Up to 20 printed copies, as well as 15 CDs with the digital file for the State Clearinghouse will be submitted. The Notice of Intent (NOI) and Environmental Document Transmittal Form will be prepared for the City to file with the County Clerk. It is anticipated that the City will publish the NOI in a local newspaper of general circulation. Responses and revisions to the public review of the IS/MND will be prepared and a Mitigation, Monitoring, and Reporting Program (MMRP) incorporated into the Draft Final MND for City review. The Final MND will be submitted in PDF format, accompanied by up to fifteen (15) hard copies. The Notice of Determination will be prepared for the City to file with the County Clerk.

### PROJECT MANAGEMENT

Project management involves many different tasks, but the end purpose for each of those tasks is quality. IEC lives by the mantra that everyone is responsible for quality. Our goal is to create a working environment where quality is a top priority through clear definition of and conformance to requirements and procedures, and doing things right the first time around. We apply these principles to each and every task we execute. The Project Manager, Shawnele Morelos, PE, will ensure adequate resources are dedicated to the project and that the overall product and service meets the City's requirements. Ms. Morelos accomplishes this with careful attention to detail and sound project management principles. We also employ a strict quality review regiment for every project. At each milestone, our technical review team will conduct quality reviews to ensure the product meets our requirements for quality.

## SCOPE OF WORK

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Other project management tasks completed throughout design include:

- Attendance at the project kickoff meeting by the Project Manager and other relevant team members.
- Attendance at up to four (4) progress meetings during the design phases of the project.
- Preparing monthly progress reports and project invoicing.
- Updating the project schedule at NTP and as necessary throughout construction.

### BID PHASE SERVICES

- Attend the Pre-Bid Meeting.
- Prepare up to two (2) addenda (electronic copy in PDF format) including responses to pre-bid meeting questions and other technical questions from contractors during the bidding process.
- Prepare a conformed set of plans and specifications, taking into account the addenda prepared for the project.

### OPTIONAL TASKS

The optional tasks below can be executed by IEC if requested by the City. Fees for optional tasks will be negotiated on a case-by-case basis, and are not shown on the included Fee Estimate.

1. Analysis of City's Hydraulic Model for use in Sizing Study: This task would expand upon the Sizing Study task by including analysis of the City's existing hydraulic model for use in sizing the trunk sewer (assuming it is in non-proprietary or compatible data format such as InfoSWMM). It is assumed all data and information necessary for this task would be provided by the City.
2. Flow Monitoring: IEC provides in-house flow monitoring services. This task would include installation of flow measuring devices at key locations in the City's sewer system to confirm existing data or supplement existing data to have a better assessment of the anticipated flows in the trunk sewer.
3. Bid Phase and Construction Support Services: IEC can provide bid phase and construction support services to assist with bid questions, requests for information, submittals, design revisions, and if necessary attend construction meetings.

### Exclusions

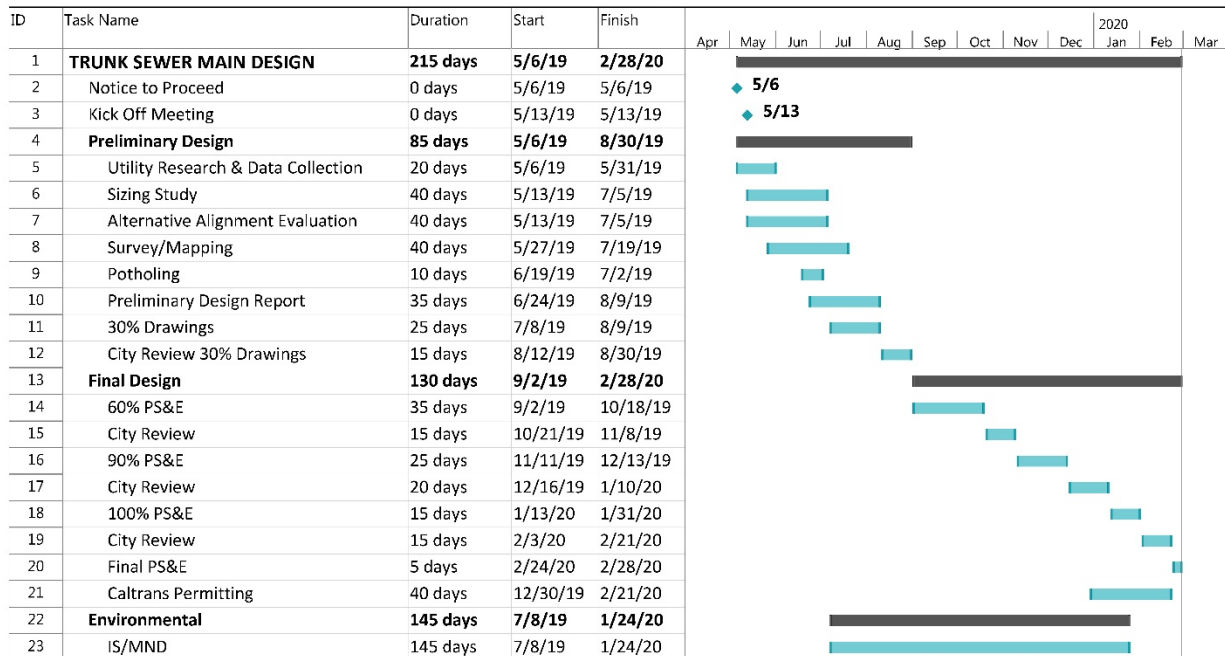
Exclusions and assumptions associated with specific tasks are noted in the tasks above. Below are additional exclusions not addressed elsewhere.

1. It is assumed the City will perform all community outreach and engagement activities associated with the project.
2. It is assumed the City will coordinate with private property owners directly affected by construction including notifying property owners of the project and obtaining permission for IEC and its subconsultants to access their property for the execution of the tasks above. This also includes any coordination or work related to modifying existing easements or obtaining new permanent or temporary construction easements.

# SCOPE OF WORK

## SCHEDULE

**PROJECT SCHEDULE**  
City of Escondido  
Trunk Sewer Main Replacement



**FEE ESTIMATE**  
**CITY OF ESCONDIDO**  
**Trunk Sewer Main Replacement**

Task/ Subtask	Task/Subtask Description	Principal & QA/QC	Project Manager	Senior Project Engineer	Project Engineer	Engineer II / Utility Coordinator	Engineer I/ CAD I Designer	Admin Support	Construction Manager	Principal Surveyor	2-Man Field Survey Crew	Subtask Labor- Hours	Subtask Labor Cost	Direct Cost	Subcontract (Inc. 5% Markup)	Total Cost
		A. Czajkowski \$250.00	S. Morelos \$220.00	D. Padilla \$185.00	D. Salgado \$170.00	B. Checkos \$145.00	D. Mulato \$130.00	R. Babka \$100.00	S. Adamson \$200.00	S. Gregerson \$170.00	\$260.00					
<b>PRELIMINARY DESIGN</b>																
1.0	Utility Research and Data Collection		2		8		32					42	\$5,960			\$5,960
2.0	Sizing Study		4	4	16	24	8					56	\$8,860			\$8,860
3.0	Alternative Alignment Evaluation	1	4	4	30	44	24					107	\$16,470			\$16,470
4.0	30% Design															\$156,520
4.1	30% Drawings	1	4	4	12	24	48	4				97	\$14,030	\$100		\$14,130
4.2	Preliminary Design Report	1	4	4	24	32	8	4				77	\$12,030			\$12,030
4.3	Geotechnical Investigation		1		4	16						21	\$3,220		\$62,320	\$65,540
4.4	Survey/Mapping					124				10	84	218	\$41,520	\$4,800		\$46,320
4.5	Potholing		1		4	16						21	\$3,220		\$15,280	\$18,500
<b>FINAL DESIGN</b>																
1.0	Plans, Specifications, and Estimate (PS&E)															\$50,800
	60% PS&E		8	4	24	48	96		4			184	\$26,820	\$100		\$26,920
	90% PS&E		4	2	12	24	48		4			94	\$13,810	\$100		\$13,910
	100% PS&E	1	2	1	6	12	24		2			48	\$7,155	\$100		\$7,255
	Final PS&E	1	1	1	2	4	8					17	\$2,615	\$100		\$2,715
2.0	Caltrans Permitting		4	2	16	16	4					42	\$6,810		\$2,500	\$9,310
<b>ENVIRONMENTAL</b>																
1.0	IS/MND		4		8	8						20	\$3,400		\$29,830	\$33,230
<b>PROJECT MANAGEMENT</b>																
1.0	Project Management															\$12,820
	Kick-Off Meeting (1)	3	3									6	\$1,410	\$50		\$1,460
	Progress Meetings (4)		12		12							24	\$4,680	\$200		\$4,880
	Project Management and Coordination		24					12				36	\$6,480			\$6,480
<b>BID PHASE</b>																
1.0	Bid Phase Support		4		12	12						28	\$4,660			\$4,660
		8	86	26	190	404	300	20	10	10	84	1138				
		\$2,000	\$18,920	\$4,810	\$32,300	\$58,580	\$39,000	\$2,000	\$2,000	\$1,700	\$21,840		\$183,150	\$5,550	\$109,930	\$298,630

**TOTAL NOT-TO-EXCEED FEE: \$298,630**

## ATTACHMENT B

IEC Employees

Amy Czajkowski

Scott Adamson

Dolores Salgado

Dalia Mulato

Brandin Checkos

Sarita Lemons

Dave Padilla

Steve Gregerson

Robert Weber

Patrick Mulvey

Annette Moore

Aric Gnesa

Vicki Shaw

Kari Glover



# CITY COUNCIL STAFF REPORT

**Consent Item No. 7**

**June 5, 2019**

**File No. 470-25**

**SUBJECT:** Award Purchase Contract for Body-worn Cameras, Accessories, Licenses, Video Storage Solution, and Access for Prosecution Partners for the Police Department

**DEPARTMENT:** Finance Department

**RECOMMENDATION:**

It is requested that the City Council adopt Resolution No. 2019-84 awarding the bid to Axon Enterprises, Inc., determined to be the lowest responsive and responsible bidder and authorizing the Deputy City Manager to execute a three-year contract with Axon Enterprises, Inc. in the amount of \$404,836.02 for body-worn camera equipment, accessories, licenses, video storage, and access for prosecution partners for the Police Department.

**PREVIOUS ACTION:**

The City Council approved the Body-worn Camera Policy and Implementation Grant on October 19, 2016.

**BACKGROUND:**

The adoption of Resolution No. 2019-84 will allow the Deputy City Manager to execute a three-year contract for body-worn camera systems.

The Finance Department conducted a formal request for bids to establish the most cost effective body-worn camera system provider. Six (6) camera vendors provided bids. Three (3) vendors did not meet all the bid specifications and were deemed non-responsive. Three (3) were selected to perform demonstrations of their products and services. Axon Enterprises, Inc. was the lowest responsive and responsible bidder.

**FISCAL ANALYSIS**

Contract costs will be covered by the Police Department and the FY 2016 Body-worn Camera Grant, which was approved by the City Council on October 19, 2016.

Contract Item	Year 1	Year 2	Year 3
Hardware: cameras; docks; mounts (tax included)	\$156,328	\$0	\$0
Software: video analytics and uploads	\$35,028	\$35,028	\$35,028
Data storage: video storage	\$47,808	\$47,808	\$47,808
<b>Total Cost</b>	<b>\$239,164</b>	<b>\$82,836</b>	<b>\$82,836</b>

Funding Sources	Year 1	Year 2	Year 3
FY2016 Body-worn Camera Grant	\$209,326	\$0	\$0
Police Funding Sources	\$29,838	\$82,836	\$82,836
<b>Total Funding</b>	<b>\$239,164</b>	<b>\$82,836</b>	<b>\$82,836</b>

Award Purchase Contract for Body-worn Cameras, Accessories, Licenses, Video Storage Solution,  
and Access for Prosecution Partners for the Police Department

June 5, 2019

Page 2

SUMMARY

Adoption of Resolution No. 2019-84 will allow the Deputy City Manager to execute a three-year contract with Axon Enterprises, Inc. for Body-Worn Cameras, Accessories, Licenses, Video Storage Solution, and Access for Prosecution Partners for the Police Department.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Sheryl Bennett*, Deputy City Manager/Administrative Services  
5/29/2019 5:22 p.m.

ATTACHMENTS:

1. Resolution No. 2019-84

RESOLUTION NO. 2019-84

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AWARDING A BID TO AXON ENTERPRISES, INC., AND AUTHORIZING THE DEPUTY CITY MANAGER TO EXECUTE, ON BEHALF OF THE CITY, A THREE-YEAR AGREEMENT TO AXON ENTERPRISES, INC. FOR BODY-WORN CAMERA EQUIPMENT, LICENSES, AND STORAGE

WHEREAS, the Police Department was awarded a \$248,940 FY 2016 Body-Worn Camera Policy and Implementation Grant from the US Department of Justice; and

WHEREAS, the City Council voted to accept the FY 2016 Body-Worn Camera Policy and Implementation Grant on October 19, 2016; and

WHEREAS, the Finance Department duly published Request for Bids #19-02 for Body-Worn Camera Equipment, Licenses, and Storage on April 2, 2019; and

WHEREAS, Request for Bids #19-02 had a closing date of April 22, 2019; and

WHEREAS, the Purchasing Division received six (6) sealed bids in response to Request for Bids #19-02; and

WHEREAS, three (3) bids did not meet all the requirements of Request for Bids #19-02; and

WHEREAS, the three (3) vendors who were responsive and met the requirements were invited to demonstrate their products during the week of May 20, 2019; and

WHEREAS, it was determined that Axon Enterprises, Inc. was the lowest responsive and responsible bidder.

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

1. That the above recitations are true.
2. That the City Council hereby authorize the Deputy City Manager to execute, on behalf of the City, an agreement for the purchase of body-worn cameras and supporting services from Axon Enterprises, Inc. in a form subject to approval by the City Attorney, for the total amount of \$404,836.02.



## CITY COUNCIL STAFF REPORT

Consent Item No. 8

June 5, 2019

File No. 0480-70

SUBJECT: Fiscal Year 2018 Operation Stonegarden Grant and Budget Adjustment

DEPARTMENT: Police Department

RECOMMENDATION:

It is requested that the City Council accept Fiscal Year 2018 Operation Stonegarden Grant funds in the amount of \$10,000 from the California Office of Emergency Services through the County of San Diego; authorize the Chief of Police or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds.

PREVIOUS ACTION:

On July 11, 2018, the City Council accepted a FY 2017 Operation Stonegarden Grant in the amount of \$51,120 to pay overtime expenses and purchase equipment.

BACKGROUND:

The Escondido Police Department received a FY 2018 Operation Stonegarden Grant in the amount of \$10,000. This funding was provided by the California Office of Emergency Services, through the San Diego Sheriff's Department.

The Department proposes to use grant funds to pay overtime expenses for multi-disciplinary crime suppression operations related to human trafficking, narcotics trafficking, criminal gang activity, and weapons trafficking. Throughout Southern California, 20 allied agencies participate in Operation Stonegarden. This grant will provide operational funding to enforce local and state laws. Grant funds will not be used to enforce immigration laws on behalf of Customs and Border Protection/Border Patrol.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Craig Carter*, Chief of Police  
5/28/2019 3:00 p.m.

ATTACHMENTS:

1. Budget Adjustment



## CITY COUNCIL STAFF REPORT

**Consent Item No. 9**

**June 5, 2019**

**File No. 0480-70**

**SUBJECT:** Fiscal Year 2018 State Homeland Security Grant Program and Budget Adjustment

**DEPARTMENT:** Police Department

**RECOMMENDATION:**

It is requested that the City Council authorize the Escondido Police Department to accept Fiscal Year 2018 State Homeland Security Grant funds in the amount of \$116,516; authorize the Chief of Police or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds.

**PREVIOUS ACTION:**

On May 16, 2018, the City Council authorized the Police and Fire Departments to accept a FY 2017 State of Homeland Security Grant in the amount of \$117,334.

**BACKGROUND:**

The Escondido Police and Fire Departments received \$116,516 in FY 2018 State Homeland Security Grant funds. The County of San Diego Office of Emergency Services authorized the City of Escondido to spend its funds on the following regional projects:

- \$41,670 – Police Department - Small Unmanned/Unarmed Aircraft System Project: Funds will be used to purchase an unmanned aircraft system.
- \$16,588– Police Department – Medical Kits for Law Enforcement Vehicles: Funds will be used to purchase trauma kits to help police officers during critical first response scenarios.
- \$58,258 – Fire Department - Enhance Protection of Critical Infrastructure and Key Resources: Funds will cover approximately 3,000 hours for part-time, Geographic Information Systems (GIS) employees to update and create maps that integrate with the Fire Department’s Computer Aided Dispatch (CAD), which is used by firefighters when responding to emergencies.

Pre-incident plans are documents that contain diagrams of buildings and features that help incident commanders make strategic and tactical decisions. The maps display information such as the building floor plan, hydrant location, utility location, roof access, sprinkler connection location, Knox box locations, fire alarm panel location, existence of hazardous materials etc.

Pre-incident maps aid firefighters response because the environments often have little or no visibility due to smoke or darkness at night. The plans identify target hazards, offer better situational awareness and aid in the speed of decision-making.

The State Homeland Security Grant Program (SHSGP) is 100% federally funded. No matching funds are required and the City will be reimbursed for all expenditures.

### UNMANNED AIRCRAFT SYSTEM PROJECT DETAILS

#### HISTORY:

Following five years of research and development, the Unmanned Aircraft Systems Unit (UASU) was established in September 2017. Missions are flown under the authority of Part 107 of the Federal Aviation Regulations (FAR). To date, the UASU has flown 117 missions, utilizing three different variations of the DJI Mavic Pro small unmanned aircraft. The aircraft have proven to be reliable and safe with no accidents, injuries or property damage as a result of training or operational flights.

Missions include:

- Providing over-watch to incident commanders during SWAT operations
- Searches for missing persons
- Searches for fleeing criminal violators
- Assisting the Fire Department during structure fires, hazardous materials incidents, search and rescue and arson investigations
- Crime scene and vehicle collision scene documentation
- Assisting the City with aerial video and photographic documentation of improvement and expansion projects (i.e.: Washington Park renovation, East Valley Parkway widening)
- Assisting the City with large-scale photogrammetry projects, such as the documentation of threatened California Live Oak trees in Daley Ranch

#### PRIVACY POLICY:

Each UASU mission is vetted and approved by the UASU Lieutenant; officer initiated flights are not allowed. Pilots strictly adhere to Fourth Amendment privacy laws when conducting flights. All image and video collected by the UASU are governed by Department Instruction 1.51 – Use of Recording Devices. Every flight initiated in a law enforcement capacity is mission-specific to enhance community safety, apprehend fleeing criminals, increase officer safety, and prevent injury, loss of life, or significant property damage.

#### SAFETY POLICY:

The UASU strictly adheres to Federal Aviation Administration (FAA) regulations regarding airspace, maximum flight altitudes, flights over people and additional safety requirements to conduct night flights. Pilots are in communication with law enforcement aircraft, and visual observers are required for every flight to scan the operational area for manned aircraft, fixed hazards, rapidly developing weather, and any other potential hazards.



The following is the Safety Policy from the UASU Operations Manual:

1. Safety Policy-Commitment to Safety-The Escondido Police Department is committed to having a safe and healthy workplace, including:
  1. The ongoing pursuit of an accident-free workplace, including no harm to people, no damage to equipment, the environment and property.
  2. A culture of open reporting of all safety hazards in which supervision will not initiate disciplinary action against any personnel who, in good faith, disclose a hazard or safety occurrence due to unintentional or intentional conduct.
  3. Support for safety training and awareness programs.
  4. Conducting regular inspections of safety policies, procedures and practices.
  5. Monitoring the UAS community to ensure best safety practices are incorporated.
2. It is the duty of every member of the UASU to contribute to the goal of continued safe operations. This contribution may come in many forms and includes always operating in the safest manner practicable and never taking unnecessary risks. Any safety hazards, whether procedural, operational, or maintenance related should be identified as soon as possible after, if not before, an incident occurs. Any suggestions in the interest of safety should be made to the UASU Lieutenant or Sergeant without reservations.
3. If any member of the UASU observes or has knowledge of an unsafe or dangerous act committed by another member, the UASU Lieutenant or Sergeant shall be notified immediately so that corrective action may be taken.
4. Safety Training-All new members shall receive training in the following prior to serving in an operational capacity:
  1. Department commitment to safety.
  2. Department policy and procedures.
  3. The member's role in safety.
  4. Process for reporting hazards and occurrences.
  5. Applicable emergency procedures.
5. All safety training shall be documented. Training records will be kept in the training file.

#### PERSONNEL:

The unit is comprised of a UASU Lieutenant, a UASU Sergeant and seven officers certified as pilots through the FAA. Pilots receive supervised flight experience and must take practical and written tests before they are certified to conduct on-duty flights. They must maintain proficiency by completing a minimum of four flights a month and attend regular training to remain active pilots.

**GRANT EQUIPMENT:**

Grant funds will cover the cost of a DJI Matrice 210, a larger airframe that carries much-improved camera equipment. The aircraft is equipped with a 30-power zoom camera as well as a Forward Looking Infrared (FLIR) camera that is comparable to the quality of cameras utilized by manned law enforcement helicopters. The Matrice 210 supports dual operators, allowing one officer to safely pilot the aircraft while a second officer manipulates the camera equipment. The aircraft allows for safer flights by allowing pilots to fly at higher altitudes away from fixed hazards while utilizing the camera's zoom capability to gather images. The Matrice 210 is a vast improvement over the unit's existing equipment that features rudimentary FLIR capabilities and limited zoom capacity.

In addition to supporting SWAT, Patrol and Traffic activities, the aircraft and pilots will be made available to other city departments for inspection of critical infrastructure and other facilities.

**BENEFITS:**

Small unmanned aircraft systems have proven to be a valuable tool for enhancing officer awareness and safety during dangerous situations. They are an efficient and cost-effective tool to search large areas for missing persons and fleeing suspects. They are more rapidly deployed and readily available than manned law enforcement aircraft, and they can be operated at a fraction of the cost. Through a live video streaming service, incident commanders can make more informed decisions on tactics and use of personnel.

**ADDITIONAL INFORMATION:**

The FAA strictly forbids weaponized small unmanned aircraft systems. The Escondido Police Department UASU does not, and will never, consider utilizing unmanned aircraft for anything other than passive observation and intelligence gathering during mission-specific law enforcement, fire, and disaster operations.

**SUMMARY**

FY 2018 State Homeland Security Grant funds will enhance community safety and improve response to critical incidents.

**APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:**

*Craig Carter*, Chief of Police  
5/28/2019 3:00 p.m.

**ATTACHMENTS:**

1. Budget Adjustment





## CITY COUNCIL STAFF REPORT

**Consent Item No. 10**

**June 5, 2019**

**File No. 0480-70**

**SUBJECT:** Fiscal Year 2019 Department of Alcoholic Beverage Control Local Law Enforcement Grant and Budget Adjustment

**DEPARTMENT:** Police Department

**RECOMMENDATION:**

It is requested that the City Council adopt Resolution No. 2019-85 authorizing the Chief of Police to receive a \$60,000 grant award from the California Department of Alcoholic Beverage Control (ABC); authorize the Chief of Police and Police Department staff to execute contract documents on behalf of the City; and approve budget adjustments needed to spend grant funds.

**PREVIOUS ACTION:**

The City Council adopted Resolution No. 2015-111 approving a \$54,422 Department of Alcoholic Beverage Control Local Law Enforcement Grant on June 24, 2015.

**BACKGROUND:**

The California Department of Alcoholic Beverage Control (ABC) has awarded the Escondido Police Department a \$60,000 grant to:

- Reduce alcohol related crimes and accidents through education, public awareness, enhanced officer training, and enforcement;
- Identify disorderly alcoholic beverage retailers illegally selling to minor patrons;
- Target alcohol establishments who participate in narcotics sales or prostitution; and
- Educate ABC licensees on the proper, legal, and responsible manner of business expected by the ABC and the City of Escondido.

Grant projects must incorporate ABC enforcement strategies into a comprehensive local program.

ABC programs include:

1. License Education of Alcohol and Drugs (LEAD) – A free voluntary prevention and education program for retail licensees, employees, and license applicants;
2. Informed Merchants Preventing Alcohol-Related Crime Tendencies (IMPACT) – A prevention and education program to teach licensees how to help reduce alcohol-related crime. IMPACT partners an ABC investigator with a law enforcement officer to visit licensed outlets in a marked vehicle. IMPACT teams educate Licensees and view premises for compliance with laws;

3. Shoulder Tap – A program in which a minor decoy, under the supervision of law enforcement officers, solicits adults outside licensed stores to purchase alcohol. Individuals who furnish alcohol to minors are arrested. Shoulder Tap is typically implemented in locations where complaints have been received about minors shoulder tapping adults to purchase alcohol for them;
4. Minor Decoy – A program in which a minor decoy, under the supervision of law enforcement officers, enters a licensed store to purchase alcohol. Individuals who sell alcohol to a minor are arrested;
5. Public Awareness – Operation results and subsequent prosecutions will be publicized through press releases, media ride-alongs, and social media outlets; and
6. Officer Training – Officers and Detectives will enhance on-going training to focus on ABC violations and regulation, DUI enforcement, public intoxication, and alcohol consumption by minors.

Grant funds will be used for police officer overtime related to enforcement operations. During the grant period, July 1, 2019, to June 30, 2020, these funds will increase enforcement efforts and enhance public awareness campaigns to promote safety in the community.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Craig Carter*, Chief of Police  
5/28/2019 3:00 p.m.

ATTACHMENTS:

1. Budget Adjustment
2. Resolution No. 2019-85



RESOLUTION NO. 2019-85

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CHIEF OF POLICE TO RECEIVE A \$60,000 GRANT FROM THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL AND TO EXECUTE CONTRACT DOCUMENTS RELATED TO THE GRANT

WHEREAS, the City of Escondido desires to reduce alcohol-related problems in the community; and

WHEREAS, the Escondido Police Department has designated the 2019-2020 Department of Alcoholic Beverage Control Project to conduct specific programs to address this goal; and

WHEREAS, the 2019-2020 Department of Alcoholic Beverage Control Project will be funded in part from funds made available through the Alcohol Policing Partnership Program administered by the Department of Alcoholic Beverage Control (hereafter referred to as ABC).

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

1. The above recitations are true.
2. That the City Council authorizes the Chief of Police of the City of Escondido to receive a \$60,000 grant from ABC and execute, on its behalf, grant contract documents, in a form subject to approval by the City Attorney, including any extensions or amendments thereof and any subsequent contract with the State in relation thereto.

## CITY COUNCIL STAFF REPORT

**Consent Item No. 11**

**June 5, 2019**

**File No. 0430-80**

**SUBJECT:** Statewide Park Development and Community Revitalization Program Application and Budget Adjustment

**DEPARTMENT:** Communications & Community Services Department

**RECOMMENDATION:**

It is requested that the City Council adopt Resolution No. 2019-87 authorizing the Director of Communications and Community Services or her designee to submit an application to the California Department of Parks and Recreation for \$8.5 million in Statewide Park Development and Community Revitalization Program funds for improvements to the Escondido Creek Trail including its extension to Citracado Parkway, and if awarded, authorize the Director of Communications and Community Services or her designee to accept the grant funds, complete a budget adjustment, and complete grant documents on behalf of the City of Escondido (City) to receive, track and spend these funds. It is also requested that the City Council authorize a \$40,000 budget adjustment of Park Development Fees to fund community outreach to facilitate the scope and design of the project.

**FISCAL ANALYSIS:**

It is anticipated that staff will request the maximum grant allocation available of \$8.5 million, although the scope and budget of the grant project will be finalized as a result of the community outreach process. This grant funding is vital to the success of this project, as many of the anticipated improvements to the Escondido Creek Trail cannot be funded through Park Development Fees.

\$40,000 in existing Park Development Fees allocated into the Aquatic Facility Improvement Capital Improvement Project will be reallocated into a new project for Park Development Outreach through the requested Budget Adjustment, and therefore, there is no impact to the General Fund.

**PREVIOUS ACTION:**

On January 25, 2012, the City Council approved Resolution No 2012-11 accepting the final Escondido Creek Trail Master Plan Report and authorized staff to seek and acquire grant funding that will enable the City to continue revitalization of the Escondido Creek Trail.

**BACKGROUND:**

California voters passed the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018 (Proposition 68) on June 5, 2018. The California Department of Parks and Recreation released the Statewide Park Development and Community Revitalization Program (SPP) with the goal of creating new parks and new recreation opportunities in critically underserved communities across California. A project must involve either development or a combination of acquisition and development to create a new park, expand an existing park or



renovate an existing park. Grant funds are intended to benefit park improvements in park-deficient and/or disadvantaged communities. The SPP embraces meaningful engagement with local residents where park designs represent each community's unique recreation needs.

Extending through the center of the City is the channelized 6.2-mile-long Escondido Creek. The Creek stretches across the entire City, from east to west, with some trail facilities in place. The Escondido Creek Trail Expansion and Improvement Project will extend the Creek Trail from the eastern to the western City limits, connecting to the Citracado Parkway extension, and will construct multiple trail amenities to transform the Class I bicycle lane into a linear park. Some of the proposed improvements may include:

- Modifying the existing 12-foot asphalt trail to include 2-foot wide strips of decomposed granite paving on each side with eight feet of asphalt paving
- Adding rest points along the trail with interpretive paving design artwork
- Landscape improvements throughout the trail emphasizing native and naturalized planting
- Installing dry creek beds/bioswales
- New wrought-iron fencing
- Extending the linear park from Harmony Grove to Citracado Parkway
- Public art installations
- Improved wayfinding signage to guide visitors to key areas along the trail and within the surrounding community
- New LED lighting
- Fitness/recreational improvements

City staff will work with a consultant in order to facilitate community outreach, report preparation, survey design and analysis, create maps and exhibits, and assist with project design and scope for the grant application submission. There will be a minimum of five outreach events to maximize community input, building upon the 2012 Escondido Creek Trail Master Plan Report. Improvements to the Escondido Creek Trail will advance safe walking and bicycling and foster a more livable, sustainable Escondido. The project design must also ensure broad and diverse input into community planning, that underserved communities have adequate access to parkland and recreation, and advance shared use, social cohesion, and sustainability.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Joanna Axelrod*, Director of Communications and Community Services  
5/30/2019 5:24 p.m.

ATTACHMENTS:

1. Budget Adjustment
2. Resolution No. 2019-87



RESOLUTION NO. 2019-87

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
APPROVING THE APPLICATION FOR  
STATEWIDE PARK DEVELOPMENT AND  
COMMUNITY REVITALIZATION PROGRAM  
GRANT FUNDS

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Development and Community Revitalization Grant Program, setting up necessary procedures governing the application; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of the application before submission of said application to the State; and

WHEREAS, successful Applicants will enter into a contract with the State of California to complete the Grant Scope project.

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. Approves the filing of an application for the Escondido Creek Trail Expansion and Improvement Project.
3. Certifies that said Applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project.

4. Certifies that if the project is awarded, the Applicant has or will have sufficient funds to operate and maintain the project.

5. Certifies that the Applicant has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide.

6. Delegates the authority to the Director of Communications and Community Services or her designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Grant Scope.

7. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

8. Will consider promoting inclusion per Public Resources Code §80001(b)(8A-G).

## MOBILEHOME RENT REVIEW BOARD

**Public Hearing Item No. 12**

**June 5, 2019**

**File No. 0697-20-10196**

**SUBJECT:** Short-Form Rent Increase Application for Casa De Amigos Mobilehome Park (File No. 0697-20-10196)

**DEPARTMENT:** Community Development Department, Housing & Neighborhood Services Division

**RECOMMENDATION:**

Consider the short-form rent increase application submitted by Casa De Amigos Mobilehome Park. If approved, adopt Rent Review Board Resolution No. 2019-02, granting an increase of 75 percent of the change in the Consumer Price Index, or 2.783 percent (an average of \$18.41) for the period of December 31, 2017 to December 31, 2018.

**BACKGROUND:**

On June 8, 1988, the voters of Escondido approved an initiative Ordinance to enact Mobilehome Rent Control (Proposition K). Under Proposition K, if a park owner wants to increase rent, they must first obtain approval from the Mobilehome Park Rent Review Board (“Board”). As prescribed by the Ordinance, the Escondido City Council sits as the Rent Review Board. To request an increase, the park owner must file an application with the City. At a public hearing, eleven nonexclusive factors are considered: (1) changes in the Consumer Price Index (“CPI”); (2) the rent charged for comparable mobilehome spaces in Escondido; (3) the length of time since the last rent increase; (4) the cost of any capital improvements related to the spaces at issue; (5) changes in property taxes; (6) changes in any rent paid by the park owner for the land; (7) changes in utility charges; (8) changes in operating and maintenance expenses; (9) the need for repairs other than for ordinary wear and tear; (10) the amount and quality of services provided to the affected tenant; and (11) any lawful existing lease. (Escondido Municipal Code section 29-104(g)). Over time, this application became known as the “Long-form” application. In 1997, the Board adopted changes to the Guidelines that allow for a “Short-form” application that focuses on the change in the CPI. To qualify for a Short-form hearing, a park owner may only request up to 75 percent of the change in the CPI for a maximum of a two-year period. The Board must presume an increase up to 75 percent of the CPI is fair, just and reasonable, but may consider other factors found in Escondido Municipal Code section 29-104(g). Additionally, a short-form application must apply to 100 percent of all spaces in the park that are subject to rent control.

**INTRODUCTION:**

Casa De Amigos Mobilehome Park (“Park”), located at 1751 W. Citracado Parkway, has filed a short-form rent increase application. The Board is asked to accept the staff report, hear public testimony, and make a determination concerning the request in accordance with the Escondido Rent Protection Ordinance and the short-form procedures as outlined in the Rent Review Board Guidelines. The application and the staff report have been made available to the Board for review and consideration prior to the hearing.

THE RENT INCREASE APPLICATION:

Casa De Amigos is a senior park with 138 spaces of which 35 spaces are subject to rent control. The Park is requesting an increase for the 35 rent controlled spaces. The other spaces not included in this application are on long-term leases or are occupied by management. The amenities available for the residents include a furnished clubhouse with book and video library, billiards room and exercise room, free laundry facilities, a year-round heated pool with Jacuzzi, and shuffle board courts.

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

PARK OWNER'S REQUEST:

The Park is requesting an increase of 75 percent of the change in CPI for the period of December 31, 2017, to December 31, 2018. Seventy-five percent of the change in the CPI for the period of consideration is 2.783 percent. The average monthly rent for the residents that are affected by this application is \$661.46. The average monthly increase requested for the ten spaces is \$18.41 per space, per month.

This is the fifteenth rent increase request filed by this Park since the Ordinance was implemented. The last increase was granted in May 2018 for an average amount of \$22.69 per space, per month.

RESIDENT MEETING AND COMMENTS:

Individual notices were sent to each affected resident notifying them of the rent increase application and the hearing date. The notice included information about a resident meeting scheduled at the Park's clubhouse on May 7, 2019. Two residents, Park management and City staff attended the meeting. The application and the short-form hearing procedures were discussed with the residents in attendance. Meryl Burke volunteered to act as the resident representative. Residents had questions about the CPI and the status of the planned street improvements for Citracado Pkwy.

CODE ENFORCEMENT INSPECTION:

An inspection of the common areas of the Park by the Code Enforcement Division found no lighting violations and no health and safety violations. A copy of the Code Report ("Report") is attached as "Attachment A." The owner, resident manager and resident representative received a copy of the Report. No rent increase will take effect until all code violations are corrected. Since no violations were found at the Park, this condition has been met.

ADDITIONAL FACTORS AFFECTING THE APPLICATION:

In conformance with the Rent Review Board Guidelines, the decision of the Board will be finalized by adoption of the Resolution confirming the findings of the Public Hearing. The Notice of Determination will be mailed to the applicant and residents immediately upon adoption of the Resolution. The 90-

Short-Form Rent Increase Application for Casa De Amigos Mobilehome Park  
June 5, 2019  
Page 3

day notice of any rent increase granted may be sent to the residents upon the adoption of the Resolution.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Bill Martin*, Director of Community Development  
5/29/2019 7:54 p.m.


ATTACHMENTS:

1. Attachment A - Code Inspection Report
2. Rent Review Board Resolution No. 2019-02



**DATE:** MAY 20, 2019

**TO:** HONORABLE CHAIRMAN AND MEMBERS OF THE RENT CONTROL BOARD

**FROM:** MARK CASS, CODE ENFORCEMENT MANAGER 

**SUBJECT:** CASA DE AMIGOS MOBILE HOME ESTATES

Casa de Amigos Mobile Home Estates was inspected on May 16, 2019, with the lighting inspection conducted the same evening, as a result of an application for rent increase having been filed. There were no general violations found during the inspection and no lighting violations noted in the attached report.

A resident meeting was held on May 7, 2019. Two residents attended, one city staff and three park staff attended the meeting. There were no health and safety concerns raised in the meeting.

There were no resident complaints and no open code enforcement cases in this park during the past year.

CC: Bill Martin, Director of Community Development  
Belinda Rojas, Rent Control Administration





May 20, 2019

**MOBILEHOME PARK RENT CONTROL  
CODE ENFORCEMENT INSPECTION REPORT**

**Park Name:** Casa De Amigos Mobile Home Park  
1751 W Citracado Pkwy  
Escondido, CA 92029

**Park Owner:** Jeff Johnston  
1751 W Citracado Pkwy  
Escondido, CA 92029

**Park Manager:** Bill Schiefler      **Phone:** (760)746-3971

**Inspection Date:** 5/16/19      **Inspectors:** Stephen Jacobson

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

**General Violations:**

1. There were no general park violations found. (25 CCR)

**Areas of the park needing illumination per 25 CCR 1108  
(Lighting Inspection; 05-16-19)**

1. No lighting violations were found.

RESOLUTION NO. RRB 2019-02

A RESOLUTION OF THE ESCONDIDO  
MOBILEHOME RENT REVIEW BOARD  
MAKING FINDINGS AND GRANTING A RENT  
INCREASE FOR CASA DE AMIGOS  
MOBILEHOME PARK

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

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

WHEREAS, a Short-Form Rent Increase Application ("Application") pursuant to Section 12 of the Rent Review Board Guidelines was filed on March 27, 2019, by Sharee Heavens, the owner's representative of Casa De Amigos Mobilehome Park ("Park"), located at 1751 W. Citracado in Escondido. The Application applies to 35 of the 138 spaces; and

WHEREAS, this is the fifteenth rent increase application filed by the Park since the Ordinance became effective in 1988. The last rent increase was granted by the Board on May 23, 2018, and adopted by Rent Review Board Resolution No. 2018-01. The rent increase affected 36 spaces; the average increase was \$22.69 per space; and

WHEREAS, the current average monthly space rent is \$661.46 for the 35 spaces subject to rent control. The owner requested a rent increase in the amount of seventy-five percent of the change in the Consumer Price Index ("CPI") for the period December

31, 2017, through December 31, 2018, in accordance with the Rent Review Board short-form policy guidelines. The Application estimated this amount to be an average of \$18.41 (2.783 percent) per space, per month; and

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

WHEREAS, on May 16, 2019, a Mobilehome Park Rent Review Code Enforcement Inspection Report ("Inspection Report") was completed. The Inspection Report noted no general lighting violations and no Health and Safety Code violations in the Park; and

WHEREAS, on June 5, 2019, the Board held its public hearing and after an initial presentation of the staff report, the Board invited testimony from Park ownership, the residents of the Park, and other residents of the community at large; and

WHEREAS, after all present had been given an opportunity to speak, the hearing was closed. Following an opportunity for discussion among the Board members and clarifying questions to the parties and staff, the Board voted to grant an increase of 2.783 percent, an average of \$18.41 per space, per month, for the 35 spaces, which are subject to a rent control.

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

1. That the above recitations are true.

2. That the Board has heard and considered all of the reports and testimony presented, and has considered the facts as outlined in the Short-Form Guidelines (“Guidelines”).

3. That following the Guidelines, an increase based on seventy-five percent of the change in the CPI for San Diego County from December 31, 2017, through December 31, 2018, would amount to 2.783 percent, which averages \$18.41 per space, per month, for the 35 spaces that are subject to rent control.

4. That the Board concluded that an increase of \$18.41 per space, per month, is consistent with the Guidelines, and is fair, just, and a reasonable increase in light of the information presented by all parties.

5. That the increase may not be implemented until after the health and safety code violations noted in the Inspection Report have been corrected, signed off, and are in compliance with the various state and local code sections as noted in the Inspection. No code violations need to be remedied for this park.

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

## **CITY COUNCIL STAFF REPORT**

**Public Hearing No. 13**

**June 5, 2019**

**File No. 0870-11**

**SUBJECT:** One Year Action Plan for Fiscal Year 2019-2020 HOME Funds for Affordable Housing Activities, CDBG Funds for Community Development Programs, and ESG Funds for Homeless Priorities

**DEPARTMENT:** Community Development Department; Housing and Neighborhood Services

**RECOMMENDATION:**

It is requested that the City Council conduct a public hearing to:

1. Adopt Resolution No. 2019-55 approving the HOME, CDBG, and ESG budgets and allocations, and authorizing the Director of Community Development and City Clerk to execute contracts with service providers as appropriate.
2. Adopt Resolution No. 2019-56 approving the FY 2019-2020 One-Year Action Plan and approving the submittal to the U.S. Department of Housing and Urban Development (HUD).

**BACKGROUND:**

On May 22, 2019, City Council conducted a public hearing to solicit and consider citizen input for the Fiscal Year (FY) 2019-2020 One-Year Action Plan for the use of HOME Investment Partnership (HOME) funds, Community Development Block Grant (CDBG), and Emergency Solutions Grant (ESG) funds. The hearing was continued in order to continue consideration of priorities for CDBG activities. Several proposed projects were reconsidered and analyzed for their community need and connection to the Consolidated Plan (Con Plan) and community priorities.

### **Homelessness**

Homelessness is an urgent and growing issue in the City of Escondido. Both CDBG and ESG funds are used to assist homeless individuals and those at imminent risk of homelessness. Staff recommends funding two organizations to address the homeless priority. The Alliance for Regional Solutions is a collaborative of North County providers working to give homeless residents a hand up. Staff recommends allocating \$45,000 in CDBG funds to fund shelter operations at five member organizations: Bread of Life (Oceanside), Interfaith Shelter Network (with rotational shelters in churches in both coastal and inland North County), Haven House (Escondido), Operation Hope (Vista), and La Posada de Guadalupe (Carlsbad). Funds will be used to serve Escondido residents in the shelter best situated to assist them. The Alliance's Bridge to Housing Network will provide emergency shelter for a minimum of 180 homeless community members, of which 90 percent will be connected to case-managed social services focused on permanent housing and 40 percent will exit to

a stable housing destination. Staff also recommends allocating \$140,610 to Interfaith Community Services. Of this, \$48,610 will be used for shelter operations to provide shelter for 275 individuals experiencing homelessness at Interfaith's Haven House with priority given to the Transitional Age Youth (TAY) population (ages 18-24) and seniors over 62 years of age. The remaining \$92,000 will provide the necessary supportive services to assess and prevent 25 households from becoming homeless by providing rental assistance and referrals to resources that can strengthen their housing stabilization, such as employment services and case management, and other individualizes services as needed.

Additionally, City staff will continue to pursue alternate funding, such as State HEAP funds, to fund services to assist Escondido's homeless populations. City staff will also continue to work with other North County cities, the Alliance for Regional Solutions, and the Regional Taskforce for the Homeless to implement solutions to empower homeless individuals.

### **Senior Services**

Staff recommends funding three programs offered by Older Adult services provided by the City's Community Services Department address the senior services priority: Senior Transportation (\$34,610), Senior Nutrition (\$56,110) and Senior Care (\$13,000). These programs include a low-cost transportation program, lunch program and staff assistance to promote the independence of seniors by assisting them to resolve their issue(s) themselves and encouraging independence and self-sufficiency while providing support and resources at the Park Avenue Community Center.

Staff also recommends continuing to fund Meals on Wheels In Home Senior Nutrition & Safety program at the \$25,000 level. Through this program, 223 seniors will receive up to two fresh meals daily (a total of 27,380 meals delivered in Escondido), accompanied by daily safety checks and in-home social visits.

### **Youth Programs**

Staff recommends continued funding for the City of Escondido Learn to Swim program (\$15,000). This program provides water safety training to low-income youth. For many youth, this is the only formal swim lessons that they will receive.

The San Diego Children's Museum serves youth aged pre-school through third grade. Staff recommends \$5,000 for their Supplemental Education Program for Escondido Union School District program to provide museum memberships, school field trip workshops, and mobile museum workshops to Escondido Union School District students

The Boys & Girls Club of Greater San Diego serves primarily low-income youth ages 5-18 in the Escondido community. They have requested \$25,000 to install new ceiling panels and fix the electrical system, "sport-proofing" the Conrad Prebys Gym and providing a safe, enjoyable place for members and local school students to engage in sports and recreation. This project addresses both

the Youth Programs and Neighborhood Revitalization priorities by allowing a non-profit to rehabilitate their facilities, creating and reinforcing partnerships between the City and local non-profits.

### **Neighborhood Revitalization**

Approximately \$1,200,000 of the City's \$1,824,482 CDBG funds will be allocated to projects addressing the Neighborhood Revitalization priority. Primarily, Staff recommends funding City programs including Code Enforcement, Graffiti, Grants to Blocks, and City projects including the Street Light Retrofit Project and Sidewalk Infill Project. Staff recommends allocating additional funds to the Street Light Retrofit Project and the Old Escondido Lighting project, which are existing capital improvement projects, so that these projects can be constructed. Each year, HUD conducts a timeliness test on each grantee to ensure that funds are being deployed to make change in the community. In FY 2018-2019, Escondido was considered untimely. Large City projects frequently take multiple years to complete, and funds are committed over several Action Plan cycles. In order to decrease the time between CDBG projects being created and completed, Staff is proposing a Neighborhood Improvement Planning Program. This will separate the initial planning and feasibility studies from the final drawings and construction projects. If a project is determined to be infeasible or not a community priority, CDBG funds will not have to be repaid. City staff will be able to create timelines and budgets without committing funds to a specific capital project, increasing the probability that sufficient funding will be committed to projects that will go forward quickly.

### **Economic Development & ADA Improvements**

These two priorities are not independently addressed in the FY2019-2020 Action Plan.

#### APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Bill Martin*, Director of Community Development  
5/29/2019 7:54 p.m.

#### ATTACHMENTS:

1. Attachment A – May 22, 2019 Staff Report
2. Resolution No. 2019-55
3. Resolution No. 2019-55 – Exhibits A, B, C, D, E, and F
4. Resolution No. 2019-56



## CITY COUNCIL STAFF REPORT

**Public Hearing Item No. 12**

**May 22, 2019**

**File No. 0870-11**

**SUBJECT:** One Year Action Plan for Fiscal Year 2019-2020 HOME Funds for Affordable Housing Activities, CDBG Funds for Community Development Programs, and ESG Funds for Homeless Priorities

**DEPARTMENT:** Community Development Department; Housing and Neighborhood Services

**RECOMMENDATION:**

It is requested that the City Council conduct a public hearing to:

1. Solicit and consider citizen input for the Fiscal Year (FY) 2019-2020 One-Year Action Plan for the use of HOME Investment Partnership (HOME) funds, Community Development Block Grant (CDBG), and Emergency Solutions Grant (ESG) funds.
2. Adopt Resolution No. 2019-55 approving the HOME, CDBG, and ESG budgets and allocations, and authorizing the Director of Community Development and City Clerk to execute contracts with service providers as appropriate.
3. Adopt Resolution No. 2019-56 approving the FY 2019-2020 One-Year Action Plan and approving the submittal to the U.S. Department of Housing and Urban Development (HUD).

In the alternative, the City Council may choose to modify the recommended FY 2019-2020 Action Plan for the allocation of HOME, CDBG and ESG funds.

**FISCAL ANALYSIS:**

The City of Escondido (City) receives annual federal entitlements from the HUD for housing and community development activities. Federal allocations to jurisdictions were published on April 16, 2019. The City will receive \$596,821 in HOME program funds, \$1,824,482 in CDBG program funds, and \$152,010 in ESG program funds.

HOME funds can only be used for the development of affordable housing and will not impact the general fund. CDBG public service and capital improvement projects will be funded solely by grant money received and will not impact the general fund. ESG funds can only be used for homeless priorities, and required administration matching funds will be provided by Successor Housing Agency funds; ESG projects will not impact the general fund.

**PREVIOUS ACTION:**

On April 22, 2015, the City Council held a public hearing and approved the FY 2015 -2019 Five-Year Consolidated Plan; this plan was amended on July 20, 2017, to include the ESG funds. The Plan



established priorities for the use of these federal funds over the five-year period, ending June 30, 2020, to benefit low-income residents and neighborhoods in the City of Escondido.

On March 20, 2019, the City Council held a public hearing and reaffirmed the community development priorities adopted in the FY 2015-2019 Amended Five-Year Consolidated Plan and approved an allocation process for FY 2019-2020 CDBG and ESG funds. The approved allocation process included a maximum allowable allocation for administration of the CDBG program (20 percent) and ESG program (7.5 percent) which are included in the Fiscal Year 2018-2019 Action Plan allocation recommendations.

### BACKGROUND:

The Five Year Consolidated Plan is a federally required document for communities that receive funds from the federal housing and community development programs, including HOME, CDBG, and ESG Programs. The Con Plan provides a comprehensive, strategic framework for a community to establish a unified vision and action plan to address the needs of low-income individuals, families and neighborhoods. The goals of the HOME, CDBG, and ESG programs covered by the Con Plan are to provide decent housing, a suitable living environment, expanded economic opportunities, and assistance to homeless households. Based on community needs assessments and public participation of the Amended Five Year Consolidated Plan, six community development, four homeless, and four housing priorities were identified and adopted. In accordance with the City of Escondido's public participation plan, the City Council held a public hearing on March 20, 2019, and reaffirmed those priorities for FY 2019-2020. Each year, the City of Escondido must submit a One-Year Action Plan identifying activities to be undertaken. The FY 2019-2020 Action Plan for use of HOME, CDBG, and ESG funds describes the specific activities the City will carry out to address those priorities during the fifth year of the five-year period. Public outreach to develop a new Con Plan for 2020-2024 will begin this summer.

### **HOME Funds**

The City will receive \$596,821 in HOME funds for Fiscal Year 2019-2020. The HOME Program provides formula grants to communities to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people. HOME is the largest Federal block grant to state and local governments designed exclusively to create affordable housing for low-income households. The City may allocate ten percent of new HOME allocation, interest, and program income derived from loan repayments for administration. A minimum of 15 percent of the annual allocation of HOME Program funds must be reserved for the housing development activities of Community Housing Development Organizations (CHDOs). A total of five percent of the HOME grant may, but is not required to, be used to provide operating funds to certified CHDOs. Federal regulations state that HOME Program funds must be committed within two years and expended within five years of allocation; recent guidance from HUD has relaxed the commitment deadline, but not the expenditure deadline.

### FY 2015-2019 Housing Priorities

In the FY 2015-2019 Consolidated Plan, the City adopted the following housing priorities:

- Increase homeownership opportunities
- Conserve the supply of existing ownership housing
- Expand the stock of affordable rental housing, including 3 and 4-bedroom units
- Promote neighborhood stability by increasing the length of stay in rental housing

Allocation recommendations for HOME-funded activities are included as Attachment 2.

### Homeownership Opportunities

The first and second priorities relate to the need for homeownership in Escondido. The rate of homeownership in Escondido is 52 percent, which is lower than the state and national averages of 56 percent and 66 percent respectively as reported by the 2012-2016 Five-Year American Community Survey. The five-year Consolidated Plan's objective is to assist approximately 1-2 homebuyers per year.

The City developed the Homebuyer Entry Loan Program (HELP) loans to assist first-time homebuyers in the purchase of their homes will contribute to increased stability in 1996. The HELP program currently provides loans up to 5 percent of the purchase price of a home (up to a maximum of \$25,000) to assist homebuyers earning 80 percent or less of the San Diego County area median income to purchase their first home. In 2019, 80 percent AMI for a family of four is \$85,600. The program has been underutilized in recent years due primarily to market conditions. In order to ensure funding is available to help potential homeowners, Housing Development funds are made available first to the HELP program and later in a Request for Proposal (RFP) for the development of affordable housing in order to meet spending deadlines.

### Rental Housing Assistance & Affordable Housing Project Development

The third and fourth priorities relate to the improvement of the supply of rental housing in the City to meet the needs of Escondido residents. Overpayment for housing is a widespread housing problem in Escondido, especially among lower-income renters. Additionally, the rate of overcrowding is especially acute for large related renter households. The Con Plan sets forth an objective of assisting 11 new owner units, 23 newly constructed rental units, and 53 rental rehab units. In order to meet this goal, HOME funding and recycled Housing Set-Aside/Successor Housing Agency (SHA) funds, is used as leverage to other funding sources, such as Low-Income Tax Credits.

In the current cycle, the City has used HOME funds to assist several projects. San Diego Habitat for Humanity completed 11 new homeowner units in 2015. UHC completed the acquisition and rehabilitation of 43-deed restricted rental units at 1150-1160 N. Escondido Blvd. using HOME and SHA funds in 2016. Community HousingWorks acquired and rehabilitated 11 HOME-deed restricted rental units at 260 Midway as part of a 200-unit acquisition and rehabilitation project in early 2017. In 2018,

Interfaith Community Services to acquired and rehabilitated a four-plex on Aster Street. Additionally, Solutions for Change built 32 new affordable units using SHA funds for formerly homeless families on South Escondido Boulevard. An RFP, consisting of HOME and SHA funds, was released earlier this year; proposed projects will come forward later this year.

### **CDBG Funds**

The CDBG program is a flexible block grant program that provides communities with resources to address a wide range of unique community development needs. The CDBG program works to ensure decent affordable housing, to provide services to the most vulnerable in our communities, and to create jobs through the expansion and retention of businesses. Each CDBG activity must meet one of the following national objectives for the program: benefit low- and moderate-income persons, prevention or elimination of slums or blight, or address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available. Escondido projects have focused on benefit to low- and moderate-income persons. The City of Escondido will receive \$1,824,482 in CDBG entitlement funds for FY 2018-2019. No more than 15 percent of the entitlement funds (\$268,720) may be used for public service activities, and no more than 20 percent (\$358,293) may be expended for administrative activities. There is no limit to the percentage that may be expended for capital improvement or other neighborhood revitalization activities in low and moderate-income neighborhoods. See Attachment 1 for a map of CDBG eligible census blocks.

As a recipient of CDBG funds, the City is also required to take steps to affirmatively further fair housing within its jurisdiction as part of the obligation it assumes when it accepts these funds. Fair Housing services are allowable under Public Service or Administration. By utilizing Administration funds, the City is able to fund more programs under Public Service.

### FY 2015-2019 CDBG Priorities

In the FY 2015-2019 Amended Consolidated Plan, the City adopted the following CDBG priorities:

- \* Youth
- \* Economic Development
- \* Transportation for seniors and other related Senior Services
- \* Neighborhood Revitalization
- \* Homelessness
- \* ADA Improvements

### Previous Year CDBG Evaluation

F Y 2018-2019 was the third year of the City's five-year strategic plan. FY 2018-2019 is the fourth year of the City's five-year strategic plan. Currently, the City is in its third quarter of FY 2017-2018, and continues to make progress towards its goals. Below are the results from last year and the mid-year status of the current year:

	Activity for FY 2017-2018		Mid-Year FY 2018-2019	
	Goal	Accomplishment	Goal	Accomplishment
Learn to Swim	225	153	138	16
Senior Transportation	150	111	175	71
Senior Nutrition	400	672	400	293
Senior Care	200	280	200	101
Meals on Wheels	223	211	223	159
Alliance for Regional Solutions	228	275	228	172
Code Enforcement	N/A	1,094	N/A	611
Graffiti Removal	N/A	1,436	N/A	2,156
Project NEAT	N/A	218	N/A	32
Fair Housing	N/A	1,010	N/A	625
San Diego Children’s Museum	150	754	500	546
Escondido Education COMPACT			25	7

CDBG Review Process

Applications for funding are updated and released on an annual basis upon approval of the City Council in early Spring. A description of the CDBG funding process, application materials and resources for technical assistance are posted on the Neighborhood Services website and are provided by staff upon request. In accordance with the City’s Citizen Participation Plan, the City conducts two public hearings to solicit and consider citizen input.

This year an RFP was released on March 21, 2019, with applications due April 22, 2019. The City of Escondido received seven proposals from outside agencies for Fiscal Year 2019-2020 CDBG funding. Six requests are for public service funds: 1.) Legal Aid Society of San Diego is requesting \$34,045 for fair housing services; 2.) Meals on Wheels is requesting \$25,000 for its in-home meal delivery to moderate and low-income seniors; 3.) San Diego Children’s Museum is requesting \$30,000 to provide school field trip workshops, mobile museum workshops, and complementary memberships; 4.) Alliance for Regional Solutions is requesting \$45,000 for its Bridge Housing Network providing year round shelter and services for homeless individuals; 5.) Voices for Children, a new applicant, is requesting \$10,000 for direct advocacy, assessment and ongoing case monitoring for Escondido foster youth; and 6) ElderHelp of San Diego, a new applicant, is requesting \$45,000 to create an Ideal Village to provide solutions for successful aging.

Staff has reviewed the applications for completeness and eligibility. Criteria for review includes, but is not limited to a pre-award risk assessment based on subrecipient history, complexity of the project, funding and budget appropriateness, and experience. Staff also reviews each non-profits’ ratings and profiles on sites such as Charity Navigator, Guidestar, and performs other general research.

FY 2019-2020 CDBG-Funded Activities

The Action Plan describes all the activities the City will carry out during FY 2019-2020 to address the priorities of the Amended Consolidated Plan. Specific allocation recommendations for CDBG-funded activities are included as Attachment 3 and are described below.

**Proposed Capital Improvement and Neighborhood Revitalization Activities**

**CDBG-Funded Code Enforcement (\$115,000)**

CDBG-funded neighborhood revitalization efforts would include funding four part-time Code Enforcement Officers to work in commercial and residential areas of CDBG-eligible census tracts. The officers would address code issues relating to business licensing, illegal signage and other appearance and compliance issues generally associated with commercial and residential areas.

**Grants to Blocks (\$60,000)**

Implemented to address the neighborhood revitalization priority. This program addresses the need to fund multiple, small neighborhood revitalization projects and Right-of-Way Enhancement mini grants associated with street improvement projects.

**Graffiti Removal (\$115,000)**

The Graffiti Removal Project, also implemented to address the revitalization priority and carried out by City staff, provides funding for graffiti removal in qualifying low income census tracts and applies only to private properties. CDBG funds can be used to remove graffiti from private homes, garages, fences and exterior surfaces of privately owned businesses.

**Project NEAT (\$50,000)**

Project NEAT (Neighborhood Enhancement, Awareness and Training) addresses the neighborhood revitalization priority. The goal of Project NEAT is to improve the appearance and safety of neighborhoods through mediation, education and fostering relationships with neighbors. Project NEAT works with organized neighborhood groups to resolve potential code compliance issues, mostly with regard to yard maintenance and other appearance-related issues, before they reach the level of code enforcement cases.

**Old Escondido Lighting Project (\$380,917)**

The Old Escondido Lighting Project addresses the neighborhood revitalization priority and is the first phase of a project to install historic style pedestrian lighting in the Old Escondido Neighborhood. The first phase focuses on Juniper Street between Second Avenue and Tenth Avenue.

**Street Light LED Retrofit Program (\$100,000)**

Staff is requesting additional funds to continue the Street Light LED Retrofit program in CDBG-eligible areas to address the neighborhood revitalization priority. Replacement of high pressure sodium (HPS) streetlights with new energy efficient LED street lights will better lighting quality, which improves traffic safety and general security as residents walk, bicycle or drive in the neighborhood.

**Sidewalk Infill Program**

The Sidewalk Infill Program addresses the neighborhood revitalization priority and responds to multiple community member requests. The goal for this program is to provide safe pedestrian travel in and around our community, and improve walkability, by completing small segments of discontinuous sidewalk in CDBG-eligible areas. Priority for projects will initially be within existing right-of way in the neighborhood groups.

**Ballfield Light Retrofit Program (\$190,000)**

The Ballfield Light Retrofit Program address the neighborhood revitalization priority. Conversion of existing baseball field lighting at Jesmond Dene Park to new energy efficient LED lights improve lighting quality.

**Boys & Girls Club New Gym Ceiling**

The Boys & Girls Club of Greater San Diego services primarily low-income youth ages 5-18 in the Escondido community. They have requested funding to install new ceiling panels and fix the electrical system, “sport-proofing” the Conrad Prebys Gym and providing a safe, enjoyable place for members and local school students to engage in sports and recreation.

**Proposed Public Service Activities**

The FY 2019-2020 Action Plan includes activities that address the priorities of the Amended Consolidated Plan. Staff recommends continued funding for the following programs.

**Learn-to-Swim (\$15,000)**

The Learn-to-Swim program provides water safety training to low-income youth, addressing the youth priority.

**Senior Transportation, Senior Nutrition, Senior Care (\$34,610; \$56,110; \$13,000)**

Programs offered by Older Adult services provided by the City’s Community Services Department address the senior services priority. These programs include a low-cost transportation program, lunch program and staff assistance to promote the independence of seniors by assisting them to resolve their issue(s) themselves and encouraging independence and self-sufficiency while providing support and resources at the Park Avenue Community Center.

**Neighbor-to-Neighbor (\$44,950)**

Neighbor-to-Neighbor supports the neighborhood revitalization priority as an additional component to the Grants to Blocks Program. Neighborhood Clean-ups block parties, leadership trainings, neighborhood group meetings, and other neighborhood organization efforts in low-income neighborhoods will be supported through this program.

**Meals-on-Wheels (\$25,000)**

The Meals-on-Wheels Program addresses the senior services priority by providing meal delivery services for homebound seniors and people with disabilities.

**Alliance for Regional Solutions (\$45,000)**

The Alliance for Regional Solutions is a collaboration of North County organizations addressing homelessness issues. The Bridge to Housing Committee of the Alliance is a collaboration of providers who offer short-term housing solutions, case management and services directed at navigating North County's homeless men, women, and families towards permanent housing and self-sufficiency.

**San Diego Children's Museum (\$5,000)**

The San Diego Children's Museum serves youth aged pre-school through third grade. This program will help to provide museum memberships, school field trip workshops, and mobile museum workshops to Escondido Union School District students.

**Voices for Children (\$10,000)**

Voices for Children provides advocacy services to Escondido foster youth through Court Appointed Special Advocate (CASA) and Case Liaison programs. This project will provide Escondido foster youth with case oversight, triage, and advocacy services as needed to ensure that their educations, mental and physical health and placement needs are met.

**Neighborhood Improvement Planning Program (\$25,000)**

The objectives this program is determine whether a proposed future CDBG Neighborhood Revitalization project is feasible and that at least 51 percent of the intended beneficiaries will be of low or moderate income. Eligible activities include preliminary architectural and engineering design, cost estimates, and market analysis. Detailed engineering specifications and working drawings are not eligible. This project will help to guide future projects and speed delivery of City projects.

**ESG Funds**

The ESG program provides funds for a variety of activities to address homelessness, to prevent homelessness and to help homeless people move toward safe and healthy living. Allocations are based on a jurisdiction's CDBG allocation; HUD's allocation to the City of Escondido for FY 2019-2020 is \$152,010.

ESG Priorities

The main purpose of the ESG funds is to provide prevention assistance to individuals and families who would otherwise become homeless and to provide assistance to rapidly re-house persons who are homeless and those who are at risk of becoming homeless. As an ESG recipient, the City of Escondido is required to work with the local Continuum of Care (CoC) to determine how ESG will be used and evaluated, and how to apply CoC-wide ESG Standards to service providers. In San Diego County, the CoC is the Regional Taskforce for the Homeless (RTFH).

ESG funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS (Homeless Management Information database; this is a required activity), as well as administrative activities (up to 7.5 percent of a recipient's allocation can be used for administrative activities such as general management, oversight,

coordination, and reporting on the program). For FY 2019-2020, the following ESG objectives have been prioritized based on community input and City Council Direction:

- Rapid re-housing for homeless individuals and families,
- Homelessness prevention,
- Emergency shelters,
- Essential services to shelter residents, and
- Engagement of homeless individuals and families.

Previous Year ESG Evaluation

FFY 2017-2018 was the second year the City received ESG funds. The City is currently in its third ESG year, FY 2018-2019, and continuing to make progress towards its goals. Below are the accomplishments from last year and mid-year status from the current year:

	Activity for FY 2017-2018		Mid-Year FY 2018-2019	
	Goal	Accomplishment	Goal	Accomplishment
<b>Interfaith</b>				
Emergency Shelter	150 individuals	274	369 individuals	172
Homeless Prevention	10 households	19	20 individuals	33
Rapid Rehousing	7 households	12		
Outreach			100 individuals	99
<b>COMPACT</b>				
Homeless Prevention	25 youth	16		

Federal Conditions

A percentage of the ESG allocation may be set-aside for the City’s planning and administration that maybe shared with a subrecipient. ESG regulations limit this amount to no more than 7.5 percent (\$11,400) of the annual grant. The remaining amount (\$140,610) is made available for projects and activities that serve the homeless and those at-risk of homelessness. The subrecipient must match allocated ESG funds with an equal amount of funds from a non-federal source that can be in cash and/or non-cash contributions.

Costs associated with shelter operations and outreach may not exceed (but may be less than) 60 percent of funding of the fiscal year grant.

ESG Review Process

This year an RFP was released on March 21, 2019, with applications due April 22, 2019. The City of Escondido has received two proposals from outside agencies for FY 2019-2020 ESG funding: 1.) YMCA is requesting \$35,000 to support their Emergency Housing Intervention program providing for up to five youths ages 18-24 at their transition-Age Youth (TAY) drop-in center located at 1050 North



Broadway with wrap around services; and 2.) Interfaith Community Services is requesting \$132,052 to assist homeless and at-risk homeless by providing homeless prevention, and emergency shelter.

Staff has reviewed the applications for completeness and eligibility. Criteria for review includes, but is not limited to a pre-award risk assessment based on subrecipient history, complexity of the project, funding and budget appropriateness, and experience. Staff also looks at each individual ratings and profiles on sites such as Charity Navigator, Guidestar, and other general research. The YMCA does not current have the appropriate land use approvals to operate an emergency shelter on site a minimum of two nights per week.

Specific allocation recommendations for ESG-funded activities are included as Attachment 4.

### **Proposed ESG Funds Activity**

#### **Interfaith Community Services (\$140,610)**

Interfaith will outreach to a minimum of 130 homeless youth, individuals, chronic homeless, and families with the goal of engaging them in services and the Coordinated Entry System, provide 25 households with homeless prevention assistance, and provide 275 unduplicated homeless individuals with a priority given to the TAY populations and seniors over 62 years of age with bridge housing/shelter services.

### **APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:**

*Bill Martin*, Dir. of Comm. Dev.  
5/15/2019 8:27 a.m.

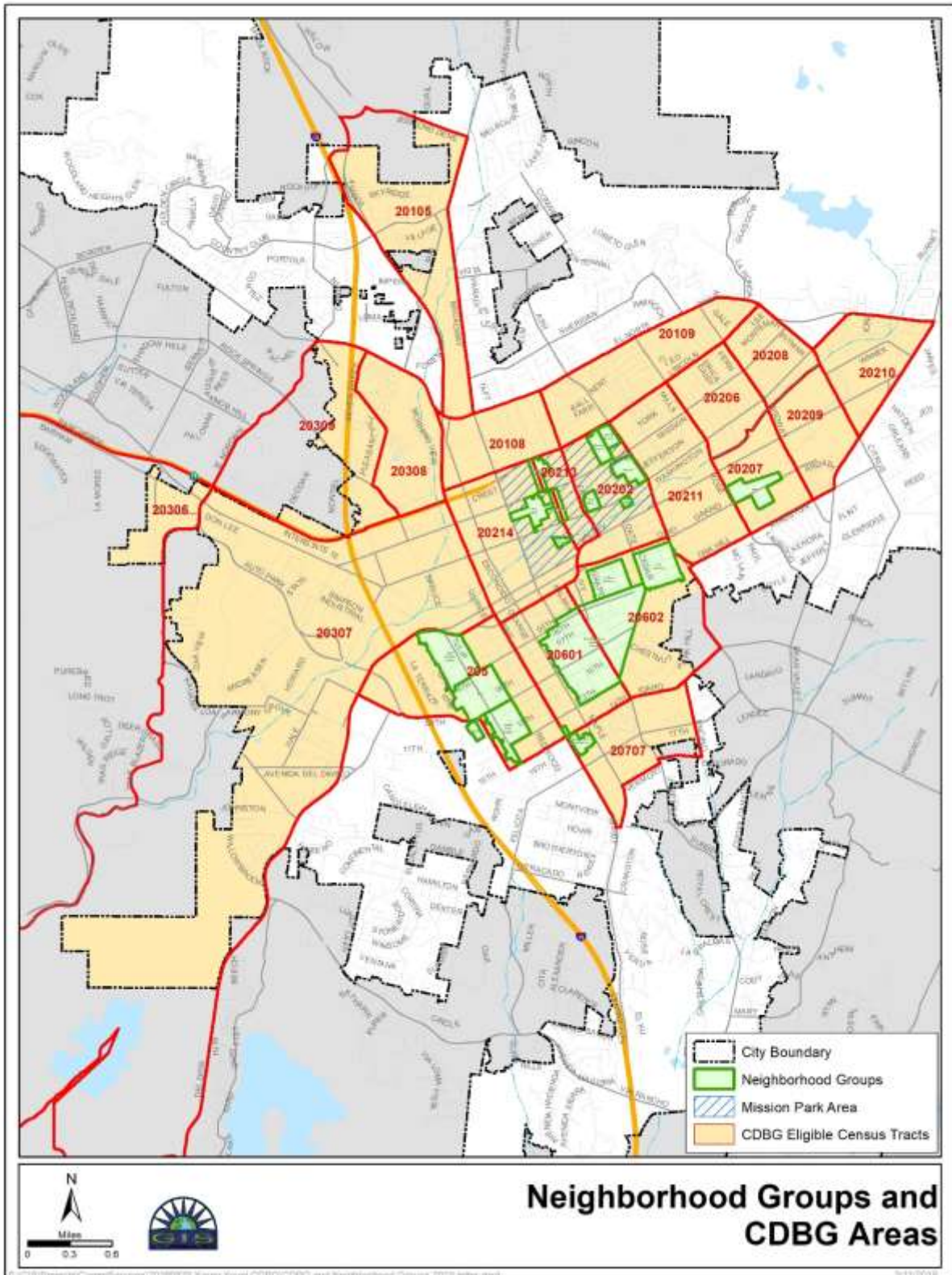
*Karen Youel*, Housing & Neighborhood Svs. Manager  
5/15/2019 5:04 p.m.

### **ATTACHMENTS:**

1. Attachment 1 – CDBG Map
2. Attachment 2 – FY 2019-2020 Proposed HOME Allocations
3. Attachment 3 – FY 2019-2020 Proposed CDBG Allocations
4. Attachment 4 – FY 2019-2020 Proposed ESG Allocations
5. Resolution No. 2019-55
6. Resolution No. 2019-55 – Exhibits A, B, C, D, E, and F
7. Resolution No. 2019-56

Attachment 1

Map of CDBG Eligible Census Blocks



Attachment 2

**HOME INVESTMENT PARTNERSHIPS PROGRAM  
FY 2019**

**SUMMARY OF HOME FUNDING CATEGORIES**

FUNDING CATEGORY	AMOUNT AVAILABLE
<p><b>2019 Allocation</b></p> <p><i>Loan Repayments</i></p>	<p><b>\$596,821</b></p> <p><u><b>100,000</b></u></p>
<b>TOTAL AVAILABLE FUNDS</b>	<b>\$696,821</b>
<p><i>10% of Allocation and Interest</i></p> <p><i>10% of Program Income</i><sup>1</sup></p> <p><i>City's Administrative Cost</i></p>	<p><b>\$ 59,680</b></p> <p><u><b>\$10,000</b></u></p> <p><b>\$69,680</b></p>
<p><b><u>Mandatory</u></b></p> <p><b>CHDO Set-Aside</b> <i>(15% of allocation)</i></p>	<b>\$89,525</b>
Housing Development	<b>\$537,616</b>
<b>TOTAL EXPENDITURES</b>	<b>\$696,821</b>

1. Generated from Loan Repayments received in the previous fiscal year

Attachment 3

**City of Escondido, Fiscal Year 2019-2020  
CDBG Allocations  
2019 HUD Allocation: \$1,824,482**

	<b>Administration - 20% cap of allocation (\$364,896 max.)</b>	
116-109	CDBG Administration	\$ 330,850
345259	Fair Housing	\$ 34,045
	Total	\$ 364,895
	<b>Public Service - 15% cap of total available (\$273,672 max.)</b>	
345469	Learn to Swim	\$ 15,000
345429	Senior Transportation	\$ 34,610
345489	Senior Nutrition	\$ 56,110
345419	Senior CARE	\$ 13,000
345640	Neighbor to Neighbor	\$ 44,950
345379	Meals on Wheels In Home Meal Delivery	\$ 25,000
345439	The Alliance for Regional Solutions	\$ 45,000
345661	San Diego Children's Museum	\$ 5,000
	Voices for Children	\$ 10,000
	Neighborhood Improvement Planning Program	\$ 25,000
	Total	\$ 273,670
	<b>Uncapped Capital Improvement &amp; Other Neighborhood Revitalization Activities - (No max.)</b>	
345580	Code Enforcement	\$ 115,000
345359	Grants to Blocks	\$ 60,000
345500	Project Neat	\$ 50,000
345610	Graffiti Removal	\$ 115,000
344908	Old Escondido Lighting Project	\$ 380,917
342650	Street Light LED Retrofit Program	\$ 100,000
	Sidewalk Infill Program	\$ 150,000
	Ballfield Light LED Retrofit Program	\$ 190,000
	Boys & Girls Club Gym Repairs	\$ 25,000
	Total	\$ 1,185,917
	Total CDBG Allocations	\$ 1,824,482

Attachment 4

**City of Escondido, Fiscal Year 2019-2020 ESG Allocations**  
**2019 HUD Allocation: \$152,010**

FY 19-20

Administration -7.5% cap of allocation (\$11,400 max)	
ESG Administration	\$ 11,400
Total	\$ 11,400
Total Available for Other Activities	
Interfaith	\$ 140,610
Total	\$ 140,610
Total ESG Allocations	\$ 152,010

RESOLUTION NO. 2019-55

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
ADOPTING THE HOME, CDBG, AND ESG  
BUDGET AND ALLOCATIONS FOR FISCAL  
YEAR 2019-2020, AND AUTHORIZING THE  
DIRECTOR OF COMMUNITY DEVELOPMENT  
AND CITY CLERK TO EXECUTE AGREEMENTS  
FOR USE OF COMMUNITY DEVELOPMENT  
BLOCK GRANT FUNDS

WHEREAS, the City of Escondido ("City") is a recipient of HOME Investment Partnerships Program ("HOME"), Community Development Block Grant ("CDBG"), and Emergency Solutions Grant ("ESG") funds from the United States Department of Housing and Urban Development; and

WHEREAS, a total of 15 percent of HOME funds received by the City must be used for the provision of affordable housing by eligible Community Housing Development Organizations ("CHDOs"); 10 percent of the HOME funds received by the City may be used for administration; and the remaining HOME funds (75 percent) received by the City may be used for Housing Development; and

WHEREAS, a total of 20 percent of CDBG funds received may be used for administration; a total of 15 percent for public service activities; and the remaining 65 percent for uncapped capital improvements. CDBG funds are to be used in CDBG eligible areas as evidenced in Exhibit "A," which is attached to this Resolution and incorporated by this reference; and

WHEREAS, a total of 7.5 percent of ESG funds received by the City may be used

for administration, and the remaining ESG funds (92.5 percent) received by the City must be used for homeless priorities; and

WHEREAS, the City Council desires at this time, and deems it to be in the best public interest, to adopt the HOME, CDBG, and ESG budgets for Fiscal Year (“FY”) 2018-2019, attached as Exhibit “B”, Exhibit “C”, and Exhibit “D” respectively, all of which are incorporated by this reference; and

WHEREAS, the HOME, CDBG, and ESG budgets reflect the work program for the coming year based on the City’s Action Plan for FY 2019-2020 which identifies the goals and priorities, established in the 2015-2019 Amended Consolidated Plan; and

WHEREAS, the HOME budget includes proposed expenditures of the City for the provision of affordable housing and proposed expenditures of CHDOs for the provision of affordable housing; and

WHEREAS, the City Council also desires to authorize City officials, including the Director of Community Development and the City Clerk, to execute agreements to provide for the use of HOME, CDBG, and ESG funds.

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 HOME, CDBG, and ESG budgets and administration of programs for the period of July 1, 2019, through June 30, 2020 inclusive, contained in the FY 2019-

2020 HOME, CDBG, and ESG Budget Documents, attached as Exhibit “B”, Exhibit “C,” Exhibit “D,” are hereby adopted.

3. That the Director of Community Development is authorized to make non-substantial changes to the HOME, CDBG, and ESG budgets within 25 percent, whether above or below the projected allocation. Changes will be proportionally dispersed to current categories.

4. That the Community Development Director and the City Clerk are hereby authorized to execute contracts with specific providers for use of CDBG and ESG funds in the amounts set forth in Exhibit “C,” and Exhibit “D,” provided such agreements have been approved as to form by the City Attorney, and provided such agreements are substantially in the form as that attached in Exhibit “E” and Exhibit “F,” which are incorporated by this reference.



Exhibit A

Map of CDBG Eligible Census Blocks

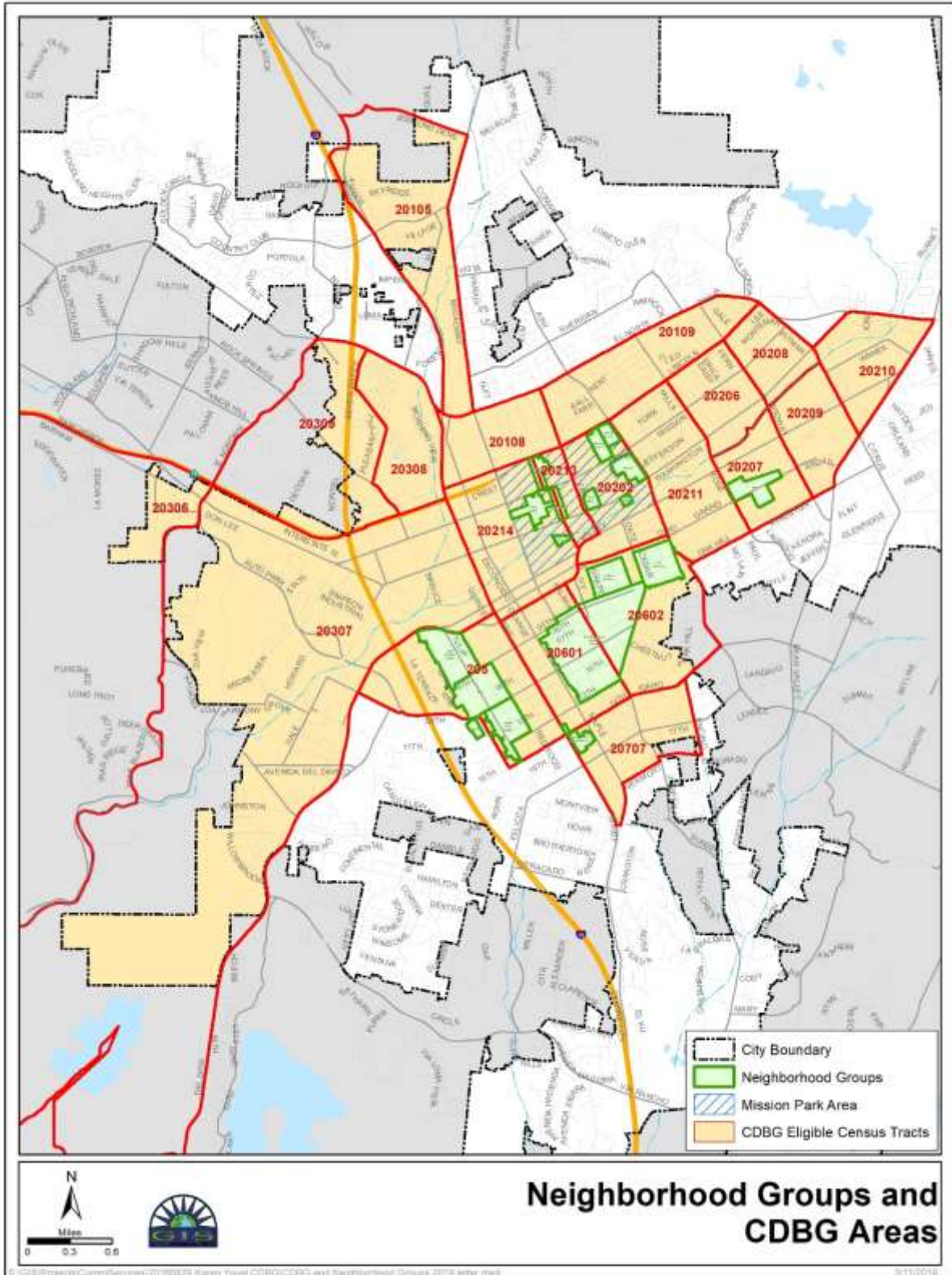


Exhibit B

**HOME INVESTMENT PARTNERSHIPS PROGRAM  
 FY 2019  
 SUMMARY OF HOME FUNDING CATEGORIES**

FUNDING CATEGORY	AMOUNT AVAILABLE
<p style="text-align: center;"><b>2019 Allocation</b></p> <p style="text-align: center;"><i>Loan Repayments</i></p>	<p style="text-align: right;"><b>\$596,821</b></p> <p style="text-align: right;"><u>100,000</u></p>
<b>TOTAL AVAILABLE FUNDS</b>	<b>\$696,821</b>
<p style="text-align: center;"><i>10% of Allocation and Interest</i></p> <p style="text-align: center;"><i>10% of Program Income <sup>1</sup></i></p> <p style="text-align: center;"><i>City's Administrative Cost</i></p>	<p style="text-align: right;"><b>\$ 59,680</b></p> <p style="text-align: right;"><u>\$10,000</u></p> <p style="text-align: right;"><b>\$69,680</b></p>
<p style="text-align: center;"><b><u>Mandatory</u></b></p> <p style="text-align: center;">CHDO Set-Aside <i>(15% of allocation)</i></p>	<b>\$89,525</b>
Housing Development	<b>\$537,616</b>
<b>TOTAL EXPENDITURES</b>	<b>\$696,821</b>

1. Generated from Loan Repayments received in the previous fiscal year

Exhibit C

**City of Escondido, Fiscal Year 2019-2020  
 CDBG Allocations  
 2019 HUD Allocation: \$1,824,482**

<b>Administration - 20% cap of allocation (\$364,896 max.)</b>		
116-109	CDBG Administration	\$ 330,850
345259	Fair Housing	\$ 34,045
	Total	\$ 364,895
<b>Public Service - 15% cap of total available (\$273,672 max.)</b>		
345469	Learn to Swim	\$ 15,000
345429	Senior Transportation	\$ 34,610
345489	Senior Nutrition	\$ 56,110
345419	Senior CARE	\$ 13,000
345640	Neighbor to Neighbor	\$ 44,950
345379	Meals on Wheels In Home Meal Delivery	\$ 25,000
345439	The Alliance for Regional Solutions	\$ 45,000
345661	San Diego Children's Museum	\$ 5,000
	Voices for Children	\$ 10,000
	Neighborhood Improvement Planning Program	\$ 25,000
	Total	\$ 273,670
<b>Uncapped Capital Improvement &amp; Other Neighborhood Revitalization Activities - (No max.)</b>		
345580	Code Enforcement	\$ 115,000
345359	Grants to Blocks	\$ 60,000
345500	Project Neat	\$ 50,000
345610	Graffiti Removal	\$ 115,000
344908	Old Escondido Lighting Project	\$ 380,917
342650	Street Light LED Retrofit Program	\$ 100,000
	Sidewalk Infill Program	\$ 150,000
	Ballfield Light LED Retrofit Program	\$ 190,000
	Boys & Girls Club Gym Repairs	\$ 25,000
	Total	\$ 1,185,917
<b>Total CDBG Allocations</b>		<b>\$ 1,824,482</b>

Exhibit D

**City of Escondido, Fiscal Year 2019-2020 ESG Allocations**  
**2019 HUD Allocation: \$152,010**

FY 19-20

Administration -7.5% cap of allocation (\$11,400 max)	
ESG Administration	\$ 11,400
Total	\$ 11,400
Total Available for Other Activities	
Interfaith	\$ 140,610
Total	\$ 140,610
Total ESG Allocations	\$ 152,010

**AGREEMENT**  
**BETWEEN THE CITY OF ESCONDIDO AND**  
**[SUBRECIPIENT]**  
**FOR THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**  
**CFDA 14.218**

This Agreement made and entered into by and between the City of Escondido, a municipal corporation of the state of California, hereinafter "CITY," and [Subrecipient Name], hereinafter "SUBRECIPIENT."

WITNESSETH:

RECITALS:

1. CITY is recipient of funds from the United States Department of Housing and Urban Development (hereinafter "HUD") pursuant to Title I of the Housing and Community Development Act of 1974 (41 U.S.C. 5301-5320) as amended (hereinafter "ACT").
2. CITY has approved the provision of federal funds under the Act to be used by the SUBRECIPIENT as provided in its "Work Plan," attached hereto as Attachment "A" and as further modified by any negotiated Statement of Work.
3. SUBRECIPIENT represents that it shall perform the work as set forth in the Work Plan and Statement of Work.
4. SUBRECIPIENT warrants that it has the expertise and experience to perform the work set forth in the Work Plan and Statement of Work.
5. SUBRECIPIENT represents that it shall perform the work as set forth in the Work Plan and Statement of Work pursuant to the "Budget," attached hereto as Attachment "B" and incorporated herein by reference.
6. CITY shall provide Community Development Block Grant "CDBG" funds to the SUBRECIPIENT in the amount set forth in the Budget, and pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and based on the mutual covenants below, the parties hereby agree as follows:

1. The term of this Agreement shall be FY 20\_\_-20\_\_ (July 1, 20\_\_ – June 30, 20\_\_).
2. Upon the termination or expiration of the term of this Agreement, SUBRECIPIENT shall transfer to CITY any CDBG funds on hand at the time of such termination or expiration and any accounts receivable attributable to the use of CDBG funds.

A. SUBRECIPIENT OBLIGATIONS

1. Use of Funds. SUBRECIPIENT agrees to use federal funds provided by CITY to SUBRECIPIENT pursuant to the provisions of this Agreement, the Work Plan and Statement of Work, and Budget for said program. SUBRECIPIENT'S failure to perform as required may, in addition to other remedies set forth in this Agreement, result in readjustment of the amount of funds CITY is otherwise obligated to pay to SUBRECIPIENT under Section B hereof.

SUBRECIPIENT agrees to use said funds to pay for necessary and reasonable costs to operate said program. Said amount shall include wages, administrative costs, employee benefits comparable to other similarly situated employees, and other allowable program costs as detailed in the Budget.

If SUBRECIPIENT uses the federal funds provided by CITY for the purpose of acquisition of real property or to reduce the cost of financing of acquisition of real property, there shall be no alteration of the use of the real property so acquired and no additional encumbrances placed on such property during the period of this agreement without the prior written consent of CITY, which consent shall not be unreasonably withheld.

SUBRECIPIENT shall, upon receipt of such federal funds for the purpose of acquiring or improving real property, cause a Deed of Trust, secured by a Promissory Note, to be executed and recorded, in favor of the CITY, for the amount of the federal funds provided by the CITY.

If SUBRECIPIENT uses federal funds provided by the CITY as set out in the preceding paragraph, and further encumbers the real property acquired without first giving notice to the CITY, and obtaining the CITY's written consent, which consent shall not be unreasonably withheld, such action on the part of the SUBRECIPIENT will be cause for termination or revocation of this Agreement and reversion of assets as delineated in paragraph A.(15.) or collection on any Promissory Note executed in favor of the CITY.

2. Statement of Work. SUBRECIPIENT represents that it will negotiate a Statement of Work in accordance with the Work Plan that will include an accurate schedule for performance and completion of the work. These items shall be in sufficient detail to provide a sound basis for the City to effectively monitor performance under the Agreement.

3. Budget. SUBRECIPIENT represents that the Budget includes only allowable costs and an accurate analysis of costs applicable to CDBG funds pursuant to 24 CFR 570.502, which includes requirements for compliance with the following in addition to other requirements as stated in 2 CFR Part 200 Subpart E – Cost Principles.

These items shall be in sufficient detail to provide a sound basis for the City to effectively monitor performance under the Agreement.

4. Records and Reports. The SUBRECIPIENT shall maintain records and reports as required by Federal Regulation 24 CFR 570.506 and 570.503, and 2 CFR Part 200.333-227 which may include but are not limited to:

a. Records.

- (1) Documentation providing a full description of the activity undertaken.
- (2) Documentation demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program.
- (3) Documentation of the number, race and income level of persons and/or families participating in or benefiting the SUBRECIPIENT'S program.
- (4) Documentation of all CDBG funds received from CITY.
- (5) Documentation of expenses as identified in the Budget.
- (6) Property and equipment acquisition, management and disposition documentation.
- (7) Any such other related records as CITY shall require.

b. Reports.

- (1) Payment Request/Invoice
- (2) Quarterly Performance and Demographic Reports
- (3) Final Evaluation Report
- (4) Any such other reports as CITY shall reasonably require.

5. Program Income. Transfers of grant funds by the City to the SUBRECIPIENT shall be adjusted according to the principles described in 24 CFR 570.504(b)(2), and 24CFR570.504(c). Any program income on hand when this Agreement expires, or received after this Agreement's expiration, shall be paid to the CITY as required by Section A.15 of this Agreement and 24 CFR 570.503(b)(8).

6. Uniform Administrative Requirements. The SUBRECIPIENT shall comply with applicable uniform administrative requirements as described in 24 CFR 570.502, 2 CFR Part 200, and 24 CFR 570 Subpart K.
7. Separation of Accounts. All funds received by SUBRECIPIENT from City pursuant to this Agreement shall be maintained separate and apart from any other fund of SUBRECIPIENT or of any principal or member of SUBRECIPIENT in an account in a federally insured banking or savings and loan institution. No monies shall be withdrawn from such account except for expenditures authorized by this Agreement.
8. Retention of Records. All accounting records and evidence pertaining to all costs of SUBRECIPIENT and all documents related to this Agreement shall be kept available at SUBRECIPIENT'S office or place of business for the duration of the Agreement and thereafter for three (3) years after completion of an audit. Records which relate to (a) complaints, claims, administrative proceedings or litigation arising out of the performance of this Agreement, or (b) costs and expenses of this Agreement to which CITY or any other governmental agency takes exception, shall be retained beyond the three (3) years until resolution or disposition of such appeals, litigation claims, or exceptions.
9. Compliance with Applicable Laws. SUBRECIPIENT agrees to comply fully with all applicable federal, state and local laws, ordinances, regulations, and permits including but not limited to federal CDBG financial and contractual procedures, and 2 CFR Part 200, as set forth in 24 CFR 570.502(b). Said federal documents are on file in the City of Escondido Community Development Block Grant Division, 201 N. Broadway, Escondido, CA 92025, and are incorporated herein by reference. The SUBRECIPIENT shall secure any new permits required by authorities herein with jurisdiction over the project, and shall maintain all presently required permits. The SUBRECIPIENT shall ensure that the requirements of the California Environmental Quality Act are met for any permits or other entitlements required to carry out the terms of this Agreement.  
  
SUBRECIPIENT agrees to comply fully with all applicable federal, state and local laws, ordinances, regulations, and permits regarding provision of services to non-U.S. citizens. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any



federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

10. Affirmative Action Policy.

a. Provision of Program Services.

- (1) SUBRECIPIENT shall not, on the ground of race, color, national origin, sex or disability, exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination under any program or activity funded in whole or in part with CDBG funds.
- (2) SUBRECIPIENT shall not, under any program or activity funded in whole or in part with CDBG funds, on the ground of race, color, national origin, sex or disability:
  - (a) Deny any facilities, services, financial aid or other benefits provided under the program or activity.
  - (b) Provide any facilities, services, financial aid or other benefits which are different or are provided in a different form from that provided to others under the program or activity.
  - (c) Subject to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.
  - (d) Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.
  - (e) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order

to be provided any facilities, services or other benefit provided under the program or activity as an employee.

- (f) Deny an opportunity to participate in a program or activity as an employee.
- (3) SUBRECIPIENT may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, national origin, sex or disability, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, sex or disability.
- (4) SUBRECIPIENT, in determining the site or location of housing or facilities provided in whole or in part with CDBG funds, may not make selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, sex or disability, or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Civil Rights Act of 1964 and amendments thereto.
- (5) (a) In administering a program or activity funded in whole or in part with CDBG funds regarding which the SUBRECIPIENT has previously discriminated against persons on the ground of race, color, national original, sex or disability, the SUBRECIPIENT must take affirmative action to overcome the effects of prior discrimination.
- (b) Even in the absence of such prior discrimination, a SUBRECIPIENT in administering a program or activity funded in whole or in part with CDBG funds should take affirmative action to overcome the effects of conditions which would otherwise result in limiting participation by persons of a particular race, color, national origin, sex or disability, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which CDBG funding applies, the SUBRECIPIENT has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Civil Rights Act of 1964.

- (c) A SUBRECIPIENT shall not be prohibited by this part from taking any eligible action to ameliorate any imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction where the purpose of such action is to overcome prior discriminatory practice or usage.
  - (6) Notwithstanding anything to the contrary in Sections A.10.a(1-5), nothing contained herein shall be construed to prohibit any SUBRECIPIENT from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.
- b. Employment Discrimination.
- (1) SUBRECIPIENT shall not discriminate against any employee or application for employment because of race, color, religion, sex, national origin, age or disability. SUBRECIPIENT shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, age or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training including apprenticeship. SUBRECIPIENT agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - (2) SUBRECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of SUBRECIPIENT, state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, age or disability.
  - (3) SUBRECIPIENT shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contractor understanding, a notice to be provided by CITY'S contracting officers advising the labor union or workers' representative of SUBRECIPIENT'S commitments under Section 202 of Executive Order No. 11246 of September 14, 1965, and

shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) SUBRECIPIENT shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) SUBRECIPIENT shall furnish to the CITY all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the related rules, regulations, and orders.
- (6) In the event of SUBRECIPIENT'S failure to comply with any rules, regulations, or orders required to be complied with pursuant to this Agreement, CITY may cancel, terminate, or suspend in whole or in part its performance and SUBRECIPIENT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) SUBRECIPIENT shall include the provisions of Section A.10.B, "Affirmative Action Policy," Paragraphs 1 through 6, in every subcontract or purchase order unless exempted by rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. SUBRECIPIENT shall take such action with respect to any subcontractor or purchase order as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event SUBRECIPIENT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the CITY, SUBRECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.
- (8) SUBRECIPIENT shall not discriminate on the basis of age in violation of any provision of the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to any otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

SUBRECIPIENT shall also provide ready access to and use of all CDBG fund assisted buildings and programs to qualified persons with disabilities in compliance with the Americans with Disabilities Act of 1990.

- (9) SUBRECIPIENT will provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
  - (b) Establishing an ongoing drug-free awareness program to inform employees about:
    - 1) The dangers of drug abuse in the workplace.
    - 2) The grantee's policy of maintaining a drug-free workplace.
    - 3) Any available drug counseling, rehabilitation, and employee assistance programs.
    - 4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
  - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a).
  - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
    - 1) Abide by the terms of the statement.
    - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
  - (e) Notifying the agency, in writing, within ten (10) calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has

designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

(f) Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended;

OR

2) Requiring such employee to participate satisfactorily in a drug-abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a)-(f).

(h) "Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (through a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

"Criminal drug statute" means a federal or nonfederal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

"Employee" means the employee of a SUBRECIPIENT directly engaged in the performance of work under this contract including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under this contract and who are not on the SUBRECIPIENT'S payroll. This definition does not include workers not

on the payroll of the SUBRECIPIENT (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of SUBRECIPIENTS or subcontractors in covered workplaces).

- c. Remedies. In the event of SUBRECIPIENT'S failure to comply with any rules, regulations, or orders required to be complied with pursuant to this Agreement, the CITY may cancel, terminate, or suspend in whole or in part its performance and SUBRECIPIENT may be declared ineligible for further government contracts and any such other sanctions as may be imposed and remedies invoked as provided by law.
11. Ineligibility of Subrecipients of Contractors. SUBRECIPIENT shall not use CDBG funds directly or indirectly in its operations or to employ, award contracts to, or otherwise engage the services of, or fund any contractor during any period of debarment, suspension, or placement in ineligibility status of the SUBRECIPIENT or such contractor under the provisions of 24 CFR Part 24.
12. Conflict of Interest. In the procurement of supplies, equipment, construction and services by SUBRECIPIENT, the conflict of interest provisions in 2 CFR Part 200.317-326 and 24 CFR 570.611 shall apply.
13. Condition for Religious Organization. SUBRECIPIENT shall comply with all applicable conditions prescribed in 24 CFR 570.200(j) and by HUD for the use of CDBG funds by religious organizations if SUBRECIPIENT is a religious organization.
14. Suspension and Termination. In accordance with 2 CFR Part 200.338-342, suspension or termination may occur if SUBRECIPIENT materially fails to comply with any term of this Agreement and/or the award, of this Agreement and/or the award may be terminated for convenience.
15. Reversion of Assets. Upon termination or expiration of the term of this Agreement, the SUBRECIPIENT shall transfer to the CITY any CDBG funds on hand at the time of such termination or expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the SUBRECIPIENT'S control that was acquired or improved in whole or in part with CDBG funds shall either be:
  - a. Used to meet one of the national objectives stated in 24 CFR 570.208 until five (5) years after termination or expiration of this Agreement, or for such longer periods of time as determined to be appropriate by the CITY; or

- b. Disposed of in a manner that results in the CITY'S being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Reimbursement to the CITY shall not be required after the period of time specified in Section A.15.a of this Agreement.
16. Independent Contractor. SUBRECIPIENT agrees that the performance of obligations hereunder are rendered in its capacity as an independent contractor and that it is in no way an employee or agent of the CITY.
17. Licensing. SUBRECIPIENT agrees to obtain and maintain all licenses, registrations, accreditations, and inspections from all agencies governing its operations. SUBRECIPIENT shall insure that its staff shall also obtain and maintain all required licenses, registrations, accreditations, and inspections from all agencies governing SUBRECIPIENT'S operations hereunder.
18. Inspection of Records. CITY and the United States government and/or their representatives shall have access for purposes of monitoring, auditing, and examining SUBRECIPIENT'S activities and performance, to books, documents and papers, and the right to examine records of SUBRECIPIENT'S subcontractors, bookkeepers and accountants, employees and participants in regard to said program. CITY and the United States government and/or their representative shall also schedule on-site monitoring at their discretion. Monitoring activities may also include, but are not limited to, questioning employees and participants in said program and entering any premises or any site in which any of the services or activities funded hereunder are conducted or in which any of the records of SUBRECIPIENT are kept. Nothing herein shall be construed to require access to any privileged or confidential information as set forth in federal or state law. SUBRECIPIENT agrees to provide notification of any audits or investigations, including copies of results, findings, and/or liens.
- In the event SUBRECIPIENT does not make the above-referenced documents available within the City of Escondido, California, SUBRECIPIENT agrees to pay all necessary and reasonable expenses incurred by CITY in conducting any audit at the location where said records and books of account are maintained.
19. Assignability. SUBRECIPIENT shall not assign or transfer any interest in this Agreement, whether by assignment, delegation or novation, without the prior written consent of CITY; provided, however, that claims for money due or to become due to SUBRECIPIENT from



CITY under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, without such approval. Any assignment, delegation or novation other than as provided above shall be void and inoperative. Notice of any proper assignment or transfer shall be promptly furnished to CITY.

20. Hold Harmless.

- a. SUBRECIPIENT shall indemnify and save harmless CITY, its officers and employees, from and against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of CITY, and shall defend, indemnify and save harmless CITY, its officers, and employees from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, workers' compensation claims, resulting from or arising out of the negligent acts, errors or omissions of SUBRECIPIENT, its employees or subcontractors.
- b. SUBRECIPIENT, shall indemnify and save harmless CITY, its officers, and employees from and against any and all damages to property or injuries to or death of any person or persons, including property, and employees or agents of CITY, and shall defend, indemnify and save harmless CITY, its officers, and employees from and against any and all claims, demands, suits, actions or proceedings therefrom, resulting from or arising out of the intentional or malicious acts of SUBRECIPIENT, its employees or subcontractors.

21. Insurance.

- a. The SUBRECIPIENT 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 21(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. SUBRECIPIENT acknowledges that operating a motor vehicle is outside the scope of this Agreement and occurs only at the convenience of the SUBRECIPIENT. A waiver of automobile liability insurance is only effective if both sets of initials appear below, otherwise such insurance is required.

Acknowledged by SUBRECIPIENT \_\_\_\_\_

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 SUBRECIPIENT'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, SUBRECIPIENT 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.

B. CITY OBLIGATIONS

1. Payment of Funds. CITY shall pay to SUBRECIPIENT from CDBG funds, when, if and to the extent received from HUD, amounts expended by SUBRECIPIENT in carrying out said program pursuant to this Agreement up to a maximum aggregate payment of \$ [REDACTED] in installments determined by CITY. Payment shall be made to SUBRECIPIENT through the submission of monthly invoices, in a form prescribed by CITY, detailing such expenses. CITY shall pay such invoices within thirty (30) days after receipt thereof, provided CITY is satisfied that such expenses have been incurred within the scope of this Agreement and that SUBRECIPIENT is in compliance with the terms and conditions of this Agreement, including 2 CFR Part 200 Subpart F.
2. Audit of Account. CITY shall include an audit of the account maintained by SUBRECIPIENT pursuant to Section A.8 of this Agreement in CITY'S annual audit of all CDBG funds pursuant to federal regulations found in Title 24 of the Code of Federal Regulations and other applicable federal laws and regulations.

C. MISCELLANEOUS PROVISIONS.

1. Termination of Agreement. CITY or SUBRECIPIENT may terminate this Agreement by giving written notice to the other party thirty (30) days prior to the effective date of termination. Additionally, the CITY shall have the right, in accordance with 2 CFR Part 200.338-342, to terminate this Agreement immediately or withhold payment of any invoice for failure of the SUBRECIPIENT to comply with the terms and conditions of this Agreement. Should the CITY decide to terminate this Agreement after a full evaluation of all circumstances has been completed, the SUBRECIPIENT shall, upon written request, have the right to an appeal process. A copy of the appeal process will be attached to any termination notice.  
  
If the CITY finds that the SUBRECIPIENT has violated the terms and conditions of this Agreement, the SUBRECIPIENT may be required to:
  - a. repay all monies received from the CITY under this Agreement; and/or
  - b. transfer possession of all materials and equipment purchased with grant money to the CITY.



7. Immigration Reform and Control Act of 1986. SUBRECIPIENT shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. SUBRECIPIENT 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. SUBRECIPIENT agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.

IN WITNESS WHEREOF, CITY and SUBRECIPIENT have caused this Agreement to be executed by their duly authorized representatives.

SUBRECIPIENT:

By \_\_\_\_\_ Date: \_\_\_\_\_  
Executive Director

By \_\_\_\_\_ Date: \_\_\_\_\_  
President of Board of Directors  
*(above signatures must be notarized)*

CITY OF ESCONDIDO:

By \_\_\_\_\_ Date: \_\_\_\_\_  
Bill Martin  
Director of Community Development

By \_\_\_\_\_ Date: \_\_\_\_\_  
Zack Beck  
City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY  
Michael R. McGuinness, City Attorney

By: \_\_\_\_\_

**AGREEMENT**  
**BETWEEN THE CITY OF ESCONDIDO AND**  
**[SUBRECIPIENT]**  
**FOR THE USE OF EMERGENCY SOLUTIONS GRANT FUNDS**  
**CFDA 14.231**

This Agreement, made and entered into by and between the City of Escondido, a municipal corporation of the state of California, hereinafter "CITY," and [Subrecipient Name], hereinafter "SUBRECIPIENT."

WITNESSETH:

RECITALS:

1. CITY is recipient of funds from the United States Department of Housing and Urban Development (hereinafter "HUD") pursuant to subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371–11378) as amended by the HEARTH Act (hereinafter "ACT").
2. CITY has approved the provision of federal funds under the Act to be used by the SUBRECIPIENT as provided in its "Work Plan," attached hereto as Attachment "A" and as further modified by any negotiated Statement of Work.
3. SUBRECIPIENT represents that it shall perform the work as set forth in the Work Plan and Statement of Work.
4. SUBRECIPIENT warrants that it has the expertise and experience to perform the work set forth in the Work Plan and Statement of Work.
5. SUBRECIPIENT represents that it shall perform the work as set forth in the Work Plan and Statement of Work pursuant to the "Budget," attached hereto as Attachment "B" and incorporated herein by reference.
6. CITY shall provide Emergency Solutions Grant "ESG" funds to the SUBRECIPIENT in the amount set forth in the Budget, and pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and based on the mutual covenants below, the parties hereby agree as follows:

1. The term of this Agreement shall be **FY 20\_\_-20\_\_ (July 1, 20\_\_ – June 30, 20\_\_)**.

2. Upon the termination or expiration of the term of this Agreement, SUBRECIPIENT shall transfer to CITY any ESG funds on hand at the time of such termination or expiration and any accounts receivable attributable to the use of ESG funds.

A. SUBRECIPIENT OBLIGATIONS

1. Use of Funds. SUBRECIPIENT agrees to use federal funds provided by CITY to SUBRECIPIENT pursuant to the provisions of this Agreement, the Work Plan and Statement of Work, and Budget for said program. SUBRECIPIENT'S failure to perform as required may, in addition to other remedies set forth in this Agreement, result in readjustment of the amount of funds CITY is otherwise obligated to pay to SUBRECIPIENT under Section B hereof.

SUBRECIPIENT agrees to use said funds to pay for necessary and reasonable costs to operate said program. Said amount shall include wages, administrative costs, employee benefits comparable to other similarly situated employees, and other allowable program costs as detailed in the Budget.

If SUBRECIPIENT uses the federal funds provided by CITY for the purpose of acquisition of real property or to reduce the cost of financing of acquisition of real property, there shall be no alteration of the use of the real property so acquired and no additional encumbrances placed on such property during the period of this agreement without the prior written consent of CITY, which consent shall not be unreasonably withheld.

SUBRECIPIENT shall, upon receipt of such federal funds for the purpose of acquiring or improving real property, cause a Deed of Trust, secured by a Promissory Note, to be executed and recorded, in favor of the CITY, for the amount of the federal funds provided by the CITY.

If SUBRECIPIENT uses federal funds provided by the CITY as set out in the preceding paragraph, and further encumbers the real property acquired without first giving notice to the CITY, and obtaining the CITY's written consent, which consent shall not be unreasonably withheld, such action on the part of the SUBRECIPIENT will be cause for termination or revocation of this Agreement and reversion of assets as delineated in paragraph A.(15.) or collection on any Promissory Note executed in favor of the CITY.

2. Statement of Work. SUBRECIPIENT represents that it will negotiate a Statement of Work in accordance with the Work Plan that will include an accurate schedule

for performance and completion of the work. These items shall be in sufficient detail to provide a sound basis for the City to effectively monitor performance under the Agreement.

3. Budget. SUBRECIPIENT represents that the Budget includes only allowable costs and an accurate analysis of costs applicable to ESG funds pursuant to 24 CFR 576.100, which includes requirements for compliance with the following in addition to other requirements as stated in 2 CFR Part 200 Subpart E – Cost Principles.

These items shall be in sufficient detail to provide a sound basis for the City to effectively monitor performance under the Agreement.

4. Records and Reports. The SUBRECIPIENT shall maintain records and reports as required by Federal Regulation 24 CFR 576.407, 24 CFR 576.2, and 2 CFR Part 200.333-227, which may include but are not limited to:

- a. Records.

- (1) Documentation providing a full description of the activity undertaken.
- (2) Documentation demonstrating that each activity undertaken meets one of the ESG Eligible Activities.
- (3) Documentation of the number, race and income level of persons and/or families participating in or benefiting the SUBRECIPIENT'S program.
- (4) Documentation of compliance with the homeless definition in 24 CFR 576.2.
- (5) Documentation of all ESG funds received from CITY.
- (6) Documentation of expenses as identified in the Budget.
- (7) Property and equipment acquisition, management and disposition documentation.
- (8) Any such other related records as CITY shall require.

- b. Reports.

- (1) Payment Request/Invoice
- (2) Quarterly Performance and Demographic Reports
- (3) Final Evaluation Report
- (4) Any such other reports as CITY shall reasonably require.



- c. Homeless Management Information System (HMIS)
- (1) Adoption and compliance of HMIS policies and procedures, including data collection, privacy, and security requirements.
  - (2) Use HMIS and other pertinent data collected in the community to assist with evaluating ESG activities within the context of broader system performance and inform subsequent ESG program allocations.
  - (3) Subrecipient will consistently collect and report performance data to integrate into HMIS.
  - (4) Provide HMIS data necessary for specific elements of the Consolidated Plan and Consolidated Annual Performance Evaluation Report (CAPER).
5. Program Income. Program income shall have the same meaning provided in 2 CFR Part 200.80. SUBRECIPIENT is prohibited from collecting program income from any eligible activity. HUD has determined that the act of requiring the security deposits paid by ESG funds on the behalf of eligible subrecipients be returned to the subrecipient in the event that the subrecipient vacates the property is earning program income (24 CFR 576.3). As such, subrecipients are prohibited from requiring that vendors return security deposit payments to the subrecipient if the subrecipient ceases to remain in a dwelling for known or unknown reasons. In the event that subrecipients that have had a security deposit returned to them and are still active or are returning subrecipients, SUBRECIPIENT will retain the right to either instruct subrecipients on its use or in the case of a returning subrecipient, evaluate how the deposit was utilized in determining continued ESG service.
6. Uniform Administrative Requirements. The requirements of 2 CFR Part 200 apply to the subrecipient that are units of general purpose local government. .
7. Separation of Accounts. All funds received by SUBRECIPIENT from City pursuant to this Agreement shall be maintained separate and apart from any other fund of SUBRECIPIENT or of any principal or member of SUBRECIPIENT in an account in a federally insured banking or savings and loan institution. No monies shall be withdrawn from such account except for expenditures authorized by this Agreement.
8. Retention of Records. All accounting records and evidence pertaining to all costs of SUBRECIPIENT and all documents related to this Agreement shall be kept available at SUBRECIPIENT'S office or place of business for the duration of the

Agreement and thereafter for three (3) years after completion of an audit. Records which relate to (a) complaints, claims, administrative proceedings or litigation arising out of the performance of this Agreement, or (b) costs and expenses of this Agreement to which CITY or any other governmental agency takes exception, shall be retained beyond the three (3) years until resolution or disposition of such appeals, litigation claims, or exceptions.

9. Compliance with Applicable Laws. SUBRECIPIENT agrees to comply fully with all applicable federal, state and local laws, ordinances, regulations, and permits including but not limited to federal ESG financial and contractual procedures, and 2 CFR Part 200). Said federal documents are on file in the City of Escondido Housing and Neighborhood Services Division, 201 N. Broadway, Escondido, CA 92025, and are incorporated herein by reference. The SUBRECIPIENT shall secure any new permits required by authorities herein with jurisdiction over the project, and shall maintain all presently required permits. The SUBRECIPIENT shall ensure that the requirements of the California Environmental Quality Act are met for any permits or other entitlements required to carry out the terms of this Agreement.

SUBRECIPIENT agrees to comply fully with all applicable federal, state and local laws, ordinances, regulations, and permits regarding provision of services to non-U.S. citizens.

No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

10. Affirmative Action Policy.

a. Provision of Program Services.

- (1) SUBRECIPIENT shall not, on the ground of race, color, religion, sex, age, national origin, familial status, or disability, exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination under any program or activity funded in whole or in part with ESG funds.
- (2) SUBRECIPIENT shall not, under any program or activity funded in whole or in part with ESG funds, on the ground of race, color, religion, sex, age, national origin, familial status, or disability:
  - (a) Deny any facilities, services, financial aid or other benefits provided under the program or activity.
  - (b) Provide any facilities, services, financial aid or other benefits, which are different or are provided in a different form from that provided to others under the program or activity.
  - (c) Subject to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.
  - (d) Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.
  - (e) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity as an employee.
  - (f) Deny an opportunity to participate in a program or activity as an employee.
- (3) SUBRECIPIENT may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, religion, sex, age, national origin, familial status, or disability, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect

to individuals of a particular race, color, religion, sex, age, national origin, familial status, or disability.

- (4) SUBRECIPIENT, in determining the site or location of housing or facilities provided in whole or in part with ESG funds, may not make selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, religion, sex, age, national origin, familial status, or disability, or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Civil Rights Act of 1964 and amendments thereto.
- (5)
  - (a) In administering a program or activity funded in whole or in part with ESG funds regarding which the SUBRECIPIENT has previously discriminated against persons on the ground of race, color, religion, sex, age, national origin, familial status, or disability, the SUBRECIPIENT must take affirmative action to overcome the effects of prior discrimination.
  - (b) Even in the absence of such prior discrimination, a SUBRECIPIENT in administering a program or activity funded in whole or in part with ESG funds should take affirmative action to overcome the effects of conditions which would otherwise result in limiting participation by persons of a particular race, color, religion, sex, age, national origin, familial status, or disability, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which ESG funding applies, the SUBRECIPIENT has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Civil Rights Act of 1964.
  - (c) A SUBRECIPIENT shall not be prohibited by this part from taking any eligible action to ameliorate any imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction where the purpose of such action is to overcome prior discriminatory practice or usage.

(6) Notwithstanding anything to the contrary in Sections A.10.a(1-5), nothing contained herein shall be construed to prohibit any SUBRECIPIENT from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

b. Employment Discrimination.

- (1) SUBRECIPIENT shall not discriminate against any employee or application for employment because of race, color, religion, sex, age, national origin, familial status, or disability. SUBRECIPIENT shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, familial status, or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training including apprenticeship. SUBRECIPIENT agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (2) SUBRECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of SUBRECIPIENT, state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, age, national origin, familial status, or disability.
- (3) SUBRECIPIENT shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contractor understanding, a notice to be provided by CITY'S contracting officers advising the labor union or workers' representative of SUBRECIPIENT'S commitments under Section 202 of Executive Order No. 11246 of September 14, 1965, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) SUBRECIPIENT shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) SUBRECIPIENT shall furnish to the CITY all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the related rules, regulations, and orders.
- (6) In the event of SUBRECIPIENT'S failure to comply with any rules, regulations, or orders required to be complied with pursuant to this Agreement, CITY may cancel, terminate, or suspend in whole or in part its performance and SUBRECIPIENT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) SUBRECIPIENT shall include the provisions of Section A.10.B, "Affirmative Action Policy," Paragraphs 1 through 6, in every subcontract or purchase order unless exempted by rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. SUBRECIPIENT shall take such action with respect to any subcontractor or purchase order as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event SUBRECIPIENT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the CITY, SUBRECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.
- (8) SUBRECIPIENT shall not discriminate on the basis of age in violation of any provision of the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to any otherwise qualified handicapped

individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

SUBRECIPIENT shall also provide ready access to and use of all ESG fund assisted buildings and programs to qualified persons with disabilities in compliance with the Americans with Disabilities Act of 1990.

- (9) SUBRECIPIENT will provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
  - (b) Establishing an ongoing drug-free awareness program to inform employees about:
    - 1) The dangers of drug abuse in the workplace.
    - 2) The grantee's policy of maintaining a drug-free workplace.
    - 3) Any available drug counseling, rehabilitation, and employee assistance programs.
    - 4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
  - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a).
  - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
    - 1) Abide by the terms of the statement.
    - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
  - (e) Notifying the agency, in writing, within ten (10) calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers

of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

- (f) Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
  - 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended;
  - OR
  - 2) Requiring such employee to participate satisfactorily in a drug-abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a)-(f).
- (h) "Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (through a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

"Criminal drug statute" means a federal or nonfederal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

"Employee" means the employee of a SUBRECIPIENT directly engaged in the performance of work under this contract including:

- (i) All "direct charge" employees;
- (ii) all "indirect charge"



employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under this contract and who are not on the SUBRECIPIENT'S payroll. This definition does not include workers not on the payroll of the SUBRECIPIENT (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of SUBRECIPIENTS or subcontractors in covered workplaces).

- c. Remedies. In the event of SUBRECIPIENT'S failure to comply with any rules, regulations, or orders required to be complied with pursuant to this Agreement, the CITY may cancel, terminate, or suspend in whole or in part its performance and SUBRECIPIENT may be declared ineligible for further government contracts and any such other sanctions as may be imposed and remedies invoked as provided by law.
11. Ineligibility of Subrecipients of Contractors. SUBRECIPIENT shall not use ESG funds directly or indirectly in its operations or to employ, award contracts to, or otherwise engage the services of, or fund any contractor during any period of debarment, suspension, or placement in ineligibility status of the SUBRECIPIENT or such contractor under the provisions of 24 CFR Part 24.
12. Conflict of Interest. In the procurement of supplies, equipment, construction and services by SUBRECIPIENT, the conflict of interest provisions in 2 CFR Part 200.317-326 and 24 CFR 576.404 shall apply.
13. Condition for Religious Organization. SUBRECIPIENT shall comply with all applicable conditions prescribed in 24 CFR 76.406 and by HUD for the use of ESG funds by religious organizations if SUBRECIPIENT is a religious organization.
14. Suspension and Termination. In accordance with 2 CFR Part 200.338-342, suspension or termination may occur if SUBRECIPIENT materially fails to comply with any term of this Agreement and/or the award, of this Agreement and/or the award may be terminated for convenience.
15. Reversion of Assets. Upon termination or expiration of the term of this Agreement, the SUBRECIPIENT shall transfer to the CITY any ESG funds on hand at the time of such termination or expiration and any accounts receivable attributable to the

use of ESG funds. Any real property under the SUBRECIPIENT'S control that was acquired or improved in whole or in part with ESG funds shall either be:

- a. Used to meet one of the eligible activities stated in 24 CFR 576.100-109 until five (5) years after termination or expiration of this Agreement, or for such longer periods of time as determined to be appropriate by the CITY; or
- b. Disposed of in a manner that results in the CITY'S being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-ESG funds for acquisition of, or improvement to, the property. Reimbursement to the CITY shall not be required after the period of time specified in Section A.15.a of this Agreement.

16. Independent Contractor. SUBRECIPIENT agrees that the performance of obligations hereunder are rendered in its capacity as an independent contractor and that it is in no way an employee or agent of the CITY.

17. Licensing. SUBRECIPIENT agrees to obtain and maintain all licenses, registrations, accreditations, and inspections from all agencies governing its operations. SUBRECIPIENT shall insure that its staff shall also obtain and maintain all required licenses, registrations, accreditations, and inspections from all agencies governing SUBRECIPIENT'S operations hereunder.

18. Inspection of Records. CITY and the United States government and/or their representatives shall have access for purposes of monitoring, auditing, and examining SUBRECIPIENT'S activities and performance, to books, documents and papers, and the right to examine records of SUBRECIPIENT'S subcontractors, bookkeepers and accountants, employees and participants in regard to said program. CITY and the United States government and/or their representative shall also schedule on-site monitoring at their discretion. Monitoring activities may also include, but are not limited to, questioning employees and participants in said program and entering any premises or any site in which any of the services or activities funded hereunder are conducted or in which any of the records of SUBRECIPIENT are kept. Nothing herein shall be construed to require access to any privileged or confidential information as set forth in federal or state law.

SUBRECIPIENT agrees to provide notification of any audits or investigations, including copies of results, findings, and/or liens.

In the event SUBRECIPIENT does not make the above-referenced documents available within the City of Escondido, California, SUBRECIPIENT agrees to pay all necessary and reasonable expenses incurred by CITY in conducting any audit at the location where said records and books of account are maintained.

19. Assignability. SUBRECIPIENT shall not assign or transfer any interest in this Agreement, whether by assignment, delegation or novation, without the prior written consent of CITY; provided, however, that claims for money due or to become due to SUBRECIPIENT from CITY under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, without such approval. Any assignment, delegation or novation other than as provided above shall be void and inoperative. Notice of any proper assignment or transfer shall be promptly furnished to CITY.
20. Hold Harmless.
  - a. SUBRECIPIENT shall indemnify and save harmless CITY, its officers and employees, from and against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of CITY, and shall defend, indemnify and save harmless CITY, its officers, and employees from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, workers' compensation claims, resulting from or arising out of the negligent acts, errors or omissions of SUBRECIPIENT, its employees or subcontractors.
  - b. SUBRECIPIENT, shall indemnify and save harmless CITY, its officers, and employees from and against any and all damages to property or injuries to or death of any person or persons, including property, and employees or agents of CITY, and shall defend, indemnify and save harmless CITY, its officers, and employees from and against any and all claims, demands, suits, actions or proceedings therefrom, resulting from or arising out of the intentional or malicious acts of SUBRECIPIENT, its employees or subcontractors.
21. Insurance.
  - a. The SUBRECIPIENT 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 21(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. SUBRECIPIENT acknowledges that operating a motor vehicle is outside the scope of this Agreement and occurs only at the convenience of the SUBRECIPIENT. A waiver of automobile liability insurance is only effective if both sets of initials appear below, otherwise such insurance is required.

Acknowledged by SUBRECIPIENT \_\_\_\_\_

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 SUBRECIPIENT'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, SUBRECIPIENT 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.

**B. CITY OBLIGATIONS**

1. Payment of Funds. CITY shall pay to SUBRECIPIENT from ESG funds, when, if and to the extent received from HUD, amounts expended by SUBRECIPIENT in carrying out said program pursuant to this Agreement up to a maximum aggregate payment of \$ [REDACTED] in installments determined by CITY. Payment shall be made to SUBRECIPIENT through the submission of monthly invoices, in a form prescribed by CITY, detailing such expenses. CITY shall pay such invoices within thirty (30) days after receipt thereof, provided CITY is satisfied that such expenses have been incurred within the scope of this Agreement and that SUBRECIPIENT is in compliance with the terms and conditions of this Agreement.
2. Audit of Account. CITY shall include an audit of the account maintained by SUBRECIPIENT pursuant to Section A.8 of this Agreement in CITY'S annual audit of all ESG funds pursuant to federal regulations found in Title 24 of the Code of Federal Regulations and other applicable federal laws and regulations.

**C. MISCELLANEOUS PROVISIONS.**

1. Termination of Agreement. CITY or SUBRECIPIENT may terminate this Agreement by giving written notice to the other party thirty (30) days prior to the effective date of termination. Additionally, the CITY shall have the right, in accordance with 2 CFR Part 200.338-342, to terminate this Agreement immediately or withhold payment of any invoice for failure of the SUBRECIPIENT to comply with the terms and conditions of this Agreement. Should the CITY decide to terminate this Agreement after a full



4. Laws Governing This Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state of California, all applicable federal statutes and regulations as amended, and all applicable local laws.
5. Severability. The invalidity in whole or in part of any provision of this agreement shall not void or affect the validity of any other provisions of this Agreement.
6. Construction of Agreement. The provisions of this Agreement and its Exhibits shall be construed as a whole. The captions preceding the text of each section are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.
7. Immigration Reform and Control Act of 1986. SUBRECIPIENT shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. SUBRECIPIENT 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. SUBRECIPIENT agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.

*SIGNATURES ON NEXT PAGE*

IN WITNESS WHEREOF, CITY and SUBRECIPIENT have caused this Agreement to be executed by their duly authorized representatives.

SUBRECIPIENT

By \_\_\_\_\_ Date: \_\_\_\_\_  
Executive Director

By \_\_\_\_\_ Date: \_\_\_\_\_  
President of Board of Directors  
*(above signatures must be notarized)*

CITY OF ESCONDIDO

By \_\_\_\_\_ Date: \_\_\_\_\_  
Bill Martin  
Director of Community Development

By \_\_\_\_\_ Date: \_\_\_\_\_  
Zack Beck  
City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY  
Michael McGuinness, City Attorney

By: \_\_\_\_\_



RESOLUTION NO. 2019-56

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
ADOPTING THE CITY OF ESCONDIDO ONE-  
YEAR ACTION PLAN FOR HOME, CDBG, AND  
ESG FUNDS AND APPROVING SUBMITTAL OF  
THE ONE-YEAR ACTION PLAN TO THE  
DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT

WHEREAS, the City of Escondido (“City”) is a recipient of HOME Investment Partnerships Program (“HOME”), Community Development Block Grant (“CDBG”), and Emergency Solutions Grant (“ESG”) funds from the United States Department of Housing and Urban Development; and

WHEREAS, the City desires at this time and deems it to be in the best interest to adopt the One-Year Action Plan for HOME, CDBG, and ESG funds.

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

1. That the above recitations are true.
2. The City Council approves the adoption of the 2019-2020 One-Year Action Plan for HOME, CDBG, and ESG funds.
3. The City Council approves the submittal of the 2019-2020 One-Year Action Plan to the Department of Housing and Urban Development (“HUD”).

## CITY COUNCIL STAFF REPORT

**Current Business Item No. 14**

**June 5, 2019**

**File No. 0600-10, A-3303**

SUBJECT: Approval of Financing Agreement with the CA IBank for Construction of the Lindley Reservoir Tank Replacement Project

DEPARTMENT: Utilities Department, Construction and Engineering Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2019-75, authorizing the Director of Utilities, on behalf of the City, to sign an Installment Sale Agreement (a type of Financing Agreement) with the California Infrastructure and Economic Development Bank (IBank) for \$15 million in funding for the Lindley Reservoir Tank Replacement Project (the "Project").

FISCAL ANALYSIS:

The Project's estimated cost, as of September 2018, is approximately \$13.7 million. Loan funding is listed among the planned sources of funding in the 2018/2019 Capital Improvement Plan, in addition to customer fees and potential water bonds.

The IBank loan 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. The IBank Board of Directors authorized the proposed Agreement on April 24, 2019. The loan amount approved is \$15 million with a term of 30 years at an annual interest rate of 3.00%. In addition to the interest charges on the outstanding principal, there is an annual loan fee of 0.3% of the outstanding principal, bringing the effective interest rate to 3.3% annually. At this rate and term, and assuming that the City does not make any principal pre-payments, the total amount repaid over 30 years will be \$23.5 million (\$15.0 million in principal, \$8.5 million in interest and fees).

The City will make payments under the Agreement solely from revenues of the City's water system remaining after payment of operation and maintenance costs. Such payments will be on a parity with existing water system obligations, including the 2007 and 2012 bond issues and two State Revolving Fund loans. Payments under the Agreement are not an obligation of the General Fund or other City funds other than the Water Fund.

Annual debt service payments on this loan will be approximately \$780,000. In FY 2018, the Water Fund debt coverage ratio was 1.83, in excess of the debt coverage required by the Water Fund's bond covenants (1.20). The debt service payments required by the IBank loan would have reduced the Water Fund debt coverage to 1.54 if loan payment had been due at that time. While the new proposed debt will decrease the debt coverage ratio, the ratio will remain well in excess of the required minimum.

Rate increases scheduled for 2020 and 2021 will increase revenue and will increase the debt coverage ratio in those years, so the actual debt coverage ratio is projected to remain well above 1.20.

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.

On April 3, 2019, the City Council authorized an application to IBank for financing of the Project for \$15.0 million.

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. 2019-75, the action requested of the City Council today, authorizes the Director of Utilities to sign the Financing Agreement with IBank for the Lindley Reservoir Tank Replacement Project. The interest rate of the loan is 3.00% annually, with a term of 30 years. Resolution No. 2019-47, which was adopted by the City Council on April 3, 2019, authorized application for this loan and committed the City to repay the loan when a loan agreement was approved by the City Council.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Christopher W. McKinney*, Director of Utilities  
5/29/2019 5:18 p.m.

ATTACHMENTS:

1. Resolution No. 2019-75
2. Resolution No. 2019-75 – Exhibit “A” – IBank Installment Sale Agreement
3. Resolution No. 2019-75 – Exhibit “B” – Government Code Section 5852.1 Disclosure

RESOLUTION NO. 2019-75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT SALE AGREEMENT WITH THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$15,000,000 AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS

WHEREAS, the City Council (the "City Council") of the City of Escondido (the "City"), pursuant to Resolution No. 2019-47 adopted on April 3, 2019, has determined to finance the acquisition and construction of the Lindley Reservoir Tank Replacement Project (the "Project"); and

WHEREAS, the California Infrastructure and Economic Development Bank (the "I-Bank") has agreed to assist the City in financing the Project; and

WHEREAS, in order to accomplish the financing of the Project, the City desires to enter into an Installment Sale Agreement (Exhibit "A," the "Installment Sale Agreement") with the I-Bank substantially in the form presented to this City Council at the meeting at which this Resolution has been adopted, pursuant to which the I-Bank will cause the Project to be acquired, constructed and sold to the City; and

WHEREAS, the City's obligation to make payments under the Installment Sale Agreement will be payable from net revenues of the City's water system, consisting of revenues remaining after payment of operation and maintenance costs, on a parity with outstanding water system debt; and

WHEREAS, in accordance with Government Code Section 5852.1, the City Council has obtained and wishes to disclose the information set forth in Exhibit "B" hereto and incorporated by this reference.

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

1. That the above recitations are true and correct.
2. That the City Council authorizes the Director of Utilities, on behalf of the City, to execute the Installment Sale Agreement (Exhibit "A") with the California Infrastructure and Economic Development Bank ("IBank") for \$15 million in funding for the Lindley Reservoir Tank Replacement Project
3. That the Installment Sale Agreement (Exhibit "A"), in substantially the form attached hereto and, upon execution as authorized below, made a part hereof as though set forth in full herein, is hereby approved. The Mayor, the City Manager, the Finance Director, the Director of Utilities, the City Clerk, or the designee of any of them (each, an "Authorized Officer"), are each hereby authorized and directed to execute and deliver the Installment Sale Agreement with such changes, insertions and omissions as may be recommended by the City Attorney or Stradling Yocca Carlson & Rauth, a Professional Corporation, bond counsel to the City, and approved by the officers executing the same, said execution being conclusive evidence of such approval.
4. That the City Council hereby authorizes the execution and delivery of the Installment Sale Agreement in an aggregate principal amount not to exceed \$15,000,000. The proceeds of the Installment Sale Agreement will be expended to finance the Project.

5. That the Authorized Officers and all other officers of the City are hereby authorized, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary and advisable in order to consummate the execution and delivery of the Installment Sale Agreement and otherwise to effectuate the purposes of this Resolution, and any such actions previously taken by such officers are hereby ratified and confirmed. In the event that the Mayor is unavailable or unable to execute and deliver any of the above-referenced documents, any other member of the City Council may validly execute and deliver such document, and, in the event that the City Clerk is unavailable or unable to execute and deliver any of the above-referenced documents, any deputy clerk may validly execute and deliver such document. The expenditure of the proceeds of the Installment Sale Agreement shall be subject to compliance by the City with all legal and other conditions precedent thereto.

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# **INSTALLMENT SALE AGREEMENT**

by and between the

**THE CITY OF ESCONDIDO,**  
as Purchaser

and the

**CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK (“IBANK”),**  
as Seller

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Dated as of June 1, 2019

Agreement No. ISRF 19-134



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## INSTALLMENT SALE AGREEMENT

THIS INSTALLMENT SALE AGREEMENT, is dated as of June 1, 2019 (as defined in Section 1.01, the "Agreement"), by and between the CITY OF ESCONDIDO, a California municipal corporation, as purchaser (the "Purchaser"), duly organized and validly existing under the laws of the State of California, and the CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK, as seller ("IBank"), duly organized and validly existing pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (the "Act," as defined in Section 1.01). IBank and the Purchaser are hereinafter at times collectively referred to as the "Parties" and individually as a "Party."

### WITNESSETH:

WHEREAS, on or about April 3, 2019, the Purchaser adopted Resolution No. 2019-47, among other things authorizing the Purchaser's submission of an application to IBank for financing the Facility, and thereafter adopted Resolution No. 2019-75, among other things authorizing the Purchaser's entry into this Agreement and the Purchase of the Facility (as defined in Section 1.01) from IBank, each in substantially the same form as set forth in Exhibit A attached hereto;

WHEREAS, the Purchaser has determined that in order to provide necessary water utility service to its customers the Purchaser must remove its existing 2.0 million gallon water tank and replace it with two 1.5 million gallon water tanks;

WHEREAS, the Purchaser's staff issued Proposition 218 notices necessary for the rates and charges increases required to support the Purchaser's water system;

WHEREAS, not having received written protests against the proposed increases from a majority of parcels subject to the revised schedule of rates and charges, the Purchaser's City Council adopted the revised schedule of rates and charges pursuant to the terms of Resolution No. 2017-14RRR, effective March 1, 2018;

WHEREAS, the Purchaser sought financing for the aforementioned improvements from IBank and IBank wishes to provide such financing;

WHEREAS, IBank has issued, or intends to issue, tax-exempt bonds ("Proceeds Bonds" as defined in Section 1.01), the proceeds of which may be used to provide all or a portion of the Facility Funds (as defined in Section 1.01);

WHEREAS, IBank may pledge its rights, including the rights to receive payments, under this Agreement to secure bonds that it has issued, or intends to issue, for the benefit of its programs ("Secured Bonds" as defined in Section 1.01), and the Purchaser acknowledges that the issuance or existence of both the Proceeds Bonds and the Secured Bonds impacts its rights and obligations as described herein; and

NOW, THEREFORE, in consideration of the promises and the mutual agreements herein contained, the parties do hereby agree as follows:

## ARTICLE I

### DEFINITIONS, RULES OF CONSTRUCTION, AND CONDITIONS PRECEDENT

SECTION 1.01. Definitions. Unless the context clearly otherwise requires, the capitalized terms in this Agreement shall have the respective meanings set forth below.

“2002 DWR Loan” means 2002 Department of Water Resources Loan No. SRF00CRX112, in the initial principal amount of \$2,048,125 and with an outstanding principal balance as of the Effective Date of \$667,887.

“2002 DWR Loan Documents” means, collectively, any instrument evidencing, securing, governing, or amending the 2002 DWR Loan, including, without limitation, the Funding Agreement Between the State of California Department of Water Resources and the City of Escondido Project Number 3710006-04, as amended by Amendment Number A-1 thereto.

“2007 COPS” means the \$30,440,000 City of Escondido Revenue Certificates of Participation, Series 2007, with an outstanding balance as of the Effective Date of \$24,615,000.

“2007 COPS Instruments” means, collectively, any instrument evidencing, securing, governing, or amending the 2007 COPS, including, without limitation, the 2007 ISA.

“2007 ISA” means the Installment Purchase Agreement by and between the Escondido Joint Powers Financing Authority and the Purchaser dated as of September 1, 2007.

“2009 DPH Loan” means the 2009 Department of Public Health Loan No. AR09FP27, in the initial principal amount of \$2,813,324 and with an outstanding principal balance as of the Effective Date of \$2,047,259.

“2009 DPH Loan Documents” means, collectively, any instrument evidencing, securing, governing, or amending the 2009 DPH Loan, including, without limitation, the Funding Agreement Between the State of California Department of Public Health and the City of Escondido Project Number 3710006-004.

“2012 Bonds” means the \$31,660,000 Escondido Joint Powers Financing Authority Revenue Bonds (Water System Financing), Series 2012, with an outstanding balance as of the Effective Date of \$28,195,000.

“2012 Bonds Instruments” means, collectively, any instrument evidencing, securing, governing, or amending the 2012 Bonds, including, without limitation, the 2012 ISA.

“2012 ISA” means the Installment Purchase Agreement by and between the Escondido Joint Powers Financing Authority and the Purchaser dated as of February 1, 2012.

“Act” means the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at section 63000 thereof) as now in effect and as it may from time to time hereafter be amended.

“Additional Payments” means the payments made pursuant to Section 2.06.

“Agreement” means this Installment Sale Agreement, between IBank and the Purchaser, as originally entered into and as amended from time to time pursuant to the provisions hereof.

“Amortization Schedule” means that certain amortization schedule attached hereto as Exhibit E.

“Amortization Terms” shall have the meaning set forth in Section 2.03(d).

“Authorized Prepayment Period” has the meaning set forth in Section 2.08.

“Business Day” means any day, Monday through Friday, which is not a legal holiday of the State or the Trustee.

“Certificate of the Purchaser” means a written request or certificate signed by a duly authorized representative of the Purchaser.

“Code” means the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

“Contamination” means the presence of hazardous waste, as defined in Health and Safety Code Section 25117, in amounts or concentrations that the State or federal government has determined to be potentially harmful or injurious to human health and safety.

“Criteria” means the “Criteria, Priorities, and Guidelines for the Selection of Projects for Financing under the ISRF Program” dated February 23, 2016, as may thereafter be amended from time to time.

“Current Guidelines” has the meaning set forth in Section 5.07.

“Current Revenues” means revenues that are both received by the Purchaser and utilized for the payment of the Purchase Price under this Agreement within a six month period.

“Debt Service” means, for any Fiscal Year, the sum of interest, and principal due and payable under this Agreement during such Fiscal Year, the IBank Annual Fee for such Fiscal Year and any Parity Debt Service for such Fiscal Year.

“Effective Date” means the date on which this Agreement is last executed, as set forth on the signature page hereto, and is the date this Agreement becomes effective and binding on the Purchaser and IBank, subject to this Agreement’s terms and conditions.

“Enterprise Fund” means the water enterprise fund established by the Purchaser into which all System Revenues are deposited and maintained by the Purchaser pursuant to Section

3.02 and in which IBank has a certain security interest pursuant to the terms of this Agreement. The Purchaser's Enterprise Fund is composed of the funds received from water treatment, transmission, distribution, and sales services provided to the Purchaser's customers.

"Existing Debt" means, collectively, the 2002 DWR Loan, the 2009 DPH Loan, the 2007 COPS, and the 2012 Bonds.

"Existing Lien Documents" means, collectively, the 2002 DWR Loan Documents, the 2009 DPH Loan Documents, the 2007 COPS Instruments, and/or the 2012 Bonds Instruments.

"Event of Default" means any of the events described in Section 7.01.

"Facility" means those improvements financed with the Facility Funds provided by IBank and to be sold by IBank to the Purchaser pursuant to the terms and conditions of this Agreement. The Facility is more particularly described in Exhibit B hereto.

"Facility Costs" means the costs of the activities set forth in Exhibit B hereto for the construction, acquisition and/or installation of the Facility, all as approved by IBank in its sole and absolute discretion.

"Facility Delivery" has the meaning set forth in Section 2.02.

"Facility Funds" mean the moneys provided by IBank to the Purchaser, as agent for IBank, pursuant to this Agreement to purchase and/or construct the Facility as set forth in Section 2.05.

"Facility Funds Reduction" means the reduction of the total Facility Funds amount by all or a portion of the Facility Funds not disbursed previously.

"Facility Funds Reduction Request" means a written request of the Purchaser to reduce the amount of total Facility Funds by all or a portion of the Facility Funds not disbursed previously.

"Facility Funds Reduction Premium" has the meaning set forth in Section 2.08.

"Fiscal Year" means any twelve month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve month period selected and designated by the Purchaser as its official fiscal year period and approved by IBank.

"IBank Annual Fee" means the fee payable to IBank pursuant to Section 2.06.

"IBank Fiscal Year" means any twelve month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive.

"Independent Accountant" means any certified public accountant or firm of certified public accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State, appointed by the Purchaser who, or each of whom:

(a) Is in fact independent and not under the direct or indirect control of the Purchaser or IBank;

(b) Does not have any substantial interest, direct or indirect, in the Purchaser, IBank, or the Facility; and

(c) Is not connected with the Purchaser or IBank as an officer or employee of the Purchaser or IBank, but who may be regularly retained to make reports to the Purchaser or IBank.

“Independent Consultant” means any consultant or firm of such consultants judged by the Purchaser to have experience in matters relating to the collection of System Revenues or other experience with respect to the financing of System projects, as appropriate, appointed and paid by the Purchaser who, or each of whom:

(a) Is in fact independent and not under the direct or indirect control of the Purchaser or IBank;

(b) Does not have any substantial interest, direct or indirect, in the Purchaser or IBank; and

(c) Is not connected with the Purchaser or IBank as a member, officer or employee of the Purchaser, but who may be regularly retained to make reports to the Purchaser or IBank.

“Installment Payments” means the principal and interest payments to be made by the Purchaser to IBank in payment of the Purchase Price hereunder.

“Insured Peril” has the meaning set forth in Section 5.10.

“Interest Payment Date” means February 1 and August 1 of every year in which the Purchase Price remains unpaid.

“Investment Property” means any security or obligation, any annuity contract, or any other investment-type property, but does not include any Tax Exempt Obligation unless such obligation is a “specified private activity bond” within the meaning of section 57(a)(5)(C) of the Code.

“IRS” has the meaning set forth in Section 5.07.

“Liquidated Damages Charge” has the meaning set forth in Section 2.06(a)(4).

“Liquidated Damages Period” has the meaning set forth in Section 5.03(f).

“Maximum Annual Debt Service” means as of the date of calculation, the greatest total Debt Service payable in any Fiscal Year during which this Agreement is in effect.

“Maximum Rate” has the meaning set forth in Section 8.23.



“Net Proceeds” has the meaning set forth in Section 5.10.

“Net Proceeds Ratio” means the quotient of (1) the dividend equal to the outstanding balance of the Purchase Price at the time of calculation, and (2) the divisor equal to the sum of the outstanding balance of the Purchase Price and the outstanding balance of then existing Parity Debt, each determined at the time of calculation.

“Net System Revenues” means, for any Fiscal Year, all System Revenues received by the Purchaser for such Fiscal Year less the Operations and Maintenance Costs for such Fiscal Year.

“Nongovernmental Persons” means any person or entity other than any state, or political subdivision of a state, but excludes the United States and its agencies or instrumentalities.

“Operations and Maintenance Costs” means: (1) costs spent or incurred for maintenance and operation of the System calculated in accordance with generally accepted accounting principles applicable to governmental agencies, including, but not limited to, the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including administrative costs of the Purchaser that are charged directly or apportioned to the System, including but not limited to salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the Purchaser or charges (other than debt service payments) required to be paid by it to comply with the terms of this Agreement and the Parity Debt Instruments; and (2) all payments under any contract for the purchase of water; but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature.

“Opinion of Counsel” means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, appointed by the Purchaser and approved by IBank, or appointed by IBank, and in all cases paid for by the Purchaser and acceptable to IBank in its sole and absolute discretion.

“Origination Fee” means a payment in the amount of one hundred fifty thousand dollars (\$150,000) that shall be due and payable by the Purchaser on the Effective Date and shall be deducted by IBank from the Facility Funds upon execution of this Agreement.

“Parity Debt” means to the extent outstanding, the obligations associated with the Existing Debt and the Existing Lien Documents, together with any loan, bond, note, advance, installment sale agreement, capital lease or other evidence of indebtedness, payable from and/or secured by a first lien on the System Revenues and/or legally available amounts in the Enterprise Fund, on parity with the Installment Payments and Additional Payments, issued or incurred pursuant to and in accordance with the provisions of Section 2.11.

“Parity Debt Instrument” means, collectively, any instrument evidencing, governing, or securing Parity Debt, including without limitation the indenture relating to such Parity Debt.

“Parity Debt Service” means, for any period, the sum of:

(1) the interest payable during such period on all outstanding Parity Debt, assuming that all outstanding serial Parity Debt is retired as scheduled and that all outstanding term Parity Debt is prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized);

(2) that portion of the principal amount of all outstanding serial Parity Debt maturing in such period; and

(3) that portion of the principal amount of all outstanding term Parity Debt required to be prepaid or paid in such period;

provided that, as to any such Parity Debt bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Parity Debt Service shall be the greater of: (a) the actual interest rate on such Parity Debt on the date of calculation, or if the indebtedness is not yet outstanding, the initial interest rate (if established and binding); (b) if the Parity Debt has been outstanding for at least twelve months, the average rate over the period of the same length as the period of calculation of Parity Debt Service immediately preceding the date of calculation; and (c) (i) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Code, the most recently published Bond Buyer "Revenue Bond Index" (or comparable index if no longer published) plus 50 basis points; or (ii) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities plus 50 basis points; provided, however, that for purposes of any portion of Section 2.11 (Permitted Additional Parity Debt), Section 2.16 (Permitted Subordinate Debt), and Section 5.06 (Maintenance of System Revenues; Rate Covenant), measuring actual debt service coverage during a test period, variable rate indebtedness shall be deemed to bear interest at the actual rate per annum applicable during the test period; and

provided further that, if any series or issue of such Parity Debt has twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year, Parity Debt Service shall be determined for the period of calculation of determination as if the principal of and interest on such series or issue of such Parity Debt were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of twenty-five (25) years from the date of calculation; and

provided further that, as to any such Parity Debt or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such Parity Debt or portions thereof, such accreted discount shall be treated as interest in the calculation of Parity Debt Service; and

provided further that, the amount on deposit in a debt service reserve fund on any date of calculation of Parity Debt Service shall be deducted from the amount of principal due at the final maturity of the Parity Debt for which such debt service reserve fund was established and in each preceding year until such amount is exhausted; and

provided further that, Parity Debt Service shall not include interest which is paid from investment earnings on amounts on deposit in any reserve fund and transferred to the Payment Account.

“Payment Account” means the funds or accounts (or any portions of any funds or accounts), established pursuant to Section 2.03(c) hereof, that will hold monies that the Purchaser expects to use to pay the Purchase Price under this Agreement.

“Phase I Environmental Site Assessment” means an investigation of the environmental condition of the Facility, including all improvements and real property as well as surrounding improvements and real property, to determine the possibility of Contamination, based on visual observation, interviews with knowledgeable persons, and the review of records and databases, in a manner consistent with the current standards and practices employed typically by State Registered Environmental Assessors, or other professionals licensed in the State as engineers or geologists, performing environmental assessments in the same general geographic location as the Facility.

“Phase II Environmental Site Assessment” means the in situ sampling and laboratory analysis of any Contamination discovered in connection with a Phase I Environmental Site Assessment, in a manner consistent with the current standards and practices employed typically by State Registered Environmental Assessors, or other professionals licensed in the State as engineers or geologists, performing environmental assessments in the same general geographic location as the Facility.

“Preliminary Costs” means architectural, engineering, surveying or soil testing costs, reports such as environmental impact reports, Phase I or Phase II Environmental Site Assessments, feasibility studies, rate studies and CEQA reports, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project, but not land acquisition, site preparation or similar costs incident to the commencement of construction.

“Prepayment Agreement” has the meaning set forth in Section 2.08.

“Prepayment Request” means any written request of the Purchaser to prepay all or a portion of the principal component of the Purchase Price.

“Prior Guidelines” has the meaning set forth in Section 5.07.

“Prior Guidelines Service Providers” has the meaning set forth in Section 5.07.

“Prohibited Prepayment Period” has the meaning set forth in Section 2.08.

“Proceeds Bonds” means bonds issued, or to be issued, by IBank the proceeds of which may be used, in whole or part, to provide the Facility Funds.

“Prop 218 Law” means, collectively, the California Constitution article XIII D, the statutes implementing it, and the published California Appellate Court and Supreme Court decisions interpreting it in effect on the Effective Date and as such law may be amended or interpreted from time to time.

“Purchase Price” means the principal amount plus the interest thereon owed by the Purchaser to IBank under the conditions and terms hereof for the payment of the costs of the Facility, and the incidental costs and expenses related thereto paid by IBank.

“Purchaser Representative” shall have the meaning set forth in Section 8.10.

“Rate Challenge” shall have the meaning set forth in Section 5.27.

“Prohibited Prepayment Period” has the meaning set forth in Section 2.08.

“Reconstruction” has the meaning set forth in Section 5.10.

“Replacement Agreement Covenant” shall have the meaning set forth in Section 5.11.

“Report” means a written document signed by an Independent Consultant or an Independent Accountant, and including:

(a) A statement that the person or firm making or giving such Report has read the pertinent provisions of this Agreement to which such Report relates;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and

(c) A statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

“Reporting Covenants” shall have the meaning set forth in Section 5.03(f).

“Revised Amortization Schedule” shall have the meaning set forth in Section 2.03(f).

“Secured Bonds” means bonds of one or more series issued, or to be issued, by IBank to which certain rights of IBank under this Agreement, including the right to receive the Installment Payments, may be from time to time pledged or assigned directly or indirectly as security for such bonds.

“Senior Debt” means the obligations evidenced by any Senior Debt Instrument and/or any loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser, payable from and/or secured by a first lien on System Revenues and/or legally available amounts in the Enterprise Fund, which is senior to the lien established by this Agreement.

“Senior Debt Instruments” means, collectively, any instrument evidencing, governing, or securing Senior Debt, including without limitation any indenture relating to such Senior Debt, as applicable.

“Service Contract” has the meaning set forth in Section 5.07.

“Service Provider” has the meaning set forth in Section 5.07

“State” means the State of California.

“Subordinate Debt” means any loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser, payable from and/or secured by a lien on System Revenues and/or legally available amounts in the Enterprise Fund, which is subordinate to the lien established by this Agreement.

“Subordinate Debt Instruments” means, collectively, any instrument evidencing, governing or securing Subordinate Debt, including without limitation any indenture relating to such Subordinate Debt, as applicable.

“Subordinate Debt Service” means for any Fiscal Year, the amounts required to be paid pursuant to any Subordinate Debt Instrument.

“System” means the whole and each and every part of the waterworks system serving the Purchaser, whether owned or operated by the Purchaser or another party, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such water system or any part thereof hereafter acquired or constructed.

“System Revenues” means all income, rents, rates, fees, charges and other moneys derived from the ownership of or operation of the System, including, without limiting the generality of the foregoing: (1) all in lieu charges and groundwater augmentation charges (including investment earnings thereon) collected by or on behalf of the Purchaser; (2) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the Purchaser from the sale, furnishing and supplying of the water, drainage or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Water System; (3) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, proceeds or other moneys, including Purchaser reserves, but excluding in all cases: (x) customers’ deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the Purchaser; and (y) proceeds of taxes or benefit assessments restricted by law to be used by the Purchaser to pay amounts due on bonds or other obligations hereafter incurred.

“Tax Exempt Obligation” means any obligation the interest on which is excluded from gross income for federal income tax purposes pursuant to section 103 of the Code or section 103 of the Internal Revenue Code of 1954, as amended, and Title XIII of the Tax Reform Act of 1986, as amended, as well as stock in a regulated investment company to the extent at least ninety-five percent (95%) of income to the stockholder is treated as interest that is excludable from gross income under section 103 of the Code.

“Trustee” means the trustee acting in its capacity as such in connection with any Proceeds Bonds or Secured Bonds, or any successor or assignee as therein provided, including IBank.

#### SECTION 1.02. Rules of Construction.

Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and vice versa. All references herein to particular articles or

sections are references to articles or sections of this Agreement. The headings, subheadings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meanings, construction or effect. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

SECTION 1.03. Conditions Precedent to Effectiveness.

IBank shall have no obligation under this Agreement until the following conditions precedent to effectiveness of this Agreement have, in IBank's reasonable discretion, been satisfied fully.

(a) IBank shall have received two (2) copies of this Agreement bearing the Purchaser's original signature and IBank shall have counter-signed this Agreement and provided a copy of this Agreement bearing its signature to the Purchaser.

(b) IBank shall have received a copy of a resolution duly adopted by the Purchaser's governing body approving entry into this Agreement in form and content acceptable to IBank, a copy of which shall be attached hereto as Exhibit A.

(c) IBank shall have received an originally executed copy of an opinion of the Purchaser's legal counsel in form and content substantially similar to the Form of Opinion of Legal Counsel to the Purchaser attached hereto as Exhibit D.

(d) The Purchaser shall have paid to IBank the Origination Fee.

(e) The Purchaser shall have provided evidence satisfactory in the reasonable discretion of IBank that the Purchaser has expended fully its funds, or has immediately available committed funds to expend, for each of the items in Exhibit H, Schedule of Sources and Uses, denoted to be the responsibility of the Purchaser, if any.

(f) The Purchaser shall have provided evidence satisfactory in the reasonable discretion of IBank that the lien of this Agreement on System Revenues and all legally available amounts in the Enterprise Fund is on parity with any lien thereon granted under, or created by, the Existing Lien Documents.

ARTICLE II

TERMS OF SALE

SECTION 2.01. Purchase and Sale.

IBank hereby agrees to sell to the Purchaser, and the Purchaser hereby agrees to purchase from IBank, the Facility, under and subject to the terms of this Agreement. This Agreement constitutes a continuing agreement between the Purchaser and IBank to secure the full and final payment of the Purchase Price, subject to the covenants, agreements, provisions and conditions herein contained.

SECTION 2.02. Design, Acquisition, Construction and Sale of the Facility.

(a) IBank hereby agrees to perform all necessary acts, including but not limited to acquisition, entitlement, permitting, installation, design, remediation and improvement, to construct and deliver the Facility ("Facility Delivery") for the benefit of, and to sell the Facility to, the Purchaser. In order to implement this provision, IBank hereby appoints the Purchaser as its agent for the purpose of Facility Delivery and the Purchaser hereby accepts such appointment and agrees to perform all acts necessary to achieve Facility Delivery, including, but not limited to, entry into such engineering, design and construction contracts and purchase orders as may be necessary, as agent for IBank, to achieve Facility Delivery. The Purchaser hereby agrees that as such agent it will cause Facility Delivery to be diligently pursued and completed as soon as reasonably possible given the nature of, and inherent challenges in connection with, the construction of the Facility and prevailing market conditions. IBank hereby agrees to sell, and hereby sells, the Facility to the Purchaser. The Purchaser hereby agrees to purchase, and hereby purchases, the Facility from IBank. Notwithstanding the foregoing, it is hereby expressly understood and agreed that IBank shall have no obligations whatsoever for Facility Delivery and shall be, except for providing the Facility Funds, under no liability of any kind or character whatsoever for the payment of any costs or expenses incurred by the Purchaser (whether as agent for IBank or otherwise) for any of the actions associated with the Facility Delivery and that all such costs and expenses shall be paid by the Purchaser, regardless of whether Facility Funds are sufficient to cover all such costs.

(b) The Purchaser represents and warrants that all construction contracts and subcontracts necessary for Facility Delivery have been or will be awarded pursuant to all competitive bidding requirements applicable to the Purchaser for similar construction projects.

(c) The Purchaser represents and warrants that it intends to complete construction of the Facility within thirty-five (35) months of commencement of construction on the Facility.

(d) In the event IBank is served with a stop payment notice in connection with the Facility, the Purchaser shall within thirty (30) days cause such stop payment notice to be discharged or released, whether by payment of the sum requested in such stop payment notice, by procurement of a stop payment notice release bond, or by any other legally available means. IBank shall withhold from the Purchaser amounts sufficient to pay the claim stated in the stop payment notice, and to otherwise comply with applicable law, until such stop payment notice is released and/or discharged to IBank's satisfaction, in its sole and absolute discretion.

SECTION 2.03. Payment of Purchase Price; Term; Interest Rates.

(a) The Purchase Price to be paid by the Purchaser to IBank hereunder is the sum of the principal amount of the Purchaser's obligation hereunder plus interest, subject to prepayment as provided in Section 2.08. Interest shall accrue on the entire principal balance, whether or not disbursed, as set forth in the Amortization Schedule.

(b) For purposes of this Agreement:

(1) The principal amount of the Purchase Price to be paid by the Purchaser to IBank hereunder is fifteen million dollars (\$15,000,000).

(2) The term of this Agreement commences on the Effective Date and ends on August 1, 2048, except as sooner terminated as set forth herein or otherwise extended.

(3) The interest rate is three percent (3.00%) per annum.

(c) For purposes of compliance with Federal tax laws applicable to IBank's Proceeds Bonds and/or Secured Bonds, the Purchaser hereby establishes a "Payment Account" within the Enterprise Fund and agrees to deposit monies intended for paying such Installment Payments in the Payment Account until the time that such Installment Payments become due and payable whereupon the Purchaser will take steps to pay Installment Payments as provided herein.

(d) The Purchaser shall make Installment Payments of principal and interest as set forth in the Amortization Schedule. IBank shall calculate the Amortization Schedule based on (i) the initial principal amount of the Purchase Price as set forth in Section 2.03(b)(1) hereto, (ii) the term of this Agreement as set forth in Section 2.03(b)(2) hereto, and (iii) the interest rate as set forth in Section 2.03(b)(3) hereto (collectively, the "Amortization Terms"), and shall attach the Amortization Schedule as Exhibit E hereto upon the Effective Date. Interest shall commence to accrue hereunder on June 13, 2019, as set forth in the Amortization Schedule. All payments of interest shall be computed on the basis of a 360-day year of 12 30-day months. In the absence of manifest error, the Amortization Schedule shall be final, conclusive, and binding on the Purchaser.

(1) The first principal payment shall be due August 1, 2020, as set forth in the Amortization Schedule.

(2) Interest only payments will be based upon the total principal component of the Purchase Price, including the amounts not disbursed, using an interest rate of three percent (3.00%) per annum.

(3) Interest shall accrue on the entire principal balance of Facility Funds, whether or not disbursed, as set forth in the Amortization Schedule. Provided, however, as an offset against interest paid on undisbursed Facility Funds, the Purchaser shall receive payment following the end of each IBank Fiscal Year on any undisbursed portions of the Facility Funds (excepting any undisbursed Facility Funds subject to a Facility Funds Reduction, as set forth in this Agreement) of the lesser of: (i) the actual interest earned by IBank during such IBank Fiscal Year on the undisbursed portions of the Facility Funds, or (ii) the interest that would have accrued during such IBank Fiscal Year on the undisbursed portions of the Facility Funds calculated using the interest rate of this Agreement. Said reimbursement shall be in the form of a check payable to the order of the Purchaser at the address set forth in Section 8.09 of this Agreement on or about the ninetieth (90<sup>th</sup>) calendar day following the end of the IBank Fiscal Year.

(e) Commencing on the day following the end of the interest only period (if any), the principal component of the Purchase Price shall be fully amortized over the remaining term of this Agreement.

(f) IBank may, in its sole and absolute discretion, revise the Amortization Schedule (a "Revised Amortization Schedule") subsequent to the Effective Date to (i) correct a



computational error in the prior Amortization Schedule, (ii) account for any partial prepayment permitted under Section 2.08, or (iii) account for any Facility Funds Reduction permitted under Section 2.08. Any Revised Amortization Schedule shall be calculated (i) such that IBank will receive the aggregate sum of all principal and interest Installment Payments it would have received had the Amortization Schedule been calculated correctly based on the Amortization Terms and interest commenced to accrue on June 13, 2019, (ii) to account for any partial prepayment, or (iii) to account for any Facility Funds Reduction, as applicable. The Revised Amortization Schedule shall be incorporated herein automatically upon its completion by IBank, and in the absence of manifest error, any such Revised Amortization Schedule will be final, conclusive, and binding on the Purchaser.

(g) The obligation of the Purchaser to pay the Purchase Price by paying the Installment Payments and Additional Payments is, subject to Section 5.10, absolute and unconditional; and until such time as the Purchase Price shall have been paid in full, the Purchaser shall not discontinue or suspend any Installment Payments or Additional Payments required to be paid by it under this Agreement when due, whether or not the Facility or any part thereof is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part; and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever.

**SECTION 2.04. Payment on Business Days.**

Whenever in this Agreement any amount is required to be paid on a day that is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day and no further interest shall accrue.

**SECTION 2.05. Disbursement of Facility Funds.**

(a) IBank shall disburse Facility Funds solely for the purposes set forth in Exhibit H hereto. The aggregate sum of disbursements for each category set forth in Exhibit H shall not exceed the corresponding amounts set forth in Exhibit H. Upon compliance with disbursement conditions set forth herein and receipt of a written request for disbursement, IBank will disburse a portion of the Facility Funds to the Purchaser for Facility Costs in amounts of at least five thousand dollars (\$5,000), up to a total aggregate amount not to exceed the Facility Funds. All requests for payment shall be accompanied by information and documentation as may be requested by IBank to determine the amount of Facility Funds to be disbursed.

(b) Each disbursement request shall specify one or more of the following for Facility Funds sought in the disbursement request:

- (1) The Purchaser previously paid the Facility Costs and is requesting reimbursement; or
- (2) The Purchaser will pay the Facility Costs directly upon receipt of funds from IBank.

(c) By submitting to IBank a disbursement request of the type set forth in subparagraph (b)(1), above, the Purchaser represents and warrants that it has previously paid the Facility Costs indicated in such disbursement request. By submitting to IBank a disbursement request of the type set forth in subparagraph (b)(2), above, the Purchaser represents and warrants that it will pay the Facility Costs indicated in such request directly upon receipt of funds from IBank.

(d) No Facility Funds shall be disbursed unless and until IBank receives documentation, satisfactory to IBank, demonstrating that the Purchaser has incurred costs that constitute both reasonable and necessary Facility Costs and which are consistent with the cost categories, amounts and requirements described in this Agreement.

(e) Unless otherwise consented to in writing by IBank, the Purchaser must both: (1) begin Facility construction no later than six months after the Effective Date; and (2) submit final invoices to IBank for the entire amount of the Facility Funds no later than thirty-five (35) months after the Effective Date. If the Purchaser fails to meet any of these conditions, IBank may, among other legally available remedies, elect to withhold any and all undisbursed Facility Funds pursuant to Section 2.14 herein.

(f) Notwithstanding any contrary provisions of this Agreement or any related documents, under no circumstances will IBank be obligated to make disbursements in excess of the lesser of (i) actual Facility Costs incurred or (ii) the amount of the Facility Funds.

(g) Not more than ninety-five percent (95%) of each invoice payable from Facility Funds designated for construction shall be disbursed until IBank receives a recorded notice of completion for the Facility or other evidence of completion satisfactory to IBank and the Purchaser has met all conditions precedent to final disbursement set forth herein.

#### SECTION 2.06. Additional Payments.

(a) The Purchaser shall pay Additional Payments to IBank as follows:

(1) A payment of the IBank Annual Fee on August 1st of each year during the term of this Agreement in an amount equal to three tenths of one percent (0.3%) of the outstanding principal component of the remaining Installment Payments as set forth in the Amortization Schedule; and

(2) Amounts in each year as shall be required by IBank for the payment of extraordinary expenses of IBank in connection with an Event of Default, the enforcement of this Agreement or any amendments hereto requested by the Purchaser, including all expenses, fees and costs of accountants, trustees, and attorneys, litigation costs, insurance premiums and all other extraordinary costs of IBank. Extraordinary expenses and extraordinary costs are those expenses and costs related to this Agreement in excess of ordinary and customary expenses and costs incurred as part of the IBank Annual Fee pursuant to this Section 2.06. Such Additional Payments shall be billed by IBank from time to time, together with any appropriate supporting documents for such extraordinary costs or expenses; and

(3) The Purchaser shall deposit the IBank Annual Fee with IBank not later than August 1st of each year and the Purchaser shall pay to IBank the amount billed pursuant to subsection (2) within thirty (30) days from the date of the invoice. Any amounts not promptly paid shall accrue interest at the lesser of twelve percent (12%) per annum or the Maximum Rate.

(4) Unless expressly waived by IBank in writing, in the event the Purchaser fails to cure any Reporting Covenants noncompliance as set forth in Section 5.03(f) or fails to cure any Replacement Agreement Covenant noncompliance within 30 days after receipt by the Purchaser of the replacement agreement from IBank as set forth in Section 5.11 of this Agreement, an amount equal to one quarter of one percent (0.25%) of the outstanding principal component of the Purchase Price, shall automatically be imposed monthly as liquidated damages charged to the Purchaser and not as a penalty (the "Liquidated Damages Charge"), and shall continue to be imposed throughout the Liquidated Damages Period. The Purchaser shall be obligated to pay the Liquidated Damages Charge as Additional Payments. Such Additional Payment shall be reflected in an IBank invoice to the Purchaser. The Purchaser agrees that, under the circumstances existing as of the date of this Agreement, such Liquidated Damages Charge represents a reasonable estimate of the costs and expenses IBank will incur as a result of the Purchaser's noncompliance with the Reporting Covenants and/or the Replacement Agreement Covenant. Nothing herein shall be construed as an express or implied agreement by IBank to forbear on its exercise of any other rights or remedies provided by this Agreement, as a waiver of such rights or remedies, or as a waiver of any default or Event of Default under this Agreement.

SECTION 2.07 *Reserved.*

SECTION 2.08. Limitations on Prepayment and Facility Funds Reductions.

(a) Limitation on Early Prepayment. The Purchaser is not permitted to prepay all or a portion of the outstanding principal component of the Purchase Price during the period commencing with the Effective Date and ending with the date that is ten (10) years after the Effective Date (the "Prohibited Prepayment Period").

(b) Authorized Prepayment Period. At any time, after ten (10) years from the Effective Date (the "Authorized Prepayment Period"), the Purchaser, upon satisfaction of the conditions of this Section 2.08, may prepay all or a portion of the outstanding principal amount of the Purchase Price as follows: (i) if the prepayment date is on or after ten (10) years after the Effective Date but prior to eleven (11) years after the Effective Date, the prepayment amount shall be one hundred two percent (102%) of the principal amount being prepaid; (ii) if the prepayment date is on or after eleven (11) years after the Effective Date but prior to twelve (12) years after the Effective Date, the prepayment amount shall be one hundred one percent (101%) of the principal amount being prepaid; and (iii) if the prepayment date is on or after twelve (12) years after the Effective Date, the prepayment amount shall be one hundred percent (100%) of the principal amount being prepaid. Further, the Purchaser shall pay to IBank all interest accrued and unpaid on the prepayment amount through the date of prepayment, plus any Additional Payments, plus the *pro rata* portion of the IBank Annual Fee accrued since the last IBank Annual Fee payment.

(c) Facility Funds Reduction. During the Prohibited Prepayment Period the amount of undisbursed Facility Funds will not be reduced and will continue to accrue interest and other charges as set forth in this Agreement. During the Authorized Prepayment Period, upon satisfaction of the conditions of this Section 2.08, the Purchaser may obtain a Facility Funds Reduction. For any Facility Funds Reduction obtained (i) on or after ten (10) years after the Effective Date but prior to eleven (11) years after the Effective Date, the Purchaser shall pay to IBank a premium (a "Facility Funds Reduction Premium") of two percent (2%) of the amount of the Facility Funds Reduction; (ii) on or after eleven (11) years after the Effective Date but prior to twelve (12) years after the Effective Date, the Purchaser shall pay to IBank a Facility Funds Reduction Premium of one percent (1%) of the amount of the Facility Funds Reduction; and (iii) on or after twelve (12) years from the Effective Date, no Facility Funds Reduction Premium shall be due. Further, the Purchaser shall pay to IBank all interest accrued and unpaid on the Facility Funds Reduction amount through the date of the Facility Funds Reduction, plus any Additional Payments, plus the *pro rata* portion of the Annual Fee.

(d) Written Request Required. The Purchaser must provide IBank with its Prepayment Request or Facility Funds Reduction Request in writing and at least ninety (90) days prior to the requested prepayment or reduction date. IBank will not accept any prepayment funds from the Purchaser, or implement a Facility Funds Reduction, unless and until all applicable requirements of this Section 2.08 have been met.

(e) Amendment for Partial Prepayment or Facility Funds Reduction. If during the Authorized Prepayment Period the Purchaser prepays a portion of the outstanding principal component of the Purchase Price or makes a Facility Funds Reduction, then IBank and the Purchaser shall enter into an amendment to this Agreement reflecting the terms of the prepayment or Facility Funds Reduction, including a Revised Amortization Schedule, and the Purchaser shall pay to IBank all interest accrued and unpaid on the prepayment amount or Facility Funds Reduction amount through the date of prepayment or Facility Funds Reduction, plus the portion of the outstanding principal component of the Installment Payments approved for prepayment, plus any applicable prepayment premium or Facility Funds Reduction Premium, plus any Additional Payments, plus the *pro rata* portion of the IBank Annual Fee accrued since the last IBank Annual Fee Payment. IBank will not accept any prepayment, and any Facility Funds Reduction will not take effect, until the Parties have executed such amendment to this Agreement.

(f) Prepayment Agreement for Full Prepayment. In the event the Purchaser elects to prepay the entire outstanding amount of the Purchase Price as set forth in paragraph 2.08(b), the Parties shall enter into a prepayment agreement (a "Prepayment Agreement") in form and content acceptable to IBank in its sole and absolute discretion. IBank will not accept a full prepayment, and the Purchaser's obligations under this Agreement will not terminate as set forth in Section 8.05 of this Agreement, until the Parties have executed a Prepayment Agreement.

#### SECTION 2.09. Validity of Pledge and First Lien.

The Purchaser warrants and represents, and agrees, that the pledge of System Revenues and all legally available amounts in the Enterprise Fund constitute a valid pledge of and first

position lien on all of the System Revenues and all legally available amounts in the Enterprise Fund on parity with the lien(s) securing the Parity Debt.

SECTION 2.10. Limited Obligation.

The Purchaser's obligation to make Installment Payments is a special obligation of the Purchaser payable solely from System Revenues and legally available amounts in the Enterprise Fund as provided herein and does not constitute a debt of the Purchaser or the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limit or restriction.

SECTION 2.11. Permitted Additional Parity Debt.

(a) The Purchaser may, after the Effective Date, issue or incur Parity Debt in such principal amount as shall be determined by the Purchaser subject to the requirements for additional obligations as set forth in all existing Parity Debt Instruments and the following specific conditions, which are hereby made conditions precedent to the Purchaser's issuance and delivery of such Parity Debt, provided that to the extent that an existing Parity Debt Instrument conflicts with any of the requirements set forth in this Section 2.11, the more restrictive provision shall prevail. For the avoidance of doubt, the conditions to the execution and issuance of (i) "Contracts" and "Bonds" set forth in Section 5.3 of the 2007 ISA, and/or (ii) "Contracts" and "Parity Bonds" set forth in Section 5.3 of the 2012 ISA, are deemed to be more restrictive than the conditions to the issuance or incurrence of Parity Debt set forth in this Section 2.11 and so shall prevail over such conditions so long as any 2007 COPS or 2012 Bonds are outstanding.

(1) No Event of Default hereunder or under any other instrument secured by System Revenues shall have occurred and be continuing unless such Event of Default shall be cured by the issuance or incurrence of such proposed Parity Debt, and the Purchaser shall otherwise be in compliance with all covenants set forth in this Agreement; and

(2) Net System Revenues calculated pursuant to generally accepted accounting principles, consistently applied, and excluding the proceeds of any taxes and also excluding any balances in any fund at the beginning of the period of the computation, as shown by the books of the Purchaser for the latest Fiscal Year, or any more recent twelve month period selected by the Purchaser ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Debt is issued or incurred, as shown by the books of the Purchaser, plus, at the option of the Purchaser, either or both of the items below designated in subsections (b)(1) and (b)(2), shall have amounted to at least 1.20 times the Maximum Annual Debt Service taking into consideration the maximum annual debt service payable in any Fiscal Year on the proposed Parity Debt, as set forth in the Report of an Independent Accountant or Independent Consultant delivered to IBank; provided, however, that where the proposed Parity Debt is with IBank, no Report of an Independent Accountant or Independent Consultant shall be required.

(b) Either or both of the following allowances may be added to Net System Revenues for the purpose of meeting the condition contained in subsection (a)(2) above:

(1) An allowance for increased System Revenues from any additions to or improvements or extensions of the System to be made with the proceeds of such proposed Parity Debt, and also for System Revenues from any such additions, improvements, or extensions which have been made from moneys from any source but which, during all or any part of such Fiscal Year or any more recent twelve month period, were not in service, all in an amount equal to ninety percent (90%) of the estimated additional average annual System Revenues to be derived from such additions, improvements, and extensions for the first thirty six (36) month period following closing of the proposed Parity Debt, all as shown in the Report of an Independent Accountant or Independent Consultant delivered to IBank; provided however, that in those instances where the proposed Parity Debt is with IBank, no Report of an Independent Accountant or Independent Consultant shall be required; and/or

(2) An allowance for increased System Revenues arising from any increase in the charges made for service from the System which has become effective prior to the incurring of such proposed Parity Debt but which, during all or any part of such Fiscal Year or any more recent twelve (12) month period, was not in effect in an amount equal to one hundred percent (100%) of the amount by which System Revenues would have been increased if such increase to charges had been in effect during the whole of such time period and any period prior to the incurring of such proposed Parity Debt, as shown in the Report of an Independent Accountant or Independent Consultant delivered to IBank; provided however, that where the proposed Parity Debt is with IBank, no Report of an Independent Accountant or Independent Consultant shall be required.

(c) The Purchaser shall deliver to IBank, prior to incurring or issuing such proposed Parity Debt, a copy of the proposed Parity Debt Instrument and Certificate of the Purchaser certifying that the conditions precedent to the issuance of such Parity Debt set forth in subsections (a) and (b) above have been satisfied and, as applicable, the Report required by subsections (a) and (b) above has been delivered; provided however, that where the proposed Parity Debt is with IBank, no copy of the proposed Debt Instrument nor Report shall be required and the certification required by this Section 2.11(d) may be made as part of the Parity Debt Instrument for the new IBank Parity Debt.

(d) Notwithstanding subsections (a)(2), (b), (c), and (d) above, proposed Parity Debt to be issued for the purpose of refunding outstanding Parity Debt may be issued without compliance with subsections (a)(2), (b), (c) and (d) above, so long as such refunding results in lower Parity Debt Service in each Fiscal Year after such refunding and the final maturity date of the refunding Parity Debt is no later than the final maturity date of the refunded Parity Debt. The Purchaser shall deliver to IBank the Parity Debt Instrument for such refunding within 30 days of such Parity Debt issuance.

**SECTION 2.12. Purchaser's Obligation for Other Costs to Complete Facility.**

The Purchaser acknowledges and agrees that the amount of IBank's obligations under this Agreement is limited to the amount of the Facility Funds. As such, it is the Purchaser's obligation to pay all other costs associated with or needed for completion of the Facility in excess the Facility Funds amount.

SECTION 2.13. Facility Description.

For the purposes of this Agreement, the description of the Facility shall be as set forth in Exhibit B hereto.

SECTION 2.14. Withholding of Facility Funds.

(a) IBank may withhold all or any portion of the Facility Funds in the event that:

(1) The Purchaser has violated any of the material terms, provisions, conditions, commitments, representations, warranties, or covenants of this Agreement, as determined by IBank in its reasonable discretion, or if an Event of Default has occurred; or

(2) The Purchaser is unable to demonstrate, to the satisfaction of IBank in its reasonable discretion, the ability to complete the Facility or to maintain adequate progress toward completion thereof.

(b) In the event that Facility Funds are withheld from the Purchaser, IBank shall notify the Purchaser of the reasons, identify any additional conditions to be met in order to resume disbursements and advise the Purchaser of the time in which to remedy the failure or violation or satisfy the applicable conditions.

(c) If Facility Funds are withheld pursuant to this section, the Purchaser remains obligated to repay the entire amount of the Purchase Price but to the extent applicable, the Purchaser may submit to IBank an Facility Funds Reduction Request pursuant to Section 2.08.

SECTION 2.15. *Reserved.*

SECTION 2.16. Permitted Subordinate Debt.

The Purchaser may issue or incur Subordinate Debt following the Effective Date in such principal amount as shall be determined by the Purchaser subject to the following specific conditions precedent to the issuance or incurrence of such Subordinate Debt.

(a) No Event of Default hereunder, and no default under any other obligation or instrument secured by System Revenues, shall have occurred and be continuing unless such Event of Default shall be cured by the issuance or incurrence of such proposed Subordinate Debt, and the Purchaser shall be in compliance with all covenants of this Agreement and any other instrument securing, evidencing, governing, or relating to other obligations secured by, System Revenues.

(b) Net System Revenues calculated pursuant to generally accepted accounting principles, consistently applied, and excluding the proceeds of any taxes and also excluding any balances in any fund at the beginning of the period of the computation, as shown by the books of the Purchaser for the latest Fiscal Year, or any more recent twelve (12) month period selected by the Purchaser ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Subordinate Debt is issued or incurred, as shown by the books of the Purchaser, shall have amounted to at least 1.0 times the aggregate sum of the Maximum

Annual Debt Service of all debt secured by Net System Revenues and/or legally available amounts in the Enterprise Fund and the maximum annual debt service payable in any Fiscal Year on all Subordinate Debt, including the proposed Subordinate Debt, as set forth in the Report of an Independent Accountant or Independent Consultant delivered to IBank.

### ARTICLE III

#### PLEDGE OF REVENUES; APPLICATION OF FUNDS

##### SECTION 3.01. Pledge of System Revenues.

The Purchaser hereby grants to IBank a lien on System Revenues and all legally available amounts in the Enterprise Fund as security for payment of Installment Payments and Additional Payments. The System Revenues and all legally available amounts in the Enterprise Fund are hereby pledged in their entirety to the payment of Installment Payments and Additional Payments. The System Revenues and all legally available amounts in the Enterprise Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Purchaser. Neither the Installment Payments, the Additional Payments nor this Agreement is a debt of IBank, the State or any of its political subdivisions (other than the Purchaser) and neither IBank, the State nor any of its political subdivisions (other than the Purchaser) is liable thereon. Pursuant to Section 5451 of the State Government Code of the State, the pledge of the Purchaser's System Revenues for the repayment of the principal of, premium, if any, and interest components of the Installment Payments constitutes a first lien and security interest which immediately attaches to such System Revenues, and is effective and binding against the Purchaser and its successors and creditors and all others asserting rights therein irrespective of whether those parties have notice of the pledge, irrespective of whether such amounts are or may be deemed to be a fixture and without the need for physical delivery, recordation, filing or further act.

##### SECTION 3.02. System Revenues to be Deposited in the Enterprise Fund.

In order to carry out its obligation to pay the Installment Payments and Additional Payments, the Purchaser agrees and covenants that it shall maintain the Enterprise Fund as a distinct fund separate and apart from the Purchaser's other funds. All System Revenues received by it shall be deposited when and as received in trust in the Enterprise Fund and shall be applied and used only as and in the order provided herein: First, the Purchaser shall pay all Operations and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operations and Maintenance Costs the payment of which is not then immediately required) from the Enterprise Fund as they become due and payable, and all remaining money on deposit in the Enterprise Fund shall then be used to pay Section 3.03 amounts. After making all the set asides and payments hereinabove required to be made in each Fiscal Year, the Purchaser may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Purchaser. The Purchaser agrees and covenants to maintain the Enterprise Fund so long as any portion of the Purchase Price remains unpaid.



SECTION 3.03. Priority of Payments Made from the Enterprise Fund.

As set forth in Section 3.02, the Purchaser shall first pay from amounts in the Enterprise Fund all Operations and Maintenance Costs as they become due and payable and thereafter shall promptly pay the following amounts in the following order and at the following times:

(a) Installment Payments and Additional Payments.

(1) The Purchaser shall promptly pay to (A) IBank (i) the principal portion of the Installment Payments, together with the IBank Annual Fee, which is due at IBank by August 1<sup>st</sup> of each year, as set forth on the Amortization Schedule, and (ii) the interest portions of Installment Payments, which are due at IBank by each Interest Payment Date, as set forth in the Amortization Schedule; and (B) the trustee(s) or holder(s) of any Parity Debt, payment of Parity Debt Service as it becomes due and payable, all on a pro rata basis.

(2) The Purchaser shall promptly pay to (A) IBank Additional Payments due pursuant to Section 2.06; and (B) the trustee(s) or holder(s) of any Parity Debt, payments due under the applicable Parity Debt Instrument that do not constitute Parity Debt Service, all on a pro rata basis.

(b) Reserve Accounts.

Any amounts needed to replenish reserve accounts established hereunder or for any Parity Debt, all on a pro rata basis.

(c) Approved Subordinate Debt Payments.

Payment of Subordinate Debt Service as it becomes due and payable on Subordinate Debt pursuant to Subordinate Debt issued or incurred in accordance with Section 2.16 hereof.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

SECTION 4.01. Organization; Authority.

The Purchaser is duly organized and existing as a municipal corporation under the laws of the State and has all necessary power and authority to enter into and perform its duties (including, but not limited to, the authority to set System rates, fees, rates and charges without the approval of any other governing body and to pledge the System Revenues or those certain amounts on deposit in the Enterprise Fund) under this Agreement.

SECTION 4.02. Agreement Valid and Binding.

This Agreement has been duly authorized, executed and delivered by the Purchaser and constitutes the legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization,

moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally.

SECTION 4.03. No Conflict in Execution of Agreement.

The execution and delivery by the Purchaser of this Agreement and compliance with the provisions hereof will not conflict with or constitute a breach of or default by the Purchaser under any law, administrative regulation, court decree, resolution, charter, by-law, or any agreement to which the Purchaser is subject or by which it is bound or by which its properties may be affected.

SECTION 4.04. No Litigation.

There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened against the Purchaser to restrain or enjoin the execution or delivery of this Agreement, or in any way contesting or affecting the validity of this Agreement, or contesting the powers of the Purchaser to enter into or perform its obligations under this Agreement, or that would affect the Purchaser's ability to perform its obligations under this Agreement, including, but not limited to, the pledge of System Revenues and legally available amounts on deposit in the Enterprise Fund.

SECTION 4.05. No Breach or Default.

The Purchaser is not in breach of or in default under any applicable law or administrative regulation of the State or the United States, the Constitution of the State (including article XVI, section 18 thereof), any applicable judgment or decree, any agreement, indenture, bond, note, resolution, agreement or other instrument to which the Purchaser is a party or is otherwise subject which, if not resolved in favor of the Purchaser, would have a material adverse impact on the Purchaser's ability to perform its obligations under this Agreement and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument.

SECTION 4.06. No Consent, Approval or Permission Necessary.

No consent or approval of any trustee or holder of any indebtedness of the Purchaser, and no consent, permission, authorization, order or licenses of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the consummation of any transaction contemplated herein, except as have been obtained or made and as are in full force and effect.

SECTION 4.07. Accuracy and Completeness of Information Submitted to IBank. The information relating to the Purchaser and its System submitted by the Purchaser to IBank, including, but not limited to, all information in the application for Facility Funds was true at the time submitted to IBank and, as of the Effective Date, remains true and correct in all material respects; and such information did not and does not contain any untrue or misleading statement

of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made.

SECTION 4.08. Financial Statements of the Purchaser.

The Purchaser's financial statements that have been furnished to IBank were prepared in conformity with generally accepted accounting principles, consistently applied, and fairly present in all material respects the financial condition of the Purchaser as of the date thereof and the results of its operations for the period covered thereby. There has been no material adverse change in the business, condition (financial or otherwise), or operations of the Purchaser since the date of such financial statements.

SECTION 4.09. Licenses, Permits and Approvals for Completion of Facility.

The Purchaser has obtained, or has applied for and will obtain as soon as practicable, all licenses, permits and approvals from any governmental agency or authority having jurisdiction over the Purchaser required to commence construction of the Facility and for Facility Delivery, and will obtain all licenses, permits, and approvals as required in the future.

SECTION 4.10. Authority to Operate the System.

The Purchaser has obtained or will obtain all licenses, permits, and approvals from any governmental agency or authority having jurisdiction over the Purchaser now required for the operation of the System and will obtain all licenses, permits, and approvals as required in the future.

SECTION 4.11. Valid Title; No Conflict.

(a) The Purchaser, upon completion of the Facility, will have good and valid title to the Facility sufficient to carry out the purposes of this Agreement.

(b) To the best of the Purchaser's knowledge no officer or official of IBank has any material interest in the Facility or in the transactions contemplated by this Agreement.

(c) All applicable local governmental agency, State, and federal government certificates, approvals, permits, and authorizations required in order to complete construction and commence operations of the Facility have been obtained or will be obtained as soon as practicable.

SECTION 4.12. Purchaser's Compliance with Prop 218 Law.

The Purchaser hereby represents and warrants that, to the best of its knowledge, as of the Effective Date, the rates, fees and charges it imposes on its System customers are legal, valid, and comply with the Prop 218 Law. The Purchaser further specifically warrants and represents that (i) the rates, fees and charges it imposes on its System customers do not exceed, in the aggregate, the funds required to operate the System, and (ii) its method of allocating rates, fees and charges among users of the System complies, to the best of its knowledge, with the proportionality requirements of the Prop 218 Law.

SECTION 4.13. No Challenge to Purchaser's Rates, Fees and Charges.

The Purchaser hereby represents and warrants that, to the best of its knowledge after reasonable investigation, as of the Effective Date, there is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened challenging Purchaser's compliance with the Prop 218 Law as it applies to Purchaser's rates, fees and charges.

SECTION 4.14 Purchaser's Compliance with Conditions Precedent to Parity Debt Set Forth in the Existing Lien Documents.

The Purchaser represents, warrants, and by the execution of this Agreement certifies as of the Effective Date, that the Purchaser has satisfied any and every condition set forth in the Existing Lien Documents precedent to the lien on System Revenues and all legally available amounts in the Enterprise Fund imposed by this Agreement being on parity with any lien on System Revenues and legally available amounts in the Enterprise Fund imposed by the Existing Lien Documents.

SECTION 4.15. Continuing Validity of Representations and Warranties.

Unless the representations and warranties set forth in this Article IV are limited by their express terms to a specific time period or a point in time, the foregoing representations and warranties are true, accurate, and correct as of the Effective Date and shall continue to be true, accurate, and correct throughout the term of this Agreement.

SECTION 4.16. Other Liens; No Lien Senior to IBank Lien.

Except as may otherwise be described herein, as of the Effective Date, there is no other debt or obligation that places a lien on or in any way encumbers the Purchaser's System Revenues and/or legally available amounts in the Enterprise Fund other than the first lien established by Section 3.01 of this Agreement, and, to the extent outstanding, the lien established by the Existing Lien Documents. Further, the Purchaser represents and warrants that the lien on System Revenues and legally available amounts on deposit in the Enterprise Fund established by Section 3.01 of this Agreement is not junior to any lien and is on parity with, to the extent outstanding, the lien on System Revenues and certain amounts on deposit in the Enterprise Fund established by the Existing Lien Documents.

## ARTICLE V

### AFFIRMATIVE COVENANTS OF THE PURCHASER

#### SECTION 5.01. Punctual Payment.

The Purchaser hereby covenants to punctually pay, or cause to be paid, all payments required hereunder when due and in all other respects in strict conformity with the terms of this Agreement, and to faithfully observe and perform all of the conditions, covenants, and requirements of this Agreement.

#### SECTION 5.02. Payment of Claims.

The Purchaser hereby covenants that, from time to time, it will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies, which, if unpaid, might become liens or charges upon the System and all personal and real property related thereto, or upon the System Revenues or any part thereof, or upon any funds in the hands of IBank, or which might impair the security for the payment of the Installment Payments or Additional Payments; provided, however, that nothing herein contained shall require the Purchaser to make any such payment so long as the Purchaser in good faith shall contest the validity of said claims and shall act promptly to remove any liens or charges arising from said claims, by, among other things, obtaining surety bonds to cause the release of such liens or charges.

#### SECTION 5.03. Books and Accounts; Financial Statements.

(a) The Purchaser hereby covenants that it will keep proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the System Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of IBank or its designee.

To the extent that any continuing disclosure certificates entered into by the Purchaser in connection with other debt or obligations require the information required in subsections (b) through (e), the Purchaser may submit a copy of the information and materials required by such continuing disclosure certificate instead of providing separate statements setting forth the required information.

(b) The Purchaser shall prepare and file with IBank annually as soon as practicable, but in any event not later than one hundred eighty (180) days after the close of each Fiscal Year, so long as this Agreement has not been discharged by IBank, an audited financial statement of the Purchaser relating to the System Revenues and the Enterprise Fund for the preceding Fiscal Year, prepared by an Independent Accountant under generally accepted accounting procedures, consistently applied; provided, however, that the Purchaser's failure to provide such audited financial statements within the required time period shall not constitute a breach of or a default under this Agreement unless the City fails to deliver such audited financial statements sixty (60) days following the receipt of written notice from IBank informing the Purchaser of its failure to provide such audited financial statements within one hundred eighty (180) days after the end of the Fiscal Year. The Purchaser will furnish to IBank such reasonable number of copies of such

audited financial statements as may be required by IBank for distribution (at the expense of the Purchaser). Alternatively, the Purchaser may furnish electronic copies of such audited financial statements to IBank in portable document format, or other format acceptable to IBank in its sole and absolute discretion.

(c) Simultaneously with the delivery of the annual financial statements, or more frequently following forty-five (45) calendar days' written notice by IBank, as IBank shall determine in its sole and absolute discretion, the Purchaser shall deliver to IBank a Certificate of the Purchaser stating the following:

- (1) The number of System users as of the end of the Fiscal Year;
- (2) Calculation of the coverage ratios described in Section 5.06 and a certification that adopted rates and charges comply with the requirements of that section;
- (3) Notification of the withdrawal of any System user generating four percent (4%) or more of System Revenues since the last reporting date;
- (4) Any significant System facility retirements or expansions planned or undertaken since the last reporting date;
- (5) Notification of any Parity Debt or Subordinate Debt incurred since the last reporting date and certification that there has been no default or noncompliance under any obligation secured by System Revenues;
- (6) Certification that (i) no Event of Default has occurred or is continuing and no other event has occurred or is continuing, which, with the passing of time or the giving of notice or of both, would constitute an Event of Default, or (ii) describing in detail any Event of Default that has occurred and/or any event that has occurred which, with the passing of time or giving or giving of notice, would constitute an Event of Default;
- (7) Certification that the Purchaser is in compliance with the terms of this Agreement, including without limitation the Tax Covenants set forth in Section 5.07 hereof, or if the Purchaser has breached any such covenant, a detailed description of such breach;
- (8) Notification of any other event or circumstance that would materially affect completion of the Facility or the payment of the Purchase Price;
- (9) To the extent the Existing Lien Documents continue to impose a lien on System Revenues and/or legally available amounts in the Enterprise Fund, certification that the Purchaser has complied with, kept, observed, and performed, and continues to comply with, keep, observe, and perform, any and all requirements, conditions, covenants, duties, and terms set forth in the Existing Lien Documents for the lien on System Revenues and/or legally available amounts in the Enterprise Fund created by this Agreement to be on parity with each of the liens on System Revenues and/or legally available amounts in the Enterprise Fund created under the Existing Lien Documents; and
- (10) Such other information as may be reasonably requested by IBank.

(d) The Purchaser shall, upon request, furnish to IBank, in a format provided by IBank, information concerning employment and other public benefits connected to the Facility.

(e) The Purchaser agrees to notify IBank, immediately, by telephone promptly confirmed in writing, if any representation made in this Agreement or any representation made in the application for financing to IBank shall at any time so long as this Agreement is outstanding prove untrue or incorrect in any manner that could adversely affect the Purchaser's ability to perform its obligations under this Agreement. Further, the Purchaser agrees to notify IBank, immediately, by telephone promptly confirmed in writing, if there is a stop payment notice, litigation or any other legal proceeding which may materially adversely impact the completion of the Facility. Additionally, the Purchaser agrees to notify IBank, immediately, by telephone promptly confirmed in writing, if the Purchaser breaches any covenant set forth in this Agreement.

(f) The Purchaser's covenants set forth in paragraphs 5.03(b) through (d) hereof are hereinafter referred to as the "Reporting Covenants." In the event the Purchaser fails to comply timely with the Reporting Covenants, starting on the date that is the thirty-first day (31<sup>st</sup> day) after the applicable due date of any Reporting Covenant and continuing until the date the Purchaser actually cures its noncompliance (the "Liquidated Damages Period"), the Purchaser shall be obligated to pay the Liquidated Damages Charge in accordance with Section 2.06(a)(4) hereof.

**SECTION 5.04. Protection of IBank's Security and Rights.**

The Purchaser will preserve and protect the security for payment of the Installment Payments, Additional Payments, and the rights of IBank. From and after the Effective Date, the Agreement shall be incontestable by the Purchaser.

**SECTION 5.05. Payments of Taxes and Other Charges.**

The Purchaser will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges, or charges in lieu thereof, which may hereafter be lawfully imposed upon the Purchaser, the System, or the System Revenues when the same shall become due. Nothing herein contained shall require the Purchaser to make any such payment so long as the Purchaser in good faith shall contest the validity of said taxes, assessments, or charges and shall have adequate funds for the payment thereof. The Purchaser will duly observe and conform to all valid requirements of any governmental authority relative to the System or any part thereof.

**SECTION 5.06. Maintenance of System Revenues; Rate Covenant.**

(a) The Purchaser hereby covenants that, to the fullest extent permitted by law, it will fix, prescribe, and charge, or cause to be fixed, prescribed, and charged, in each Fiscal Year, such rates, fees, and charges for the use of and for the service furnished by the System to ensure that Net System Revenues realized, together with any amounts on deposit in a rate stabilization fund held by the Purchaser, are in an amount which the Purchaser reasonably expects will be sufficient to be at least equal to one hundred twenty percent (120%) of annual Debt Service, and

at least equal to one hundred percent (100%) of the sum of annual Debt Service and annual Subordinate Debt Service for such Fiscal Year.

(b) The Purchaser further covenants that, to the fullest extent permitted by law, it will fix, prescribe, and charge, or cause to be fixed, prescribed, and charged, in each Fiscal Year, such rates, fees, and charges for the use of and for the service furnished by the System to ensure that System Revenues realized are in an amount which the Purchaser reasonably expects will be sufficient to pay the following amounts in the following order or priority:

(1) All Operations and Maintenance Costs estimated by the Purchaser to become due and payable in such Fiscal Year;

(2) The Installment Payments, the IBank Annual Fee, and the principal and interest on any outstanding Parity Debt as they become due and payable during such Fiscal Year, without preference or priority;

(3) All amounts, if any, required to restore the balance of any reserve fund required under this Agreement or any reserve fund or accounts required under any Parity Debt Instrument, for any outstanding Parity Debt, to the full amount of any such reserve requirement; and

(4) All payments required to meet any other obligations of the Purchaser which are charges, liens, or encumbrances upon, or with are otherwise payable from, the System Revenues or the Net System Revenues during such Fiscal Year, including any Additional Payments.

(c) If for any reason Net System Revenues, or System Revenues, as applicable, prove insufficient to meet the numerical thresholds set forth in subsection (a) and to comply with the requirements of subsection (b), the Purchaser first will engage an Independent Consultant to recommend revised rents, rates, fees, charges, savings, or assessments, or any combination thereof, and the Purchaser will, subject to any applicable requirements and restrictions imposed by law, including, but not limited to, the Prop 218 Law, and subject to the good faith determination of the Purchaser that such recommendations, in whole or in part, are in the best interests of the Purchaser, take all actions necessary to increase System Revenues through any combination of increased rents, rates, fees, charges, savings, or assessments and that it will do so not later than one hundred eighty (180) days following the date on which Net System Revenues first fail to meet the requirements of this Section 5.06. The Purchaser may make adjustments from time to time in such rents, rates, fees, and charges and may make such classification thereof as it deems necessary, but shall not reduce the rents, rates, fees, and charges then in effect unless the Net System Revenues from such reduced rents, rates, fees, and charges will at all times be sufficient to meet the requirements of this section. Notwithstanding the foregoing, in lieu of taking the preceding actions with respect to the Purchaser's failure to comply with subsection (a), the Purchaser may within one hundred eighty (180) days following the date Net System Revenues first fail to meet the requirements of subsection (a) either establish and fund a rate stabilization fund, or increase monies held in an existing rate stabilization fund, in an amount sufficient to satisfy the requirements of subsection (a). If the Purchaser elects to proceed accordingly, it shall provide to IBank within such one hundred eighty (180) day period evidence



satisfactory to IBank in its reasonable discretion that the amounts held in such rate stabilization fund are sufficient to satisfy the requirements of subsection (a).

(d) The Purchaser will have in effect at all times rules and regulations requiring each landowner or water user located on any land served by the System to pay the rates, fees, and charges applicable to the System services provided to such land and providing for the billing thereof and for a due date and delinquency date for each bill. In each case where any such bill remains unpaid in whole or in part after it become delinquent, the Purchaser shall take any actions reasonably necessary to collect any such unpaid bill, and the Purchaser may discontinue providing System services to any customer with an unpaid bill or prohibit groundwater extractions in accordance with the Purchaser's rules and regulations governing such situations of delinquency.

SECTION 5.07. Tax Covenants.

The Purchaser recognizes that the Facility Funds may be derived from the proceeds of, or payments made hereunder may be pledged to secure, bonds issued or to be issued by IBank, the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code. In order to maintain the tax-exempt status of, and perform its obligations with respect to, the Proceeds Bonds and Secured Bonds, the Purchaser will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Proceeds Bonds or Secured Bonds under the Code, and the Purchaser specifically agrees to comply with all terms and conditions contained herein and to provide annual certification of its compliance with the tax covenants set forth in this Section 5.07. The Purchaser will not directly or indirectly use or make any use of the Facility Funds or any other funds of the Purchaser, or take or omit to take any action, if such use or action would cause the Proceeds Bonds or Secured Bonds to be "arbitrage bonds" subject to federal income taxation by reason of section 148 of the Code. In addition, the Purchaser covenants and agrees that it, and/or any party related to it, will not acquire Proceeds Bonds or Secured Bonds in an amount related to the amount of the Facility Funds. The provisions of this Section 5.07 shall survive the discharge of the Purchaser's obligations hereunder and shall apply to the Trustee or any other successor or assignee described in Section 8.02.

(a) Eligible Uses of Facility Funds. Unless otherwise agreed to by IBank, Facility Funds shall be used exclusively to pay or reimburse the Purchaser for capital expenditures paid with respect to the Facility that meet the requirements of subsection (b) of this Section 5.07.

(b) Allocation of Facility Funds to Expenditures. On April 3, 2019, the Purchaser adopted a resolution stating its official intent to be reimbursed from the proceeds of a borrowing to finance costs of the Facility (the "Reimbursement Resolution"). Absent written agreement by IBank, all expenditures of Facility Funds will be used to pay or reimburse the Purchaser for capital expenditures with respect to the Facility that are either:

(1) costs that are Preliminary Costs incurred with respect to the Facility prior to the start of construction and in an aggregate amount not exceeding twenty percent 20% of the Facility Funds;

(2) costs paid by the Purchaser no earlier than the date which is sixty (60) days prior to the date of the adoption of the Reimbursement Resolution; or

(3) costs paid by the Purchaser on or after the Effective Date.

In addition, Facility Funds shall be allocated to paying or reimbursing the Purchaser for capital expenditures no later than eighteen months after the later of the date the expenditure was paid or the date the Facility is placed in service, but in the case of costs described in clause (2), above, such allocations must be made in all events no later than three years after the cost was paid.

(c) Prohibited Uses of Facility Funds. The Purchaser will not loan any of the Facility Funds to any other person or entity. The Purchaser will not use Facility Funds directly or indirectly to make principal, interest, or premium payments with respect to any bond, note, certificate of participation or other obligation of the Purchaser or any person or entity that is a related party to the Purchaser within the meaning of Treasury Regulation Section 1.150-1(b).

(d) Expectations Regarding Facility Funds and Facility; No Change in Use. The Purchaser reasonably expects and consistent with this Section 5.07 hereof to use all Facility Funds and all of the Facility for the entire stated term to maturity of this Agreement. The Purchaser does not expect that the Facility or any part thereof will be sold or otherwise disposed of so long as the Purchaser's obligations under this Agreement are not discharged. Absent written agreement by IBank, the Purchaser hereby agrees that it will use all Facility Funds and all of the Facility as set forth in this Section 5.07.

(e) Funds for Making Installment Payments. All amounts used to fund the Payment Account will be deemed to have been made from the Purchaser's funds by using a last-in, first-out accounting method, and amounts in the Payment Account will be treated as used to pay the Installment Payments by using a first-in, first-out accounting method. The Purchaser agrees that the amounts used to pay Installment Payments shall be both received by the Purchaser and utilized for the payment of Installment Payments within a ninety (90) day period. The Payment Account will be used primarily to achieve a proper matching of revenues and Installment Payments within each year; a matching of revenues means that revenue and Installment Payments come in and go out at approximately the same level and the Payment Account is cleared out to a very low balance at least one time during the year. Current Revenues in the Payment Account shall be invested without regard to yield so long as the Purchaser complies with this section.

(f) Nongovernmental Use of Facility Funds and Facility. The Purchaser understands that the Facility Funds and the Facility are subject to certain restrictions on the use of the Facility Funds or the Facility by any Nongovernmental Person, other than use as a member of the general public. For this purpose a Nongovernmental Person will be treated as "using" Facility Funds to the extent the Nongovernmental Person:

(1) borrows Facility Funds;

(2) acquires an ownership or lease interest with respect to any portion of the Facility;

(3) uses any portion of the Facility (e.g., as a service provider, operator, or manager), except pursuant to a contract that meets the requirements of subsection (g) of this Section 5.07; or

(4) in the case of a Facility that provides water, electricity, or natural gas, acquires such output from the Facility (except pursuant to generally applicable and uniformly applied rates that are available to the general public).

The Purchaser hereby represents and covenants that it will not allow more than five percent (5%) of the Facility Funds or more than five percent (5%) of the Facility to be used directly or indirectly by any Nongovernmental Person, other than as a member of the general public.

(g) Management Contracts. The Purchaser understands that an arrangement with any person or organization (other than a state or local governmental unit) which provides for such person or organization to manage, operate, maintain or provide services with respect to the Facility (a "Service Contract") can give rise to use by a Nongovernmental Person that is subject to the limitations of Section 5.07(f) of this Agreement. However, as of the Effective Date the Internal Revenue Service ("IRS") has issued two sets of guidelines that describe situations in which the IRS would rule that a Service Contract will not be treated as giving rise to a Nongovernmental Person's use of the Facility: (i) the guidelines set forth in Revenue Procedure 97-13, as amended by Revenue Procedure 2001-39, and as amplified by Notice 2014-67 (the "Prior Guidelines"); and (ii) the guidelines set forth in Revenue Procedure 2017-13 (the "Current Guidelines"). The Purchaser may apply the Prior Guidelines to any Service Contract entered into before August 18, 2017 that is not modified materially or extended on or after that date (other than pursuant to a renewal option as defined in Treasury Regulation Section 1.141-1(b)). The Purchaser may apply the Current Guidelines to Service Contracts entered into at any time.

Commencing with the Effective Date, at least thirty (30) days prior to the execution of any modification to, extension or renewal of, or new operations and maintenance agreement relating to the Facility the Purchaser shall (i) ensure that any such instrument meets the requirements for qualified management contracts under the Code, and (ii) provide IBank a copy of any such instrument together with an explanation of the basis for its conclusion that such instrument meets the requirements for qualified management contracts under the Code; provided, however, that the Purchaser is not obligated to provide to IBank contracts for services that are solely incidental to the primary governmental function, or functions, of the Facility (e.g., contracts for janitorial services, landscaping services, office equipment repair, escalator repair, elevator repair, auditing services, legal services, or similar services).

(1) Current Guidelines. Service Contracts that relate to the use or operation of the Facility by "service providers," as that term is used in the Current Guidelines (the "Service Providers"), will satisfy the Current Guidelines if the requirements of each of the following subsections is satisfied:

(i) The compensation of the Service Provider under the contract must be reasonable for the services rendered.

(ii) The contract must not provide to the Service Provider a share of net profits from the operation of the Facility. Compensation to the Service Provider will not be treated as providing a share of net profits if no element of the compensation takes into account, or is contingent upon, either the Facility's net profits or both the Facility's revenues and expenses for any fiscal period. For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation. Further, solely for purposes of determining whether the amount of the compensation meets the requirements of this Section 5.07(g)(1)(ii), any reimbursements of actual and direct expenses paid by the Service Provider to unrelated parties are disregarded as compensation. Incentive compensation will not be treated as providing a share of net profits if the eligibility for the incentive compensation is determined by the Service Provider's performance in meeting one or more standards that measure quality of services, performance, or productivity, and the amount and the timing of the payment of the compensation meet the requirements of this section 5.07(g)(1)(ii).

(iii) The contract must not, in substance, impose upon the Service Provider the burden of bearing any share of net losses from the operation of the Facility. An arrangement will not be treated as requiring the Service Provider to bear a share of net losses if: (A) The determination of the amount of the Service Provider's compensation and the amount of any expenses to be paid by the Service Provider (and not reimbursed), separately and collectively, do not take into account either the Facility's net losses or both the Facility's revenues and expenses for any fiscal period, and (B) the timing of the payment of compensation is not contingent upon the Facility's net losses. For example, a Service Provider whose compensation is reduced by a stated dollar amount (or one of multiple stated dollar amounts) for failure to keep the Facility's expenses below a specified target (or one of multiple specified targets) will not be treated as bearing a share of net losses as a result of this reduction.

(iv) Without regard to whether the Service Provider pays expenses with respect to the operation of the Facility without reimbursement by the qualified user (e.g., the Purchaser), compensation for services will not be treated as providing a share of net profits or requiring the Service Provider to bear a share of net losses under sections 5.02(2) and 5.02(3) of the Current Guidelines if the compensation for services is: (A) based solely on a capitation fee, a periodic fixed fee, or a per-unit fee; (B) incentive compensation described in the last sentence of section 5.02(2) of the Current Guidelines; or (C) a combination of these types of compensation.

(v) Deferral due to insufficient net cash flows from the operation of the Facility of the payment of compensation that otherwise meets the requirements of sections 5.02(2) and 5.02(3) of the Current Guidelines will not cause the deferred compensation to be treated as contingent upon net profits or net losses under sections 5.02(2) and 5.02(3) of the Current Guidelines if the contract includes requirements that: (A) the compensation is payable at least annually; (B) the qualified user is subject to reasonable consequences for late payment, such as reasonable interest rate charges or late payment fees; and (C) the qualified user will pay such deferred compensation (with interest or late payment fees) no later than the end of five years after the original due date of the payment.

(vi) The term of the contract, including all renewal options, must not be greater than the lesser of 30 years or 80 percent of the reasonably expected useful life of the Facility. For this purpose, economic life is determined in the same manner as under section 147(b) of the Code as of the beginning of the term of the contract. A contract that is materially modified with respect to any matters relevant to section 5 of the Current Guidelines is retested under section 5 of the Current Guidelines as a new contract as of the date of the material modification.

(vii) The qualified user must exercise a significant degree of control over the Facility. Service Contract provides such control if it requires the qualified user to approve:

(A) The annual budget of the Facility;

(B) Capital expenditures with respect to the Facility (for this purpose, a qualified user may show approval of capital expenditures for the Facility by approving an annual budget for capital expenditures described by functional purpose and specific maximum amounts);

(C) each disposition of property that is part of the Facility;

(D) rates charged for use of the Facility (for this purpose, a qualified user may show approval of rates charged for use of the managed property by either expressly approving such rates (or the methodology for setting such rates) or by including in the Service Contract a requirement that the Service Provider charge rates that are reasonable and customary as specifically determined by an independent third party); and

(E) the general nature and type of use of the Facility (for example, the type of services).

(viii) The qualified user bears the risk of loss upon damage or destruction of the Facility (for example, upon force majeure). A qualified user does not fail to meet this risk of loss requirement as a result of insuring against risk of loss through a third party or imposing upon the Service Provider a penalty for failure to operate the Facility in accordance with the standards set forth in the Service Contract.

(ix) The Service Provider must agree that it is not entitled to and will not take any tax position that is inconsistent with being a Service Provider to the qualified user with respect to the Facility.

(x) The Service Provider must not have a role or relationship with the qualified user (e.g., the Purchaser) that, in effect, substantially limits the ability of the qualified user to exercise its rights, including cancellation rights, under the Service Contract, based on all the facts and circumstances. Accordingly:

(A) Not more than 20 percent of the voting power of the governing body of the qualified user (or IBank) in the aggregate may be vested in the Service Provider and its directors, officers, shareholders, partners, members and employees.

(B) The governing body of the qualified user does not include the chief executive officer of the Service Provider or the chairperson (or equivalent executive) of the Service Provider's governing body.

(C) The chief executive officer of the Service Provider is not the chief executive officer of the qualified user or any related person (within the meaning of Treasury Regulation 1.150-1(e)) to the qualified user.

For purposes of this section 5.07(g)(1)(x), the phrase Service Provider includes related persons (within the meaning of Treasury Regulation 1.150-1(e)) and the phrase "chief executive officer" includes a person with equivalent management responsibilities.

(xi) the Service Provider's use of the Facility that is functionally related to and subordinate to the performance of its services under a Service Contract for the Facility that meets the conditions of Section 5 of the Current Guidelines does not result in private business use of the Facility.

(2) Prior Guidelines. Service Contracts that relate to the use or operation of the Facility by a "service provider," as that term is used in the Prior Guidelines (the "Prior Guideline Service Providers"), will satisfy the Prior Guidelines if, among other ways of satisfying the Prior Guidelines, the requirements of each of the following requirements is satisfied:

(i) The compensation of the Prior Guidelines Service Provider under the contract must be reasonable for the services rendered.

(ii) The contract must not provide for any compensation for services based, in whole or in part, on a share of net profits from the operation of the Facility. Generally, compensation is not based on a share of net profits if such compensation is based on a "capitation fee" or a "per-unit fee." Under the Prior Guidelines, "capitation fee" means a fixed periodic amount for each person for whom the Prior Guidelines Service Provider assumes the responsibility to provide all needed services for a specified period (so long as the quantity and type of services actually provided to covered persons varies substantially). Under the Prior Guidelines, a "per-unit fee" means a fee based on a unit of service provided (e.g., a stated dollar amount for each specified medical procedure performed). Further, compensation based on a percentage of gross revenues or a percentage of expenses (but not both) will generally not be considered as based on a share of net profits.

(iii) A productivity reward for services in any annual period during the term of the contract generally also does not cause the compensation to be based on a share of net profits of the financed facility if (a) the eligibility for the productivity award is based on the quality of the services provided under the management contract, rather than increases in revenues or decreases in expenses of the facility; and (b) the amount of the productivity award is a stated dollar amount, a periodic fixed fee, or a tiered system of stated dollar amounts or periodic fixed fees based solely on the level of performance achieved with respect to the applicable measure.

(iv) A Service Contract providing for a compensation arrangement that satisfies any one of the following paragraphs will meet the Prior Guidelines:

(A) All of the compensation for services is based on a stated amount; periodic fixed fee; a capitation fee; a per-unit fee; or a combination of the preceding. The compensation for services also may include a percentage of gross revenues, adjusted gross revenues, or expenses of the facility (but not both revenues and expenses). The term of the contract, including all renewal options, does not exceed five years. Such contract need not be terminable by the Purchaser prior to the end of the term. For purposes of this subsection 5.07(g)(2)(iv)(A), a tiered productivity award as described in subsection 5.07(g)(2)(iii) will be treated as a stated amount or a periodic fixed fee, as appropriate.

(B) For a contract with a term, including renewal options, that is not longer than (i) the lesser of 10 years or 80 percent of the reasonably expected useful life of the financed property, or (ii) the lesser of 15 years or 80 percent of the reasonably expected useful life of the financed property, at least 80 percent (in the case of a contract with a term described in (i) hereof) or at least 95 percent (in the case of a contract with a term described in (ii) hereof) is based on a periodic fixed fee. For purposes of this paragraph, a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense (but not both) is reached if that award is equal to a single, stated dollar amount.

(v) The Prior Guidelines Service Provider may not have a role or relationship with the qualified user (or the Purchaser) that, in effect, substantially limits the ability of the qualified user to exercise its rights, including cancellation rights, under the Service Contract. Accordingly, not more than 20 percent of the voting power of the governing body of the qualified user (or the Purchaser) in the aggregate may be vested in the Prior Guidelines Service Provider and its directors, officers, shareholders and employees. Furthermore, the group of persons belonging to both the governing board of the qualified user (or the Purchaser) and the Prior Guidelines Service Provider may not include the chief executive officers of the qualified user (or the Purchaser) and the Prior Guidelines Service Provider, or their respective governing bodies. Finally, neither the qualified user nor the Purchaser may be members of the same "controlled group" (within the meaning of Treasury Regulations § 1.150-1(f)) or related person as the Prior Guidelines Service Provider.

(h) No Other Replacement Proceeds. The Purchaser is not using any Facility Funds and hereby agrees that it will not use any Facility Funds to replace funds of the Purchaser which are or will be used to acquire Investment Property reasonably expected to produce a yield that is materially higher than the yield on the Installment Payments under this Agreement.

(i) Federal Guarantee. The Purchaser will not directly or indirectly use or permit the use of any Facility Funds or take or omit to take any action that would cause the Proceeds Bonds or Secured Bonds to be obligations that are "federally guaranteed" within the meaning of section 149(b) of the Code. In furtherance of this covenant, the Purchaser will not allow the payment of principal or interest under this Agreement to be guaranteed (directly or indirectly) in whole or in part by the United States or any agency or instrumentality thereof.

(j) No Hedge Bonds. The Purchaser reasonably expects that more than eighty-five percent (85%) of the Facility Funds will be expended for the purposes of this Agreement within three years of the Effective Date.

SECTION 5.08. Maintenance and Operation of System.

The Purchaser hereby covenants that, so long as any portion of the Purchase Price is unpaid, it will at its own cost and expense maintain, preserve, keep, and operate the System, and every portion thereof, in good condition, repair and working order as necessary to operate the System for its intended purpose in compliance with all laws, rules, regulations, codes, and ordinances, subject only to normal wear and tear and that it will from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals necessary to maintain the System in such a condition. IBank will have no responsibility or obligation for any of these matters. The Purchaser further covenants that it will operate the System in an efficient and economical manner, and will pay all Operations and Maintenance Costs as they become due and payable.

SECTION 5.09. Assumption of Obligations.

The obligations of the Purchaser under this Agreement may not be assumed by another entity except in connection with a transfer of the entire System by the Purchaser and only upon prior written approval of IBank and receipt by IBank of:

(a) an Opinion of Counsel experienced in matters relating to the tax-exempt status of interest on any obligations secured by this Agreement, and approved by IBank, to the effect that such transfer would not cause interest on the obligations to be included in gross income for federal income tax purposes;

(b) a Report signed by an Independent Consultant or Independent Accountant concluding that such transfer would not materially adversely affect the security for the Installment Payments, Additional Payments, or the rights of IBank; and

(c) evidence satisfactory to IBank that the entity assuming the Purchaser's obligation hereunder is eligible pursuant to the Act.

SECTION 5.10. Damage, Destruction, Title Defect and Condemnation; Use of Net Proceeds.

(a) If prior to the termination of the term hereof (i) the System or any portion thereof is damaged or destroyed (each of which is hereinafter called "Damaged Improvements") by a peril covered by a policy of insurance described in Section 5.22 hereof (an "Insured Peril"); or (ii) title to, or the right to possession, use, or occupancy, whether permanent or temporary, of, the System or any portion thereof or the estate of the Purchaser in the System or any portion thereof is defective or shall be taken under the exercise of the power of eminent domain by any governmental body or by any person or firm or corporation acting under governmental authority, then the Purchaser and IBank will cause the net proceeds of any loss or claim paid by an insurer under an insurance policy, or condemnation award, resulting from any damage or destruction to any portion of the System, or taking of the System, (the "Net Proceeds") to be transferred to IBank and applied as follows:

(1) Net Proceeds Exceeding Costs. Within one hundred twenty (120) days of the date of said Insured Peril, the Purchaser shall obtain written estimate(s) of the (i) cost of the



repair, replacement, and reconstruction of the Damaged Improvements (collectively referred to herein as the "Reconstruction"), and (ii) Net Proceeds available to pay such costs. Copies of such estimate(s) shall be provided to IBank. If the one hundred twenty (120) day period is insufficient to obtain said estimates, the period may be reasonably extended by the Purchaser upon the approval of IBank, in its reasonable discretion. If the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by IBank in respect of the System) exceed the estimated costs of Reconstruction, the Damaged Improvements shall be repaired, replaced, and reconstructed to the same or better quality as existed before the damage occurred. The Purchaser shall commence and manage the Reconstruction and shall complete the Reconstruction as soon as reasonably possible after the occurrence of such damage. An amount equal to the Net Proceeds remaining after the Reconstruction has been completed multiplied by the Net Proceeds Ratio shall be transferred to IBank for the payment of unpaid Purchase Price and Additional Payments. Net Proceeds remaining after payment of the amount specified in the previous sentence shall be transferred to the Purchaser.

(2) Costs Exceeding Net Proceeds. If the estimated costs of Reconstruction exceed the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by IBank in respect of the System), the Purchaser, in its sole discretion, may elect to budget and appropriate to the Reconstruction the amount of such excess, and to manage the Reconstruction as set forth in Section 5.10(a)(5). The Purchaser shall exercise this election by written notice thereof delivered to IBank within thirty (30) days after the Purchaser obtains the written estimate(s).

(3) Net Proceeds Sufficient to Prepay. If the Purchaser does not exercise the election to reconstruct pursuant to the above subsection and Net Proceeds are at least sufficient to prepay all unpaid amounts of the Purchase Price and any due and owing Additional Payments, plus the outstanding balance of then existing Parity Debt, Net Proceeds equal to the unpaid amounts of the Purchase Price and any due and owing Additional Payments shall be transferred to IBank to prepay such Purchase Price and any due and owing Additional Payments. The Purchaser shall be entitled to the amount of proceeds remaining after such prepayment.

(4) Net Proceeds Insufficient to Prepay. If the Purchaser does not exercise the election to reconstruct pursuant to Section 5.10(a)(2) and the sum of Net Proceeds multiplied by the Net Proceeds Ratio are insufficient to prepay the unpaid Purchase Price hereunder, the Purchaser, in its sole discretion, may elect to budget and appropriate funds to cause the full prepayment of the Purchase Price and due and owing Additional Payments, and the sum of Net Proceeds multiplied by the Net Proceeds Ratio, together with such funds, shall be transferred to IBank with directions to apply the proceeds to the prepayment of the Purchase Price and due and owing Additional Payments; provided, that if the Purchaser elects not to appropriate funds for such prepayment, the Purchaser shall apply all Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by IBank in respect of the System) to the Reconstruction. If the Purchaser, in its sole discretion, elects to budget or appropriate funds for the full prepayment of the unpaid Purchase Price and due and owing Additional Payments, the Purchaser shall transfer such funds to IBank for the full prepayment of Purchase Price and due and owing Additional Payments.

(5) Management of Reconstruction. If the System or any part thereof becomes Damaged Improvements, the Purchaser shall promptly cause, manage, and supervise the Reconstruction.

(b) The proceeds of any policy of title insurance or condemnation award received by IBank in respect of the System shall be applied to prepay the Purchase Price in an amount equal to the sum of such proceeds multiplied by the Net Proceeds Ratio.

SECTION 5.11. Entry into Replacement Agreement.

The Purchaser acknowledges that IBank intends to issue, has issued, or may issue, Secured Bonds or Proceeds Bonds subsequent to the Effective Date of this Agreement, and that one requirement of the Secured Bonds and/or Proceeds Bonds will be the re-entry by the Purchaser into an agreement to replace this Agreement. So long as the terms of the replacement agreement are substantially identical to the term of this Agreement, the Purchaser hereby covenants and agrees to execute the replacement agreement and any related documents and to provide required certifications in a timely manner. The Purchaser understands and acknowledges that time is of the essence with respect to entry into such replacement agreement as such timing is mandated by Federal tax laws applicable to IBank's Proceeds Bonds and/or Secured Bonds. The Purchaser's covenant set forth in this Section 5.11 is hereinafter referred to as the "Replacement Agreement Covenant."

SECTION 5.12. Further Assurances.

The Purchaser will adopt, make, execute, and deliver any and all such further resolutions, instruments, and assurances as may be reasonably required by IBank as necessary or proper to carry out the intention or to facilitate the performance of this Agreement and for the better assuring and confirming unto IBank of the rights, remedies, and benefits provided in this Agreement.

SECTION 5.13. Agreement to Complete Facility Delivery.

(a) The Purchaser agrees that it will perform all acts necessary to complete Facility Delivery, and construct, acquire, improve or install other facilities and real and personal property deemed by the Purchaser necessary for the operation of Facility. The Purchaser may supplement or amend the Facility description with written approval from IBank from time to time, provided that no such supplement or amendment shall (1) cause the Facility or any portion thereof to fail to constitute an eligible project under the Act, or (2) in any way affect the tax-exempt status of any Proceeds Bonds or Secured Bonds.

(b) At any time, upon request of IBank, the Purchaser agrees to make available to IBank for review and copying all then current plans and specifications for the Facility. The Purchaser may identify any proprietary information in such plans and specifications and, to the extent legally permissible, IBank agrees to keep such information confidential. However, for the avoidance of doubt, and not by limitation of the foregoing, IBank may disclose any such confidential information in connection with any Proceeds Bonds or Secured Bonds or in the event IBank is served with a subpoena, a valid discovery request, a notice to appear and produce

documents, or a valid California Public Records Act request, seeking, or that could be construed reasonably as seeking, such confidential information.

(c) As soon as the Facility is completed, the Purchaser shall evidence such completion by providing a certificate to IBank stating that (i) construction of the Facility has been completed substantially in accordance with the final plans and specifications therefor and all labor, services, materials, and supplies used in construction have been paid for, and (ii) all other facilities necessary in connection with the Facility have been constructed, acquired, and installed in accordance with the final plans and specifications therefor, and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights of the Purchaser against third parties for the payment of any amount not then due and payable which exist at the date of such certificate or which may subsequently exist.

(d) The Purchaser shall notify IBank forthwith upon the filing of a stop payment notice in connection with the Facility, the tender of a claim against any payment or performance bond related to the Facility, the recordation of a mechanics lien against Facility, the filing of litigation in connection with the Facility, the issuance of a mandatory or prohibitory injunction related to the Facility, or any other legal proceeding which may impact the completion of the Facility.

**SECTION 5.14. Collection of Rates, Fees and Charges.**

The Purchaser will have in effect at all times rules and regulations requiring each user of the System to pay the rates, fees, and charges applicable to the services provided by the System to each user. The Purchaser will not permit any part of the System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm, or person, or by any public agency (including the United States of America, the State, and any city, county, district, political subdivision, public corporation, or agency of any thereof); provided, that the Purchaser may without charge use the services provided by the System.

**SECTION 5.15. The Purchaser's General Responsibility.**

The Purchaser is solely responsible for Facility Delivery and the construction, operation, and maintenance of the Facility. Any review or approval of plans, specifications, bid documents, or other construction documents by IBank is solely for the purpose of proper administration of Facility Funds by IBank and shall not be deemed to relieve or restrict the Purchaser's responsibility or result in any duty, obligation, or responsibility on the part of IBank or the officers and agents thereof.

**SECTION 5.16. The Purchaser's Assurances and Commitments.**

**(a) Compliance with Laws, Regulations and the Criteria.**

The Purchaser shall at all times comply, and require its direct contractors, and their subcontractors, to comply with all State prevailing wage laws, all applicable federal and State laws, rules and regulations, the Criteria (except to the extent the express provisions of this Agreement conflict with the Criteria), and all local ordinances applicable to the Facility. This

specifically includes, but is not limited to environmental, procurement and safety laws, rules, regulations and ordinances. The Purchaser acknowledges and agrees that under no circumstances would its failure to act in accordance with the provisions of this subsection (a) result in any duty, obligation or responsibility on the part of IBank or the officers and agents thereof.

(b) Facility Construction Activities.

The Purchaser shall ensure that adequate supervision and inspection of Facility construction activities are maintained. IBank, either by itself or through its designee, reserves the right to conduct an audit of the Purchaser's construction expenditures during construction and for up to three years following receipt by IBank of notice of completion or other evidence of completion satisfactory to IBank. IBank, at its discretion, may require the Purchaser to conduct an interim and/or a final audit at the Purchaser's expense, such audit to be conducted by and a Report prepared by an Independent Accountant.

SECTION 5.17. Facility Access.

The Purchaser shall ensure that IBank or its designee have suitable access to the Facility site at all reasonable times so long as the Purchase Price remains unpaid and shall include provisions ensuring such access in all contracts and subcontracts relating to the Facility.

SECTION 5.18. Operation and Maintenance of the Facility.

The Purchaser agrees to commence operation of the Facility upon the completion thereof. The Purchaser covenants and agrees that it will, at its own cost and expense, operate and maintain the Facility, and every portion thereof, in accordance with all governmental laws, ordinances, approvals, rules, codes, regulations, and requirements including, without limitation, such zoning, sanitary, pollution and safety ordinances and laws, and such rules and regulations thereunder as may be binding upon the Purchaser. The Purchaser further covenants and agrees that it will, at its own cost and expense, maintain, preserve, keep, and operate the Facility and will maintain, keep, preserve, and operate the same, now or hereafter at any time constituting part of the Facility, in good repair, working order and condition as necessary to operate the Facility for its intended purposes, subject only to normal wear and tear, and that it will from time to time make or cause to be made all needful and proper replacements, repairs, renewals, and improvements, in each case to the extent necessary so that the efficiency and value of the Facility shall not be impaired. IBank shall have no responsibility or obligation for any of these matters or for the making of additions or improvements to the Facility.

SECTION 5.19. Performance and Payment Bonds.

(a) The Purchaser shall require its direct contractor(s) for the Facility to certify under penalty of perjury, and provide the Purchaser with a copy of such certification, which shall be available for IBank's inspection, if requested, that, in connection with the construction of the Facility, it has obtained a bond or bonds by one or more authorized surety companies satisfactory to the Purchaser; such surety companies must be authorized to do business in California, be an admitted surety insurer, and have an agent for service of process in California.

(b) Said bonds shall be in the following amounts and for the following purposes: (i) a performance bond(s) in an amount not less than one hundred percent (100%) of the total amount of the construction agreement(s) for the Facility, guaranteeing the faithful performance of the terms of the Facility construction agreement(s), including the maintenance of the work required under the Facility construction agreement(s) for a period of one year from the date of the Purchaser's final acceptance, and the prompt correction of any defective work or labor done, or defective materials furnished, pursuant to the Facility construction agreement(s) and (ii) a payment bond(s) in an amount not less than one hundred percent (100%) of the total amount of the Facility construction agreement(s), securing payment to the subcontractors and to persons renting equipment or furnishing labor or materials to such subcontractors or to the Purchaser's direct contractors, or to any other claimant as defined in Civil Code Section 8004, under the Facility construction agreement(s).

SECTION 5.20. Continuing Disclosure.

If requested by IBank, the Purchaser hereby covenants and agrees to furnish certain financial and operating data pertaining to the Purchaser that may be required to either: (i) enable IBank to issue any, or perform its obligations under existing, Proceeds Bonds or Secured Bonds; or (ii) enable any underwriter of any Proceeds Bonds or Secured Bonds to comply with Rule 15c2-12(b)(5) of the Securities and Exchange Commission.

SECTION 5.21. Notice of Purchaser Event of Default.

The Purchaser covenants that it will deliver to IBank, immediately after the Purchaser shall have obtained knowledge of the occurrence of an Event of Default or a failure as described in Section 7.01, the written statement of an authorized officer of the Purchaser setting forth the details of such Event of Default or failure, and the action which the Purchaser proposes to take with respect thereto.

SECTION 5.22. Maintenance of Insurance.

(a) The Purchaser will procure and maintain or cause to be procured and maintained insurance on the System with responsible insurers, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System; provided, however, that such insurance shall be in an amount at least equal to the full replacement value of the Facility. Such insurance may be subject to a deductible clause of not to exceed one hundred thousand dollars (\$100,000).

(b) The Purchaser shall procure and maintain, or cause to be procured and maintained a standard commercial general liability insurance policy in protection of the Purchaser, the IBank and their directors, officers and employees and, when requested by the IBank, the Trustee, indemnifying and defending such parties against direct or contingent loss or liability for damages for personal injury, death or property damage related to the possession, operation or use of the Facility with a minimum combined single limit of one million dollars (\$1,000,000) for personal injury or death of one or more persons, and for property damage, in each accident or event (subject to a deductible clause of not to exceed one hundred thousand dollars (\$100,000) or such greater amount as may be covered by any self-insurance or self-funding method or plan permitted by this Section). IBank

shall be named as an additional insured, and when requested by IBank the Trustee shall also be named as an additional insured.

(c) The Purchaser will cause to be procured and maintained a standard, commercially reasonable, commercial general liability policy of the direct contractor(s) for the Facility with a minimum combined single limit of one million dollars (\$1,000,000) for personal injury or death of one or more persons, and for property damage, in each accident or event (subject to a deductible clause of not to exceed one hundred thousand dollars (\$100,000)). The Purchaser and IBank shall be named as an additional insured under such insurance policy. The Purchaser shall also cause to be procured and maintained a standard, commercially reasonable, worker's compensation insurance policy of the direct contractor(s) for the Facility in an amount equal to at least the required statutory minimum. The Purchaser and IBank shall be named as an additional insured under such insurance policy.

(d) The Purchaser will cause to be procured and maintained by its direct contractor(s) a builder's risk insurance policy with coverages equal to the amount of the fixed price construction contract for the Facility.

(e) The Purchaser shall on the Effective Date, and annually on each anniversary of the Effective Date thereafter, provide a Certificate of the Purchaser to IBank certifying that the insurance required under this Section 5.22 is in effect, together with copies of the declarations pages for each policy required hereunder and each additional insured endorsement required hereunder.

#### SECTION 5.23. Facility Construction.

(a) The Facility is described in Exhibit B and the Purchaser shall make no changes thereto or the operation thereof without the prior written consent of IBank, which consent shall be granted or denied in IBank's reasonable discretion. Further, IBank may condition any such consent upon receipt of an Opinion of Counsel to the effect that any such changes will not affect the qualification of the Facility for tax exempt financing under the Code.

(b) The Purchaser shall not enter into a contract for the construction of the Facility unless it is in the form of a fixed price construction contract; provided, however, that this provision shall not apply to contracts in an amount below that required to be bid publicly under State law.

(c) Included within the Facility Funds are construction contingency funds in the amount of one million two hundred sixty-two thousand two hundred fifty dollars (\$1,262,250). Absent IBank's express prior written consent, which consent shall be granted or denied in IBank's sole and absolute discretion, construction contingency funds shall be used solely for the purpose of paying any reasonably unforeseen increased costs in connection with the construction of the Facility. It is expressly understood that the Purchaser shall have no obligation to replenish or otherwise restore the contingency funds to their original amount as they are used to cover reasonably unforeseen increased Facility construction costs. All such increased costs shall be documented by a change order (or change orders) executed pursuant to the fixed price construction contract between the Purchaser and the direct contractor(s) for the Facility.

(d) The Purchaser has pre-qualified all direct contractors bidding on the Facility by using its internally-required contractor pre-qualification questionnaire, which questionnaire substantially meets the intent of the model pre-qualification questionnaire approved by the State Department of Industrial Relations pursuant to Public Contract Code Section 20101.

SECTION 5.24. Compliance with Contracts.

The Purchaser will comply with, keep, observe, and perform all agreements, conditions, covenants, and terms, express or implied, required to be performed by it contained in all contracts for the use of the System, and all other contracts affecting or involving the System to the extent that the Purchaser is a party thereto.

SECTION 5.25. *Reserved.*

SECTION 5.26 Maintenance of Lien Parity Conditions.

To the extent the Parity Debt Instruments continue to impose a lien on System Revenues and/or legally available amounts in the Enterprise Fund, the Purchaser will at all times comply with, keep, observe, and perform all requirements, conditions, covenants, duties, and terms for the lien on System Revenues and legally available amounts in the Enterprise Fund created by this Agreement to be on parity with the lien on System Revenues and legally available amounts in the Enterprise Fund created by the Parity Debt Instruments, including, but not limited to, satisfying any debt service coverage and reserve requirements.

SECTION 5.27 Covenant to Comply with Prop 218 Law.

The Purchaser shall at all times ensure that the rates, fees and charges imposed on its customers comply with the Prop 218 Law. In the event any party (or parties) institutes litigation or an administrative proceeding challenging the Purchaser's rates and charges or any other aspect of its compliance with Prop 218 Law (collectively, a "Rate Challenge"), the Purchaser shall as soon as practicable, but no later than 30 days after the Purchaser becomes aware of the Rate Challenge, provide IBank with written notice of such Rate Challenge. Further, the Purchaser will expeditiously take steps to (i) diligently defend against the Rate Challenge; or (ii) conform its rates or other practices in a manner that fully addresses the deficiencies underlying the Rate Challenge. The Purchaser shall provide IBank with a second written notice indicating its chosen course of action as soon as practicable.

## ARTICLE VI

### NEGATIVE COVENANTS OF THE PURCHASER

SECTION 6.01. Limitation on Additional Obligations; No Senior Debt.

The Purchaser hereby covenants that, until the Purchase Price has been paid in full and this Agreement has been discharged pursuant to Section 8.05, the Purchaser shall not after the date of this Agreement issue any Senior Debt and shall not issue any bonds, notes, or other obligations, enter into any agreement or otherwise incur any loans, advances, or obligations, which are in any case secured by a lien on all or any part of System Revenues or on those legally

available amounts on deposit in the Enterprise Fund that is on parity with the lien established hereunder for the security for the payment of the Installment Payments and Additional Payments, excepting only Parity Debt meeting the requirements of Section 2.11 herein. The Purchaser may issue or incur Subordinate Debt upon compliance with the requirements of Section 2.16 herein.

SECTION 6.02. Disposition of Property.

The Purchaser hereby covenants that it will not authorize or effect the disposition of real or personal property constituting more than ten percent (10%) of the value of the System unless the Purchaser first obtains, and provides a copy to IBank, of: (i) a Report of an Independent Consultant concluding that such disposition will not substantially adversely affect the security for the payment of the Installment Payments and Additional Payments; and (ii) an Opinion of Counsel concluding that such disposition will not cause the interest on any Secured Bonds or Proceeds Bonds to no longer be excluded from federal gross income. The Purchaser hereby covenants that it will not dispose of any portion of the Facility while the Purchase Price is unpaid except for property that is not operating or is worn out, and for the dedication of public streets and public and private utility easements.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01. Events of Default and Acceleration.

(a) Each of the following events shall constitute an Event of Default hereunder:

(1) Failure by the Purchaser to pay any Installment Payment or interest or prepayment premium (if any) or any Additional Payment pursuant to Section 3.03(a) when and as the same shall become due and payable;

(2) Failure by the Purchaser to observe and perform any of the covenants, agreements or conditions on its part contained in this Agreement, other than as referred to in the preceding subsection (1), or if any representation or warranty fails to be true and correct in all material respects, for a period of sixty (60) days after written notice has been given to the Purchaser by IBank, or to the Purchaser and IBank, specifying such failure and requesting that such failure be remedied; provided, however, that if the failure stated in such notice can be corrected, but not within such sixty (60) day period, IBank may consent to an extension of such time if corrective action is instituted by the Purchaser within such sixty (60) day period and diligently pursued until such failure is corrected;

(3) The filing by the Purchaser of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Purchaser, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Purchaser or of the whole or any substantial part of its property;



(4) Any representation or other written statement made by the Purchaser contained in this Agreement, the application for financing or in any instrument furnished in compliance with or in reference thereto shall prove to have been incorrect in any material respect;

(5) An unexcused failure by the Purchaser to pay amounts due under any bond, note, installment sale agreement, capital lease, or other agreement or instrument to which it is a party relating to the borrowing of money, if such unpaid amount shall exceed fifty thousand dollars (\$50,000); or

(6) The occurrence of an event of default with respect to any Parity Instrument or any Subordinate Debt Instrument which causes all principal of such Parity Debt or Subordinate Debt to become due and payable immediately.

(b) If an Event of Default has occurred and is continuing, IBank may (i) declare the principal of the Purchase Price, together with the accrued interest on all unpaid installments thereof, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Agreement to the contrary notwithstanding, and (ii) exercise any other remedies available to IBank in law or at equity. Immediately upon becoming aware of the occurrence of an Event of Default, IBank shall give notice of such Event of Default to the Purchaser by telephone, telecopier, facsimile or other telecommunication device, promptly confirmed in writing. This provision, however, is subject to the condition that if, at any time after the principal of the Purchase Price shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Purchaser shall deposit with IBank a sum sufficient to pay all installments of principal of the Purchase Price due prior to such declaration and all accrued interest thereon, with interest on such overdue Installment Payments at the rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law, and the reasonable expenses of IBank (including but not limited to attorney's fees and costs), and any and all other defaults known to IBank (other than in the payment of principal of and interest on the Purchase Price due and payable solely by reason of such declaration), including the payment of Additional Payments due and owing, shall have been made good or cured to the satisfaction of IBank or provision deemed by IBank to be adequate shall have been made therefor, then, and in every such case, IBank may, by written notice to the Purchaser, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

#### SECTION 7.02. Remedies.

Upon the occurrence of an Event of Default IBank shall have the following rights, in addition to its rights under Section 7.01:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the Purchaser or any member, officer, or employee thereof, and to compel the Purchaser or any such member, officer, or employee to perform and carry out its or his duties

under law and the agreements and covenants required to be performed by it or him contained herein;

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of IBank; or

(c) By suit in equity to require the Purchaser and its members, officers, and employees to account as the trustee of an express trust.

SECTION 7.03. Application of Funds upon Default.

All amounts received by IBank pursuant to any right given or action taken by IBank under provisions of this Agreement, or otherwise held by IBank upon the occurrence of an Event of Default, shall be applied by IBank in the following order:

(a) First, to the payment of the costs and expenses of IBank, including reasonable compensation to their agents and attorneys, including IBank employees, as set forth in Section 2.06; and

(b) Second, to the payment of the whole amount of Installment Payments then due and unpaid, with interest on overdue Installment Payments at the rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law; provided, however, that in the event such amounts shall be insufficient to pay in full the amount of such Installment Payments, then such amounts shall be applied in the following order of priority:

(1) First, to the payment of all installments of interest on the Purchase Price then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full;

(2) Second, to the payment of principal of all installments of the Purchase Price then due and unpaid, other than principal having come due and payable solely by reason of acceleration pursuant to Section 7.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full;

(3) Third, to the payment of principal of the Purchase Price then due and unpaid and having come due and payable solely by reason of acceleration pursuant to Section 7.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full; and

(c) Third, to the payment to IBank of other Additional Payments as described in Section 2.06.

SECTION 7.04. No Waiver.

Nothing in this Article VII or in any other provision of this Agreement shall affect or impair the obligation of the Purchaser, which is absolute and unconditional, to pay from Net System Revenues and other amounts pledged hereunder, all payments due hereunder, or affect or

impair the right of action, which is also absolute and unconditional, of IBank to institute suit to enforce such payment by virtue of the contract embodied in this Agreement.

A waiver of any default by IBank shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of IBank to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein, and every power and remedy conferred upon IBank by this Article VII may be enforced and exercised from time to time and as often as shall be deemed expedient by IBank.

If a suit, action, or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to IBank, the Purchaser and IBank shall be restored to their former positions, rights, and remedies as if such suit, action, or proceeding had not been brought or taken.

SECTION 7.05. Remedies Not Exclusive.

No remedy herein conferred upon or reserved to IBank is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. California Law; Venue.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State. Any action or proceeding arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California, unless otherwise expressly agreed to by IBank in its sole and absolute discretion.

SECTION 8.02. Assignment of IBank's Rights.

The Purchaser hereby agrees and acknowledges that IBank's rights, including but not limited to the right to receive Installment Payments and Additional Payments under this Agreement may, in IBank's sole and absolute discretion, be assigned by IBank to the Trustee or another party for the purpose of securing the payment of any bonds, notes, or other obligations issued by IBank and secured by this Agreement and the Installment Payments and Additional Payments, without the need for consent by the Purchaser. Accordingly, the Purchaser agrees to make all payments due hereunder to the Trustee when so directed by IBank, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach hereof or otherwise) that the Purchaser may have from time to time against IBank. The Purchaser agrees to execute all documents, including notices of assignment and chattel mortgages or financing

statements, which IBank or the Trustee may request, in their sole and absolute discretion, in connection with any such assignment by IBank.

SECTION 8.03. Third Party Beneficiaries.

The Trustee is hereby expressly designated as a third party beneficiary hereunder for the purpose of enforcing any of the rights hereunder assigned to said Trustee and for the purpose of said Trustee enforcing its own rights. Nothing in this Agreement, expressed or implied, is intended to give to any person other than IBank, the Purchaser, and the Trustee, any right, remedy, or claim under or by reason of this Agreement. All covenants, stipulations, promises, or agreements contained in this Agreement by and on behalf of the Purchaser shall be for the sole and exclusive benefit of IBank, the Trustee, and their permitted assigns.

SECTION 8.04. Successor Entities.

Whenever in this Agreement either the Purchaser or IBank is named or referred to, such reference shall be deemed to include the permitted successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the Purchaser or IBank shall bind and inure to the benefit of the respective permitted successors and assigns thereof, whether so expressed or not. The Trustee will be IBank's initial assignee.

SECTION 8.05. Discharge of Agreement.

Upon the Purchaser's payment of the outstanding principal of, outstanding interest on, and prepayment premium (if any) on the Purchase Price, together with all Additional Payments, pursuant to this Agreement, then all obligations of IBank under this Agreement, all obligations of the Purchaser under this Agreement with respect to the Purchase Price, and, at the written election of the Purchaser, the pledge of and lien upon the System Revenues and all legally available amounts in the Enterprise Fund provided for in this Agreement, shall cease and terminate, excepting only the obligations of the Purchaser pursuant to the tax covenants herein, including but not limited to Section 5.07, indemnification obligations, including but not limited to Section 8.14, and the choice of law and venue provisions under Section 8.01. Notice of such election shall be filed with IBank.

SECTION 8.06. Amendment.

No term or provision of this Agreement may be waived or otherwise modified except by a written agreement signed by the Parties. The Parties acknowledge and agree that the previous sentence shall be interpreted, enforced, and adhered to strictly, notwithstanding any legal doctrine, rule, statute, or case law that may permit oral modification of this Agreement, or that may find under certain circumstances the portion of this Section 8.06 requiring all modifications to this Agreement be in writing is waived orally or by the Parties' conduct. To the greatest extent permissible under the law, the Parties hereby agree to waive any legal doctrine, rule, statute, or case law that permits, or could be construed to permit, modification of this Agreement by means other than a writing signed by both Parties.

SECTION 8.07. Waiver of Personal Liability.

No member, officer, agent, or employee of the Purchaser shall be individually or personally liable for the payment of the principal of, premium, if any, or the interest under this Agreement; but nothing herein contained shall relieve any such member, officer, agent, or employee from the performance of any official duty provided by law.

SECTION 8.08. Arm's Length Transaction.

The Purchaser acknowledges and agrees that IBank is acting solely as seller under this Agreement and not an advisor to the Purchaser, including that: (i) the transaction contemplated by this Agreement is an arm's-length commercial transaction, (ii) in connection therewith and with the financing discussions, undertakings and procedures leading up to the consummation of such transaction, IBank is and has been acting solely as a principal and is not acting as the agent or fiduciary of or in any way advising the Purchaser, including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules, (iii) IBank has not provided any advice or assumed an advisory or fiduciary responsibility in favor of the Purchaser with respect to the financing contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether IBank, or any party related to IBank, has provided other services, or advised, or is currently providing other services, or advising, the Purchaser on other matters) and IBank has no obligation to the Purchaser with respect to the financing contemplated hereby except the obligations expressly set forth in this Agreement, (iv) IBank has financial and other interests that differ from those of the Purchaser, and (v) the Purchaser has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

SECTION 8.09. Notices.

All written notices to be given under this Agreement shall be given by first-class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time, except that notices from the Purchaser to IBank shall be given by registered mail, or by telecommunication confirmed in writing. Notice shall be effective forty-eight (48) hours after deposit in the United States mail, postage prepaid or, in the case of any notice to IBank, or in the case of personal delivery to any person, upon actual receipt at the address set forth below:

If to IBank:

California Infrastructure and Economic Development Bank  
Attn: Loan Servicing Manager, Agreement Number ISRF 19-134  
P.O. Box 2830  
Sacramento, CA 95812-2830

For overnight mail or personal delivery only:

California Infrastructure and Economic Development Bank  
Attn: Loan Servicing Manager, Agreement Number ISRF 19-134  
1325 J Street, 13<sup>th</sup> Floor  
Sacramento, CA 95814

With a copy to the General Counsel of IBank at the same address.

If to the Purchaser:                   City of Escondido  
  201 N. Broadway  
  Escondido, CA 92025-2790  
  Attn.: General Manager

Or to such other address as may be designated in writing by the Purchaser.

SECTION 8.10.    Contact Persons.

(a)     The Executive Director of IBank or such other person as designated in writing by IBank shall manage this Agreement for IBank and shall have authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under this Agreement.

(b)     The Purchaser's contact person shall be its Director of Utilities, or such other person as may be designated in writing by the Purchaser (the "Purchaser Representative"). The Purchaser's Director of Utilities shall be the Purchaser Representative for the administration of this Agreement and shall have full authority to act on behalf of the Purchaser and may designate in writing another person or persons authorized to request disbursement of Facility Funds. All communications given to the Purchaser's Director of Utilities shall be as binding as if given to the Purchaser.

SECTION 8.11.    Partial Invalidity.

The illegality, unenforceability, or invalidity of any provision of this Agreement with regard to any Party or circumstance shall not render that provision illegal, unenforceable, or invalid with regard to any other Party or circumstance. All provisions of this Agreement, in all other respects, shall remain legal, enforceable, and valid to the fullest extent permitted by law. If any provision of this Agreement is held to be illegal, unenforceable, or invalid by a court of competent jurisdiction, then such provision shall be deemed severed from this Agreement and this Agreement shall be construed and enforced as if such illegal, unenforceable, or invalid provision had never been part hereof.

SECTION 8.12.    Binding Effect.

This Agreement shall inure to the benefit of and shall be binding upon IBank and the Purchaser and their respective successors and assigns.

SECTION 8.13. Entire Agreement.

Except as expressly stated herein, this Agreement, together with the exhibits and attachments hereto, constitutes the entire agreement among the Parties. Except as expressly stated herein, there are no understandings, agreements, representations or warranties, express or implied, not specified herein or therein regarding this Agreement or the Facility financed hereunder. Any terms and conditions of any purchase order or other document submitted by the Purchaser in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on IBank and will not apply to this Agreement.

SECTION 8.14. Indemnification.

The Purchaser shall, to the fullest extent permitted by law, indemnify, protect, hold harmless, save and keep harmless IBank and its members, directors, officers, attorneys, advisors, employees, and agents (collectively, the "Indemnified Parties") from and against any and all liability, obligations, losses, claims, demands, damages, actions, causes of action, liens, stop payment notices, or costs whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses as incurred, penalties and interest (collectively, a "Claim"), arising out of, related to or as the result of entering into this Agreement, and the acquisition, construction, operation, use, condition, or possession of the Facility and any portion thereof, including without limitation:

- (a) any accident in connection with the operation, use, condition, or possession of the Facility resulting in damage to property or injury to or death to any person including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the Purchaser or IBank;
- (b) patent, trademark or copyright infringement, or similar claims as a consequence of the operation, use, occupancy, or maintenance of the Facility;
- (c) strict liability in tort as a consequence of the operation, use, occupancy, or maintenance of the Facility;
- (d) any Claim based upon any environmental law or regulation relating to the Facility;
- (e) any Claim of any nature directly arising from or related to the Facility, which Claim is based upon the operation of the Facility from and after the Effective Date;
- (f) the existence, placement, delivery, storage, or release of hazardous materials on or from the Facility or contamination of property, arising therefrom;

(g) either (a) the application of the Facility Funds, or other amounts subject to the Purchaser's control treated as "gross proceeds" of the Proceeds Bonds or Secured Bonds in such manner that any portion of the Proceeds Bonds or Secured Bonds becomes an "arbitrage bond" within the meaning of Code sections 103(b)(2) and 148, with the result that interest on the Proceeds Bonds or Secured Bonds is or becomes subject to federal income taxation of the holder of the Proceeds Bonds or Secured Bonds; or (b) if as a result of any act, failure to act, or use of the proceeds of any portion of the Facility Funds or the Facility, or any misrepresentation or inaccuracy in any of the representations, warranties, or covenants contained in this Agreement or the enactment of any federal legislation or the promulgation of any federal rule or regulation after the date of this Agreement, all or any portion of the interest on any portion of the Proceeds Bonds or Secured Bonds becomes subject to federal income taxation;

(h) the consummation or carrying out of any of the transactions contemplated by this Agreement or any related document; and

(i) information provided by the Purchaser which is used in connection with the Proceeds Bonds or the Secured Bonds.

The indemnification arising under this Section 8.14 shall continue in full force and effect notwithstanding the full payment of all obligations hereunder and shall survive the termination of this Agreement for any reason. Any party seeking indemnity hereunder shall promptly give notice to the Purchaser of any Claim or liability hereby indemnified against upon learning of any circumstances giving rise to any such Claim or liability. The Purchaser's obligation to indemnify, defend, protect, hold harmless, save, and keep harmless the Indemnified Parties as provided in this Section 8.14 shall arise immediately upon any Claim covered under this Section 8.14 being asserted against an Indemnified Party, whether orally, in writing, or in any court or administrative action or proceeding.

SECTION 8.15. Expectations.

The undersigned is an authorized representative of the Purchaser acting for and on behalf of the Purchaser in executing this Agreement. To the best of the knowledge and belief of the undersigned, there are no other facts, estimates or circumstances that would materially change the expectations as set forth herein, and said expectations are reasonable.

SECTION 8.16. Section Headings.

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision hereof.

SECTION 8.17. Time of the Essence.

Subject to the remainder of this Section 8.17, time is of the essence with respect to this Agreement and the performance of each obligation contained in this Agreement. Whenever the time for performance of any obligation under this Agreement, or if under this Agreement a Party must act by a particular time or date, or if an act is effective only if done by a particular time or date, and the last date for performance of such obligation or the doing or effectiveness of such



act falls on a Saturday, Sunday, or legal holiday in the State, the time for performance of such obligation or the doing or effectiveness of such act shall be extended to the next day that is not a Saturday, Sunday, or a legal holiday in the State. The first day shall be excluded and the last day shall be included when computing the time in which an obligation is to be performed or an act is to be done under this Agreement. Unless otherwise provided herein all time periods shall end at 5:00 p.m. California time.

SECTION 8.18. Form of Documents.

The form and substance of all documents and instruments to be delivered to IBank under the terms of this Agreement, if any, shall be at all times subject to IBank's approval, in its reasonable discretion. No document or instrument delivered to IBank, or to be delivered to IBank, or which is subject to the approval of IBank, shall be amended, modified, superseded, or terminated in any respect whatsoever without IBank's prior written approval.

SECTION 8.19. Waiver of Consequential Damages.

To the fullest extent permitted by law, the Purchaser shall not assert, and hereby waives, any claim against IBank on any theory of liability for special, indirect, consequential, or punitive damages (as opposed to direct actual damages) arising from, or in connection with, this Agreement.

SECTION 8.20. Nondiscrimination.

(a) During the performance of this Agreement, the Purchaser shall ensure that any direct contractor and its subcontractors constructing the Facility shall not deny the contracts' benefits to any person on the basis of race, color, religion, ancestry, national origin, ethnic group identification, marital status, gender, sex, sexual orientation, age, medical condition, physical handicap or disability, mental disability, political affiliation, or position in a labor dispute, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, religion, national origin, ethnic group identification, ancestry, physical handicap or disability, mental disability, medical condition, marital status, age, gender, sex, sexual orientation, political affiliation, or position in a labor dispute. The Purchaser shall ensure that any direct contractor and its subcontractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

(b) The Purchaser shall ensure that any direct contractor and its subcontractors constructing the Facility shall comply with the applicable provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0 et seq.) the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any regulations promulgated thereunder.

(c) The Purchaser shall ensure that any direct contractor and its subcontractors constructing the Facility shall not knowingly give preferential treatment of any kind whatsoever in connection with any business transaction related to the construction or operation of the

Facility to any of its affiliates or to any business enterprise in which the Purchaser has any financial interest, but in such business transactions shall deal at all times with such affiliates and enterprises on the same basis as though dealing with any other parties.

(d) The Purchaser shall ensure that any direct contractor and its subcontractors constructing the Facility shall, with respect to the Facility, give written notice of their obligations under this section to labor organizations representing employees of the Purchaser and any contractor or subcontractor performing work on the Facility which have a collective bargaining or other contract with the Purchaser, such contractor or subcontractor.

(e) The Purchaser shall ensure that any direct contractor and its subcontractors constructing the Facility shall include the provisions of this section in all subcontracts to perform work with respect to the Facility.

SECTION 8.21. Execution in Counterparts.

This Agreement shall become enforceable upon its execution and delivery. This Agreement may be executed and entered into in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 8.22. Disclaimer of Warranties.

IBank makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability, or fitness for any particular purpose or fitness for the use contemplated by the Purchaser for the Facility, or any item thereof, or any other representation or warranty with respect to the Facility or any item thereof.

SECTION 8.23. Usury Savings.

Nothing herein shall be construed as entitling IBank to charge, receive, or collect interest in a sum greater than the maximum interest rate permitted to be charged by IBank to the Purchaser under applicable law (the "Maximum Rate"). The Parties intend that this Agreement shall comply with applicable law and that the rate or rates of interest charged hereunder shall not exceed the Maximum Rate. If the occurrence of any circumstance, event or contingency should cause such interest to exceed interest at the Maximum Rate, any such excess amount shall be applied to the reduction of the unpaid principal component of the Installment Payments. As used herein, the term "applicable law" shall mean the law in effect as of the date hereof; provided, however, that in the event there is a change in the law which results in a different permissible rate of interest, then this Agreement shall be governed by such new law as of its effective date.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective officers on the dates set forth below.

CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK, as Seller

By \_\_\_\_\_  
Nancee Robles  
Acting Executive Director

Date \_\_\_\_\_

CITY OF ESCONDIDO, as Purchaser

By \_\_\_\_\_  
Christopher W. McKinney  
Director of Utilities

Date \_\_\_\_\_

## **EXHIBIT A**

### **APPROVING RESOLUTION OF THE PURCHASER**

*[To be Attached to Executed Agreement]*

## **EXHIBIT B**

### **DESCRIPTION OF FACILITY**

#### **Description of the Facility**

Generally, the Facility consists of demolishing and removing an existing 2.0 million gallon above-ground steel water tank and replacing with two 1.5 million gallon partially buried concrete potable water tanks, and includes all necessary equipping, installation, design, engineering, construction, construction contingency, demolition, removal, resurfacing, restoration, landscaping, permitting, construction management, project administration, and general project development activities. More specifically, the Facility includes the following elements:

- Demolition and removal of the existing 2.0 MG, above-ground, steel Lindley Reservoir Water Tank and demolition/removal or abandonment in-place of appurtenant facilities such as valves and pipelines;
- Construction of two, 1.5 MG, partially buried concrete water tanks and installation of related valves, pipelines, and other appurtenances;
- Construction of a separate, partially buried, valve vault structure and associated structures (retaining walls) and facilities (valves, pipelines, and related appurtenant assemblies);
- Construction of two asphalt-concrete access road spurs extending to the new tanks and valve vault;
- Installation of a subsurface potable water pipeline;
- Construction of a detention basin to provide flow regulation and water quality treatment for site storm water drainage;
- Backfilling and grading the existing tank site and landscaping the existing and new tank sites; and
- Other components necessary or desirable in connection with an infrastructure project of this type and that are consistent with the applicable requirements of the IBank Act and the Criteria.

## **EXHIBIT C**

### **CONDITIONS PRECEDENT TO DISBURSEMENT**

#### **A. Conditions Precedent to Initial Disbursement**

No Facility Funds shall be disbursed pursuant to this Agreement until and unless the Purchaser has submitted the following to IBank:

- (1) Insurance Certificate of the Purchaser required by Section 5.22.

#### **B. Conditions Precedent to Disbursement for Construction Costs**

No Facility Funds shall be disbursed for construction costs for the Facility until and unless the Purchaser has submitted the following to IBank:

- (1) A copy of the Purchaser's direct contractor(s)' builder's risk, commercial general liability, and worker's compensation insurance policies satisfying the requirements of Section 5.22, unless specifically waived by IBank;

- (2) A copy of the Purchaser's direct contractor's payment and performance bonds satisfying the requirements set forth in Section 5.19 of this Agreement; and

- (3) A copy of the executed direct contract(s) for the Facility between the Purchaser and its direct contractor(s), including any exhibits, attachments, or change orders, if and when applicable.

#### **C. Conditions Precedent to Final Disbursement**

The final disbursement of Facility Funds shall not be made until the Purchaser has provided the following to IBank:

- (1) Recorded notice of completion for the Facility or other evidence of completion satisfactory to IBank;

- (2) Lien waivers for the Facility, or evidence of the passage of the applicable statutory time periods for filing mechanics and other similar liens; and

- (3) Certification by the Purchaser that the Facility has been completed according to its approved final plans and specifications, that the completed Facility is consistent with the definition of Facility in this Agreement and is acceptable to IBank.

## EXHIBIT D

### FORM OF OPINION OF LEGAL COUNSEL TO PURCHASER

*Attorney letterhead*

*To be signed and dated as of the Effective Date*

City of Escondido  
201 N. Broadway  
Escondido, CA 92025-2790

California Infrastructure and Economic Development Bank  
1325 J St. 13<sup>th</sup> Floor  
Sacramento, CA 95814

RE: Installment Sale Agreement, By and Among the City Escondido and the California Infrastructure and Economic Development Bank ("IBank"), dated as of June 1, 2019.

Ladies and Gentlemen:

In my capacity as legal counsel to the City Escondido (the "City") and in connection with the above described financing agreement (the "Financing Agreement"), I have examined the laws pertaining to the City; copies of the Financing Agreement; the City's Resolution Nos. 2019-47 and 2019-75 (collectively, the "Resolutions"); the documents related to the 2002 DWR Loan, the 2007 COPS, the 2009 DPH Loan, and the 2012 Bonds (each as defined in the Financing Agreement and collectively, the "Existing Financing Documents"); the City's System (as defined in the Financing Agreement) rate and fee structure; and such other information and documents as I considered necessary to render this opinion.

Based upon the foregoing, it is my opinion that:

(i) the City is a municipal corporation and a general law city duly organized and validly existing pursuant to the laws of the State of California;

(ii) the Resolutions and other actions of the City approving and authorizing the execution and delivery of the Financing Agreement were duly adopted at meetings of the governing body of the City which were called and held pursuant to law, in accordance with all public notice required by law and at which a quorum was present and acting throughout and such approval and authority is continuing and in full force and effect as of the date hereof;

(iii) the City has the full right and lawful authority to execute and deliver the Financing Agreement and the Financing Agreement has been duly authorized and executed on behalf of the City

and the Financing Agreement is the legal, valid and binding obligations of the City enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, moratorium, or similar laws, or by legal or equitable principles relating to or limiting creditors' rights generally;

(iv) to the best of my knowledge, after due inquiry, the execution and delivery of the Financing Agreement and compliance with the provisions thereof, under the circumstances contemplated thereby, does not and will not, in any material respect, conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the District is a party, including, but not limited to, the Existing Financing Documents, or by which it is bound or any existing law, regulation, court order or consent decree to which the City is subject;

(v) The City's obligations under the Financing Agreement constitute permitted parity obligations under the Existing Financing Documents, and based on my independent review, and in conjunction with information the City provided me related to the City's existing debt service and revenues, and the payments required under the Financing Agreement, the parity debt conditions set forth in the Existing Financing Documents have been satisfied as of the date of this letter.

(vi) the rates, fees and charges the City imposes on its System customers are legal, valid and comply with California Constitution article XIID, the statues implementing it, and the published California Appellate Court and Supreme Court decisions interpreting it;



(vii) to the best of my knowledge, after due inquiry, there is no action, suit, proceeding, inquiry or investigation before or by any court or public body pending or threatened against or affecting the City: (1) challenging or questioning the transactions contemplated by the Financing Agreement or any other agreement, document or certificate related to such transactions; (2) challenging or questioning the creation, organization, existence or powers of the City; (3) seeking to enjoin or restrain the execution of the Financing Agreement or the construction of the Facility (as defined in the Financing Agreement) or the collection of any of the revenues used for making payments under the Financing Agreement; (4) in any way questioning or affecting any authority for the execution of the Financing Agreement or the validity or enforceability of the Financing Agreement; or (6) in any way questioning or affecting any other agreement or instrument relating to the Financing Agreement to which the City is a party.

Sincerely,

---

***[Insert attorney name]***  
City Attorney, ***[Identity of Purchaser]***

**EXHIBIT E**  
AMORTIZATION SCHEDULE

Payment Date	Ending Principal Balance	Principal Payment	Interest Payment	Total Principal & Interest	Annual Fee	Total Payment	Total Payment Fiscal Year Ending June 30
13-Jun-2019	\$15,000,000.00						
1-Feb-2020			\$285,000.00	\$285,000.00		\$285,000.00	\$285,000.00
1-Aug-2020	\$14,668,279.93	\$331,720.07	\$225,000.00	\$556,720.07	\$45,000.00	\$601,720.07	
1-Feb-2021			\$220,024.20	\$220,024.20		\$220,024.20	\$821,744.27
1-Aug-2021	\$14,326,608.26	\$341,671.67	\$220,024.20	\$561,695.87	\$44,004.84	\$605,700.71	
1-Feb-2022			\$214,899.12	\$214,899.12		\$214,899.12	\$820,599.83
1-Aug-2022	\$13,974,686.45	\$351,921.82	\$214,899.12	\$566,820.94	\$42,979.82	\$609,800.77	
1-Feb-2023			\$209,620.30	\$209,620.30		\$209,620.30	\$819,421.06
1-Aug-2023	\$13,612,206.97	\$362,479.47	\$209,620.30	\$572,099.77	\$41,924.06	\$614,023.83	
1-Feb-2024			\$204,183.10	\$204,183.10		\$204,183.10	\$818,206.93
1-Aug-2024	\$13,238,853.12	\$373,353.86	\$204,183.10	\$577,536.96	\$40,836.62	\$618,373.58	
1-Feb-2025			\$198,582.80	\$198,582.80		\$198,582.80	\$816,956.38
1-Aug-2025	\$12,854,298.64	\$384,554.47	\$198,582.80	\$583,137.27	\$39,716.56	\$622,853.83	
1-Feb-2026			\$192,814.48	\$192,814.48		\$192,814.48	\$815,668.31
1-Aug-2026	\$12,458,207.54	\$396,091.11	\$192,814.48	\$588,905.59	\$38,562.90	\$627,468.48	
1-Feb-2027			\$186,873.11	\$186,873.11		\$186,873.11	\$814,341.60
1-Aug-2027	\$12,050,233.69	\$407,973.84	\$186,873.11	\$594,846.95	\$37,374.62	\$632,221.58	
1-Feb-2028			\$180,753.51	\$180,753.51		\$180,753.51	\$812,975.08
1-Aug-2028	\$11,630,020.64	\$420,213.06	\$180,753.51	\$600,966.56	\$36,150.70	\$637,117.26	
1-Feb-2029			\$174,450.31	\$174,450.31		\$174,450.31	\$811,567.57
1-Aug-2029	\$11,197,201.19	\$432,819.45	\$174,450.31	\$607,269.76	\$34,890.06	\$642,159.82	
1-Feb-2030			\$167,958.02	\$167,958.02		\$167,958.02	\$810,117.84
1-Aug-2030	\$10,751,397.16	\$445,804.03	\$167,958.02	\$613,762.05	\$33,591.60	\$647,353.65	
1-Feb-2031			\$161,270.96	\$161,270.96		\$161,270.96	\$808,624.61
1-Aug-2031	\$10,292,219.01	\$459,178.15	\$161,270.96	\$620,449.11	\$32,254.19	\$652,703.30	
1-Feb-2032			\$154,383.29	\$154,383.29		\$154,383.29	\$807,086.59
1-Aug-2032	\$9,819,265.51	\$472,953.50	\$154,383.29	\$627,336.78	\$30,876.66	\$658,213.44	
1-Feb-2033			\$147,288.98	\$147,288.98		\$147,288.98	\$805,502.42
1-Aug-2033	\$9,332,123.41	\$487,142.10	\$147,288.98	\$634,431.08	\$29,457.80	\$663,888.88	
1-Feb-2034			\$139,981.85	\$139,981.85		\$139,981.85	\$803,870.73
1-Aug-2034	\$8,830,367.05	\$501,756.36	\$139,981.85	\$641,738.22	\$27,996.37	\$669,734.59	
1-Feb-2035			\$132,455.51	\$132,455.51		\$132,455.51	\$802,190.09
1-Aug-2035	\$8,313,557.99	\$516,809.06	\$132,455.51	\$649,264.56	\$26,491.10	\$675,755.66	
1-Feb-2036			\$124,703.37	\$124,703.37		\$124,703.37	\$800,459.03
1-Aug-2036	\$7,781,244.66	\$532,313.33	\$124,703.37	\$657,016.70	\$24,940.67	\$681,957.37	
1-Feb-2037			\$116,718.67	\$116,718.67		\$116,718.67	\$798,676.04
1-Aug-2037	\$7,232,961.94	\$548,282.73	\$116,718.67	\$665,001.40	\$23,343.73	\$688,345.13	
1-Feb-2038			\$108,494.43	\$108,494.43		\$108,494.43	\$796,839.56
1-Aug-2038	\$6,668,230.73	\$564,731.21	\$108,494.43	\$673,225.64	\$21,698.89	\$694,924.52	
1-Feb-2039			\$100,023.46	\$100,023.46		\$100,023.46	\$794,947.98
1-Aug-2039	\$6,086,557.58	\$581,673.14	\$100,023.46	\$681,696.61	\$20,004.69	\$701,701.30	
1-Feb-2040			\$91,298.36	\$91,298.36		\$91,298.36	\$792,999.66
1-Aug-2040	\$5,487,434.25	\$599,123.34	\$91,298.36	\$690,421.70	\$18,259.67	\$708,681.38	
1-Feb-2041			\$82,311.51	\$82,311.51		\$82,311.51	\$790,992.89
1-Aug-2041	\$4,870,337.21	\$617,097.04	\$82,311.51	\$699,408.55	\$16,462.30	\$715,870.86	
1-Feb-2042			\$73,055.06	\$73,055.06		\$73,055.06	\$788,925.91
1-Aug-2042	\$4,234,727.26	\$635,609.95	\$73,055.06	\$708,665.01	\$14,611.01	\$723,276.02	
1-Feb-2043			\$63,520.91	\$63,520.91		\$63,520.91	\$786,796.93
1-Aug-2043	\$3,580,049.01	\$654,678.25	\$63,520.91	\$718,199.16	\$12,704.18	\$730,903.34	
1-Feb-2044			\$53,700.74	\$53,700.74		\$53,700.74	\$784,604.07
1-Aug-2044	\$2,905,730.41	\$674,318.60	\$53,700.74	\$728,019.33	\$10,740.15	\$738,759.48	
1-Feb-2045			\$43,585.96	\$43,585.96		\$43,585.96	\$782,345.43
1-Aug-2045	\$2,211,182.26	\$694,548.15	\$43,585.96	\$738,134.11	\$8,717.19	\$746,851.30	
1-Feb-2046			\$33,167.73	\$33,167.73		\$33,167.73	\$780,019.04
1-Aug-2046	\$1,495,797.66	\$715,384.60	\$33,167.73	\$748,552.33	\$6,633.55	\$755,185.88	
1-Feb-2047			\$22,436.96	\$22,436.96		\$22,436.96	\$777,622.84
1-Aug-2047	\$758,951.52	\$736,846.14	\$22,436.96	\$759,283.10	\$4,487.39	\$763,770.49	
1-Feb-2048			\$11,384.27	\$11,384.27		\$11,384.27	\$775,154.77
1-Aug-2048	\$0.00	\$758,951.52	\$11,384.27	\$770,335.79	\$2,276.85	\$772,612.65	
Total Payments:		\$15,000,000.00	\$7,729,881.93	\$22,729,881.93	\$766,988.19	\$23,496,870.12	\$23,496,870.12

**EXHIBIT F**

*Reserved*

**EXHIBIT G**

*Reserved*

**EXHIBIT H**

**SCHEDULE OF SOURCES AND USES**

<b>Project Uses</b>	<b>Project Sources</b>		
	<b>IBank</b>	<b>City of Escondido</b>	<b>Total</b>
Construction, Design, and Contingency	\$14,850,000	\$351,100	\$15,201,100
Origination Fee	\$150,000		\$150,000
<b>Total</b>	<b>\$15,000,000</b>	<b>\$351,100</b>	<b>\$15,351,100</b>

**EXHIBIT I**

*Reserved*

## EXHIBIT B

### GOVERNMENT CODE SECTION 5852.1 DISCLOSURE

The following information consists of estimates that have been provided by the IBank and has been represented by such party to have been provided in good faith:

- (A) True Interest Cost of the Installment Sale Agreement: 3 percent
- (B) Finance Charge of the Installment Sale Agreement (sum of all fees/charges paid to third parties): \$916,988.19
- (C) Net Proceeds of the Installment Sale Agreement to be received (net of finance charges, reserves and capitalized interest, if any): \$14,850,000
- (D) Total Payment Amount through Maturity of the Installment Sale Agreement: \$23,496,870.12

The foregoing constitutes good faith estimates only. The principal amount of the Installment Sale Agreement, the true interest cost of the Installment Sale Agreement, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to: (a) the actual date of the sale of the Installment Sale Agreement being different than the date assumed for purposes of such estimates; (b) the actual principal amount of Installment Sale Agreement sold being different from the estimated amount used for purposes of such estimates; (c) the actual amortization of the Installment Sale Agreement being different than the amortization assumed for purposes of such estimates; (d) the actual market interest rates at the time of sale of the Installment Sale Agreement being different than those estimated for purposes of such estimates; (e) other market conditions; or (f) alterations in the City's financing plan, or a combination of such factors.

The actual date of sale of the Installment Sale Agreement and the actual principal amount of the Installment Sale Agreement will be determined by the City based on a variety of factors. The actual interest rates borne by the Installment Sale Agreement will depend on market interest rates at the time of sale thereof. The actual amortization of the Installment Sale Agreement will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the City.



## CITY COUNCIL STAFF REPORT

**Workshop Item No. 15**

**June 5, 2019**

**File No. 1340-02**

**SUBJECT:** Update on the Recycled Water Expansion and Potable Reuse Program

**DEPARTMENT:** Utilities Department

**RECOMMENDATION:**

It is requested that the City Council receive and file a report by the Utilities Director concerning the Recycled Water Expansion and Potable Reuse Program.

**FISCAL ANALYSIS:**

The Recycled Water Expansion and Potable Reuse Program (the “Program”) is a series of Capital Improvement Projects (CIPs), valued at approximately \$300 million over about 30 years. This multiphase program was conceptually approved by the City Council in 2014, with each project considered individually during the budget, design, and construction phases. This workshop is a periodic update intended to give the City Council Members numerous opportunities to evaluate the program as it proceeds.

Approximately \$23.4 million of construction projects have already been completed or are in progress. These projects include:

<b>Project Description</b>	<b>Location</b>	<b>Cost</b>
Recycled Water Main along Escondido Creek	Broadway to Citrus	\$7.7 M
Brine Line	Broadway to HARRF	\$6.0 M
Recycled Water Main and Tanks	Citrus Avenue / Mountain View	\$9.7 M

Two projects are expected to begin construction in the next year:

<b>Project Description</b>	<b>Location</b>	<b>Cost</b>
Membrane Filtration, Reverse Osmosis Facility (MFRO)	901 West Washington	\$47 M
Recycled Water Agricultural Distribution System	Hogback / Eastern Ag area	\$4.2 M
Emergency Recycled Water Storage Pond	Eastern Ag area	\$2.5 M

Future projects (i.e., projects to begin construction in five or more years) will further expand the distribution system along La Honda to Dixon Lake, expand the MFRO to include production of drinking water, expand capacity and improve treatment processes at the Hale Avenue Resource Recovery Facility (HARRF), and reline/rehabilitate the existing HARRF land outfall.

Program costs on projects already completed or in construction have been funded through wastewater ratepayer fees and charges, and borrowing. Wastewater rates have increased by 5.5% per year since 2017, in large part to cover costs of the recycled water (RW) expansion. Borrowing has been through CA State Revolving Fund (SRF) Loans, including \$5.0 million for the Brine Line project and \$8.0 million

for the RW Main and Tanks project. These loans are beneficial for ratepayers because the interest rate is low (1.8% to 2.5% annually) compared to other borrowing options.

Projects to be constructed over the next few years will be primarily funded through SRF loans and grants. An application for an SRF loan for \$4.3 million has been submitted for the Recycled Water Agricultural Distribution System project and another for \$29 million is pending for the MFRO project. The MFRO project has also been awarded \$7 million dollars in State and Federal grants.

Although the primary driver for the Program is limited capacity and age of the HARRF land outfall, the Program will generate additional revenue to offset some costs and will greatly improve Escondido's water independence. The RW water produced for agricultural customers and the future drinking water expansions are additional, local, drought-proof water supplies. Initial program phases will expand RW distribution, and generate water sales for the Recycled Water Fund and avoid imported water costs for the Water Fund. Later drinking water phases will produce revenue for the Wastewater Fund and further avoid imported water costs for the Water Fund.

#### PREVIOUS ACTION:

The City Council has taken many actions since 2012 concerning the Program and its component projects. A summary of important milestone actions to award consulting and construction contracts follows.

On June 27, 2012, the City Council adopted Resolution No. 2012-105, authorizing a Program Management Service contract with Black & Veatch for the Potable Reuse Program, which was later renamed the Recycled Water and Potable Reuse Program.

On September 24, 2014, the City Council adopted Resolution No. 2014-145, awarding a Public Improvement Agreement with MNR Construction, Inc. in the amount of \$6,276,000 for the construction of (1) a 24-inch recycled water pipeline from the Broadway crossing of Escondido Creek, along the creek to Citrus Avenue; and (2) a Brine Line return along the same path as the above described new section of RW pipeline.

On February 14, 2018, the City Council adopted Resolution No. 2018-23, awarding a Public Improvement Agreement with CCL Contracting, Inc. in the amount of \$5,587,420 for construction of the Brine Line Project – Harmony Grove to Broadway, which extended the brine transmission pipeline from Broadway and Woodward (near Grape Day Park) to the brine line in Harmony Grove Road.

On September 19, 2018, the City Council adopted Resolution No. 2018-116, awarding a Public Improvement Agreement with SC Valley Engineering, Inc. in the amount of \$9,652,000 for construction of the Recycled Water Easterly Main and Tanks Project (also known as the Blended RO Line Project – Package 2A & 2B). This project extended the existing recycled water pipeline from the Citrus Avenue crossing of Escondido Creek to the Hogback Reservoir.

On April 3, 2019, the City Council adopted Resolution No. 2019-50, authorizing the award of a Design Build Agreement for the Membrane Filtration Reverse Osmosis 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. This contract was for the initial Pre-construction Phase, which includes engineering, design, and pre-construction services.

BACKGROUND:

In 2012, the City Council approved a conceptual plan to address major challenges facing the Utilities Department. The primary challenge was and still is limited capacity in the land outfall that carries treated wastewater from the HARRF to the Pacific Ocean. Secondary, but still important challenges included: (1) capacity at the HARRF itself; (2) limited and costly imported water; (3) local water supplies that depend on rainfall; and (4) limited distribution of recycled water.

As previously reported to the City Council, the capital cost for replacing the HARRF land outfall is very high (more than \$600 million). There is also great risk associated with this option because the construction would occur in environmentally sensitive areas along Escondido Creek. Thus, environmental approvals are not guaranteed and would likely add to the cost and time required. It was immediately clear that other options must be studied because the “pipeline replacement” option addressed only one of the primary challenges facing the department, and it would not generate any revenue.

Instead, staff recommended, and the City Council agreed, on a solution that not only solves the problem of limited HARRF outfall capacity, but also addresses the other aforementioned challenges – the Recycled Water and Potable Reuse Program.

So far, the City of Escondido (City) has completed or is presently constructing several projects in the expansion of the RW distribution system (*more information on these projects can be found in the “Financial Analysis” section*):

1. Recycled water main, brine line, and fiber-optic conduit along Escondido Creek between Broadway and Citrus;
2. Brine line along Escondido Creek from Broadway to the existing brine system near the HARRF;
3. Recycled water main along Citrus Avenue and through Mountain View Cemetery;
4. Recycled water main along Mountain View Drive to the existing Hogback Reservoir;
5. Conversion of the Hogback Reservoir (a drinking water tank) to RW and construction of a smaller, replacement drinking water tank; and
6. Emergency recycled water storage pond.

Additionally, the City has selected the design-build team of Filanc Brown & Caldwell Joint Venture to construct the MFRO facility for desalinating the existing RW supply so that it can be used for agricultural irrigation. The final project needed to deliver RW for agriculture is the distribution system from the Hogback Reservoir to the individual customer meters. This project is in the final design stages and is on track for completion before the MFRO begins production. Both projects have pending application for SRF loans totaling \$33.3 million. When these projects go into service (projected in 2021),






discharges into the HARRF land outfall and the Pacific Ocean will decrease by several million gallons per day (up to 6 MGD).

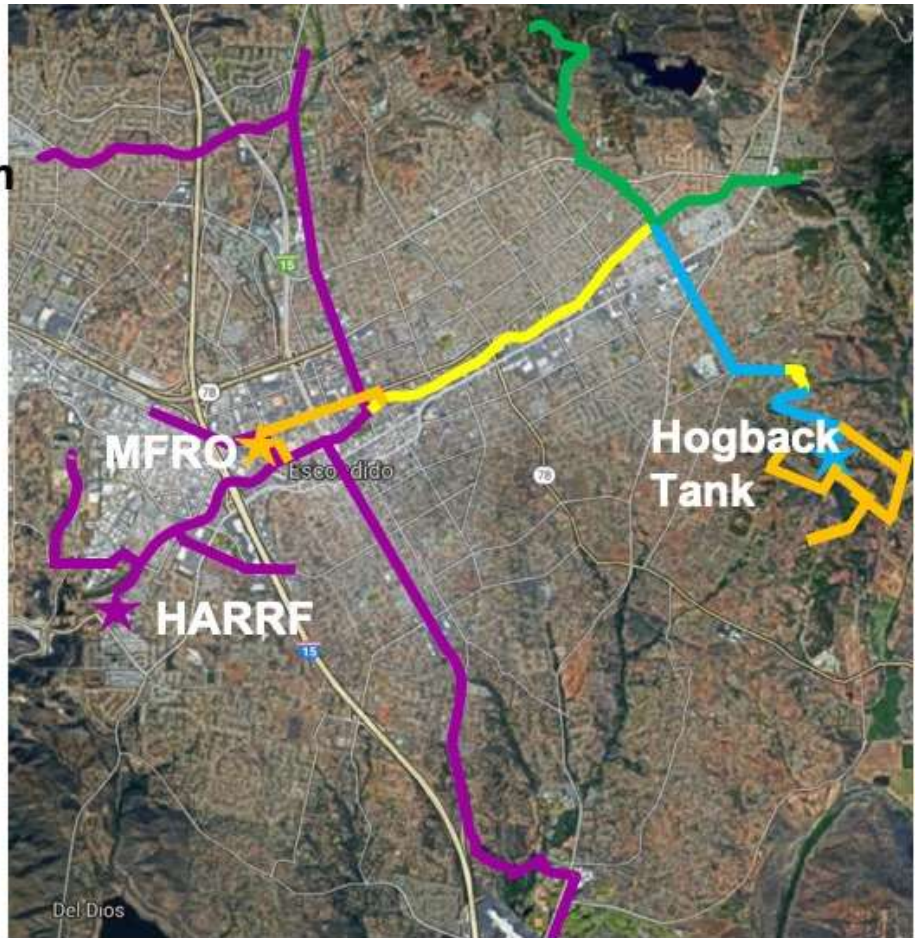
Future phases include expansion of the recycled water distribution in the La Honda/Lake Dixon area, Hidden Trails, and Mountain View and Cloverdale area; and replacement of existing recycled water filtration and disinfection processes at the HARRF.

The third and fourth phases will include construction of a full-scale advanced water treatment (AWT) facility at the MFRO site, along with a pump station to move AWT product water to Dixon Lake. It was originally projected that these future phases would be needed within the next 10-15 years, but permanent water conservation measures have slowed the rate of flow increase at the HARRF. This will possibly allow the City to construct these phases on a longer timeline (20-30 years) and therefore, slow the rate of spending on the Program.

The Program will not generate revenue sufficient to cover construction costs in the short-term, but it will generate revenue through the sale of additional recycled water, and it will avoid the cost of a similar volume (~5,000 acre-feet annually) of imported water. These revenues and avoided costs are projected to produce a net financial benefit to the two Utility funds of \$7 million each year, even after operating costs for the new facilities are accounted. This financial benefit will help cover the debt-service cost incurred to finance construction. Once these debts are retired (~30 years), cash flow as a result of the Program project will be positive.

The Recycled Water and Potable Reuse Program is critical to the future economic growth of the City, the continued health and welfare of its people, the protection of our environment, and the protection of our City's historic agricultural interests. Although it is expensive, it represents the best-value alternative in terms of sound infrastructure management to bring more water independence to Escondido.

-  Existing RW System (in operation)
-  Constructed (not in operation)
-  Under construction
-  In design phase
-  Future expansion (proposed)



*City of Escondido Existing and Planned Recycled Water Distribution System*

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Christopher W. McKinney*, Director of Utilities  
5/29/2019 5:18 p.m.



## FUTURE CITY COUNCIL AGENDA ITEMS

Updated May 29, 2019

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

**June 12, 2019**

**6:00 p.m. (Include Budget & CIP)**

### CONSENT CALENDAR

**Award of Bid for Legal Advertising – Fiscal Year 2019/20**

(Z. Beck)

*The California Public Contract Code requires when there is more than one newspaper of general circulation in a community that the public bidding process occur annually for the purpose of publishing legal notices. The award of bid will complete the process for the upcoming fiscal year.*

**Electronic and Paperless Filing of Campaign Statements and Statements of Economic Interest**

(Z. Beck)

*The proposed ordinance would require all campaign statements and statements of economic interest to be filed electronically. Electronic filing makes it easier for officials to comply with reporting obligations and provides the public with the information in a more accessible and consistent format.*

**Reimbursement Agreement with New Urban West to Evaluate the Formation of a Community Facilities District for The Villages Project**

(J. Procopio)

*The Villages project was approved by the City Council on November 15, 2017. The developer, New Urban West, proposed and the project conditions contemplate the potential formation of a Community Facilities District (CFD). New Urban West has submitted a letter requesting that the City evaluate formation of a CFD. This action allows staff to engage consultants, at the developer's expense, to begin the process of evaluating the developer's request for CFD formation. It is anticipated that staff will report back with refinement and evaluation of the developer's proposal and to request City Council direction within three months.*

### PUBLIC HEARINGS

**Adoption of the Fiscal Year 2019/20 Operating Budget**

(S. Bennett)

*This action will adopt an operating budget for certain City funds effective July 1, 2019 through June 30, 2020.*

**June 12, 2019**  
**Continued**

**PUBLIC HEARINGS Continued**

**Five-Year Capital Improvement Program and Project Budgets for Fiscal Year 2019/20**  
(S. Bennett)

*This action will adopt the City's Five-Year Capital Improvement Program and Transnet Program of projects for FYs 2019/20-2023/24.*

**CURRENT BUSINESS**

**FUTURE AGENDA ITEMS**

**June 19, 2019**  
**6:00 p.m.**

**PROCLAMATION**

**San Diego County Water Authority 75<sup>th</sup> Anniversary**

**CONSENT CALENDAR**

**PUBLIC HEARINGS**

**Report on Drinking Water Public Health Goals**  
(C. McKinney)

*Public Health Goals are set by the California Office of Environmental Health Hazard Assessment (OEHHA), which is part of the California Environmental Protection Agency (Cal-EPA). It is required that the City of Escondido have on file a report comparing the City's drinking water quality with Cal-EPA's Public Health Goals (PHGs), and with the Maximum Contaminant Level Goals (MCLGs) adopted by the United States Environmental Protection Agency.*

**CURRENT BUSINESS**

**Escondido Disposal Incorporated (EDI) Solid Waste and Recycling Franchise Agreement**  
(J. Petrek)

*Escondido's solid waste and recycling services are detailed in the City's franchise agreement with EDI. It has been over twenty 20 years since the original franchise agreement was updated. The amended franchise agreement will generate new unrestricted General Fund revenues, and new restricted funding for mandated recycling programs and services. The updated agreement also includes provisions for processing Commingled Organics that will be implemented after improvements are completed at EDI's facility for recycling organic waste into natural gas for energy production.*

**FUTURE AGENDA ITEMS**

# Weekly Activity Report



May 30, 2019

## Escondido Hero Banners Proudly Displayed

The 2019 Hero banners went up in downtown over the holiday weekend. The Escondido Hero banner program honors men and women who serve, or have served, in the U.S. Armed Forces by offering personalized banners that will be hung from approximately Memorial Day to Veterans Day in Downtown Escondido along Grand Avenue, 2nd Avenue and Valley Parkway. <https://www.escondido.org/herobanner.aspx>



## Escondido Library's "Read Local, Shop Local" Program Adds New Partners

You can save big when you show your Escondido Public Library card at participating local businesses. Recent partner additions include Faming on Grand and Persian Cultural Center. To see the full line up of participants and the exclusive deals, click the image below.





## Escondido Earns High Marks in the *San Diego Business Journal*

This month the SDBJ's "The List" identified the top craft breweries and wineries in the County. Escondido's Stone Brewing earned the number one spot for breweries, and Orfilia Vineyard & Winery secured the number two spot with Bell Marie Winery coming in at number six on the wineries list.



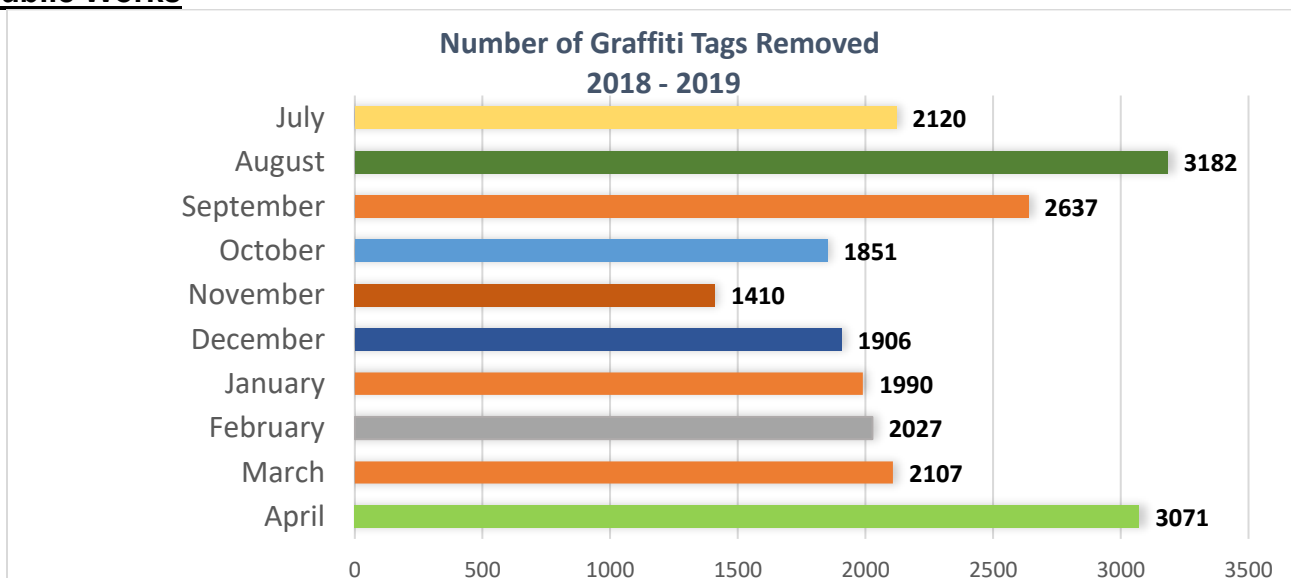
## Escondido is a Proud Participant in "North County Day"

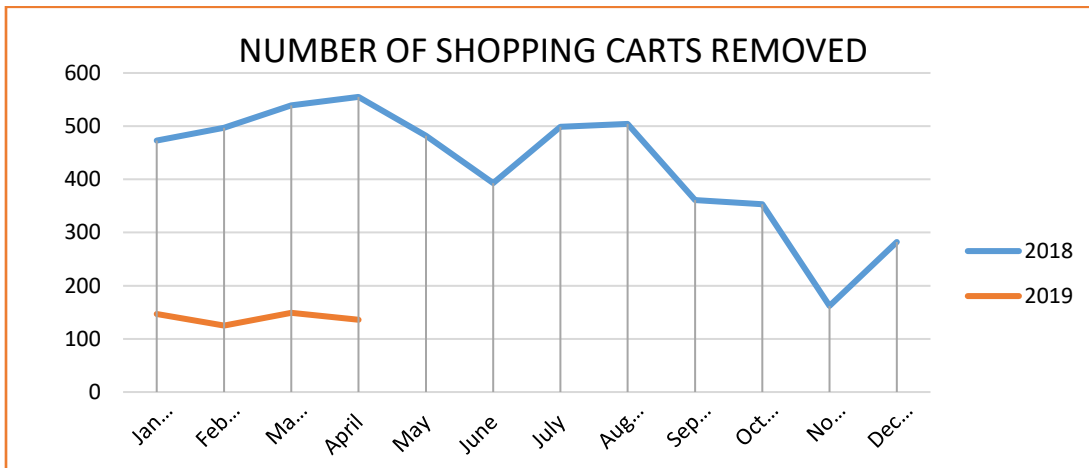
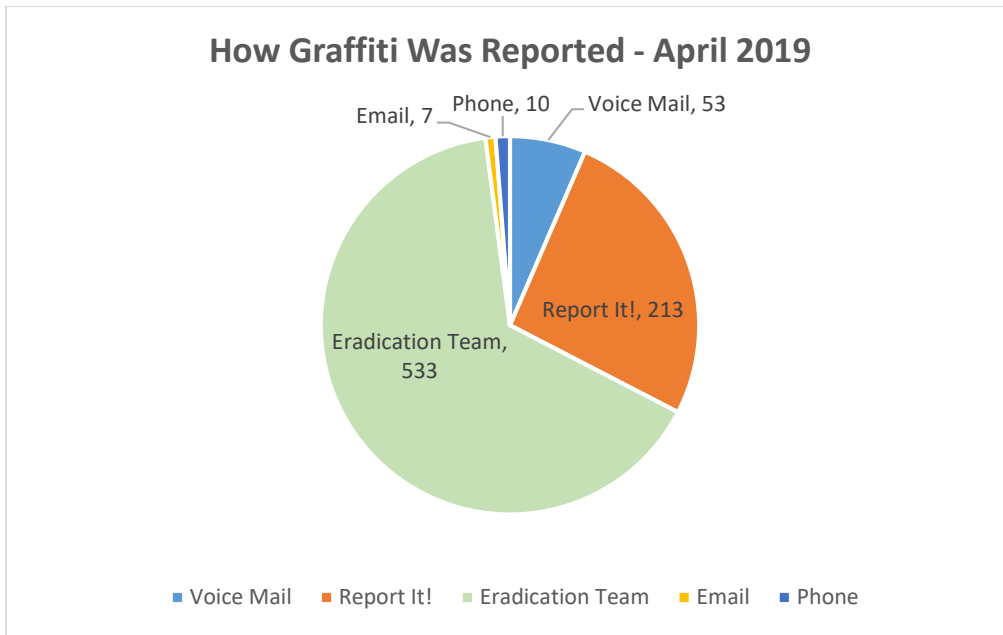
Innovate78 is partnering with San Diego Startup Week, one of the nation's largest startup events, to host "North County Day" this Sunday, June 2 at Make in Carlsbad. The day will include mentoring, panel discussions and more. For more information visit

<https://mailchi.mp/sandiegobusiness/innovate78-startupweek-in-northcounty>

## BY THE NUMBERS

### Public Works





## Code Enforcement

**309 Total Active Cases**

**70 New Cases**

**46 Cases Closed**

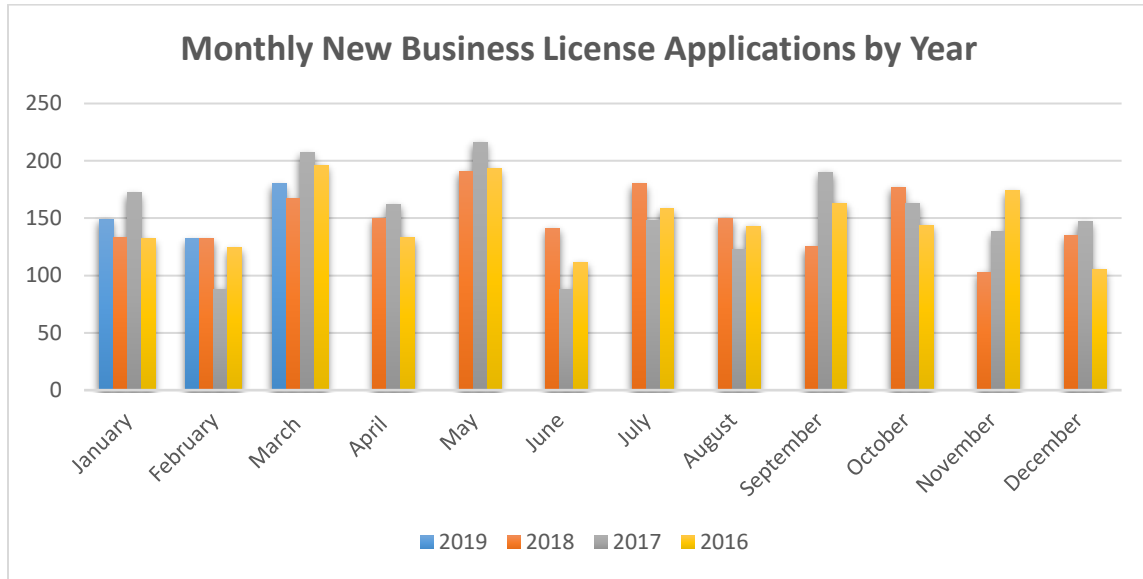
**45 Voluntary Compliance**

**31 Notices Issued**

**1 Citation Issued**

Total Code Cases (Year To Date)	<b>1044</b>
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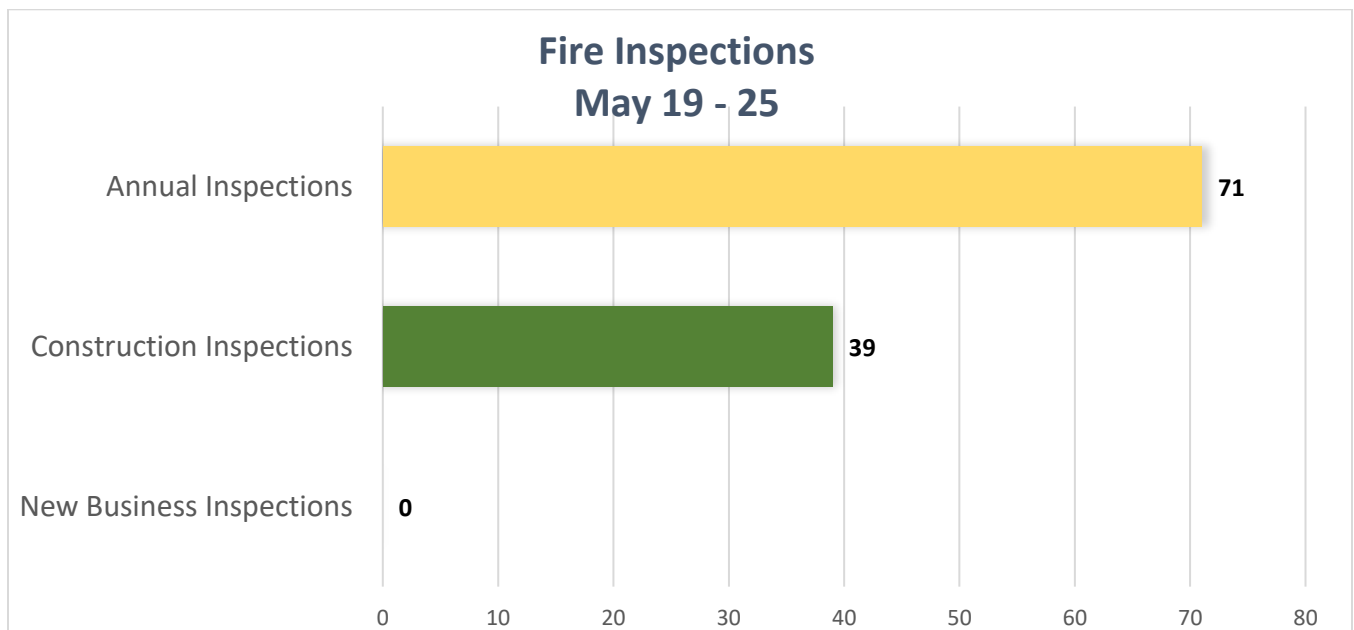
**Business Licenses**



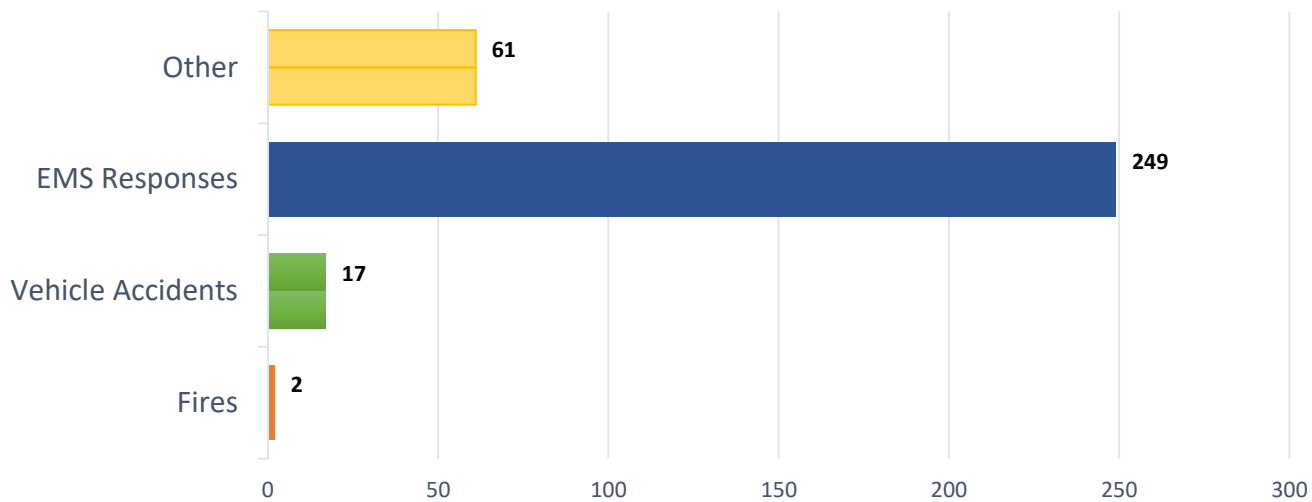
**Graffiti Restitution**

Collected This Week	Collected Year to Date
\$105	\$2515.75

**Fire**

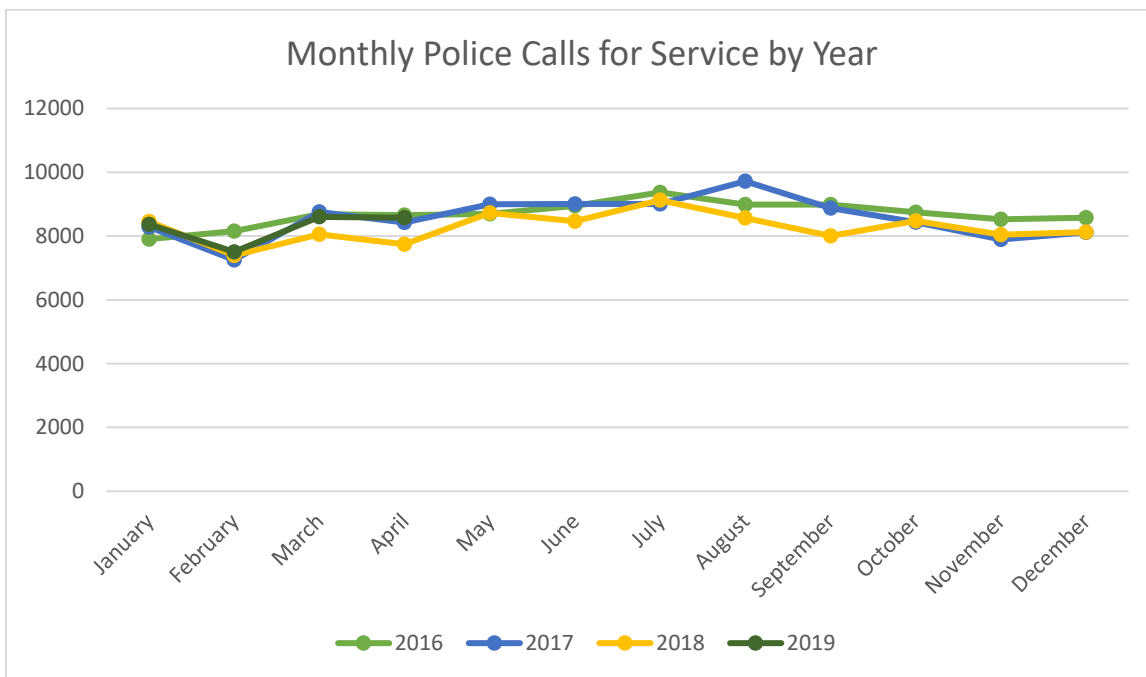


## Fire Emergency Responses May 19 - 25

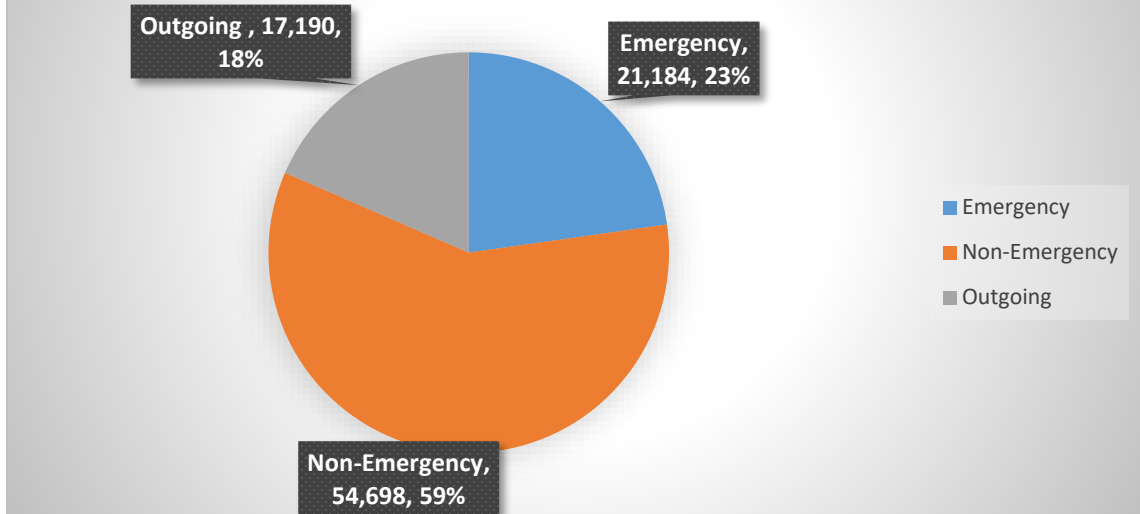


Total Emergency Responses (Year To Date)	6,343
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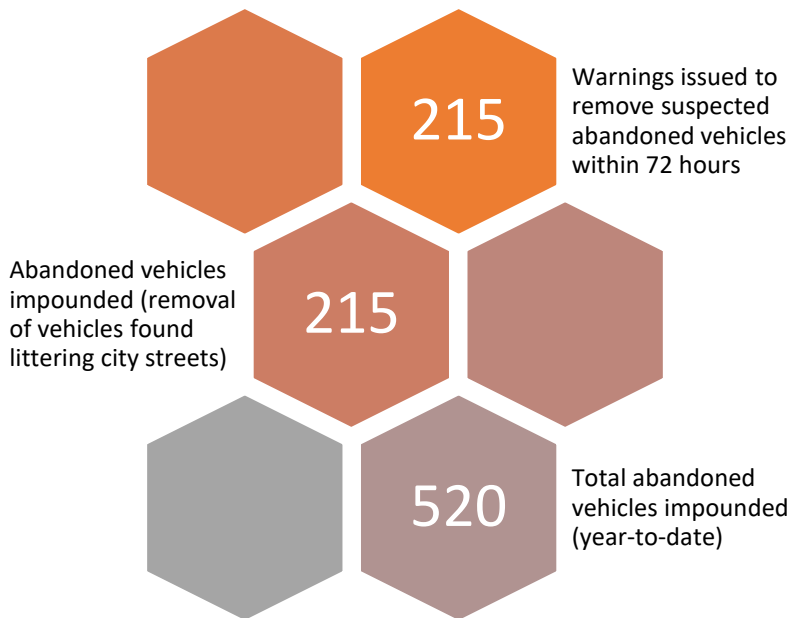
**Police:**



## 2019 YTD Police/Fire Communication Center Call Volume

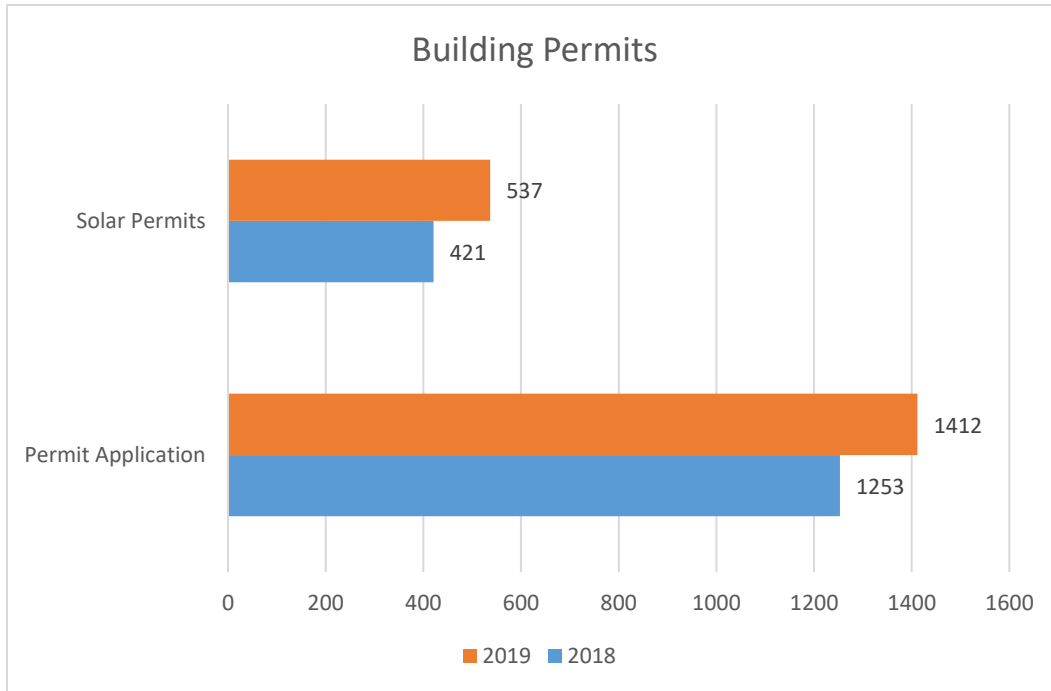
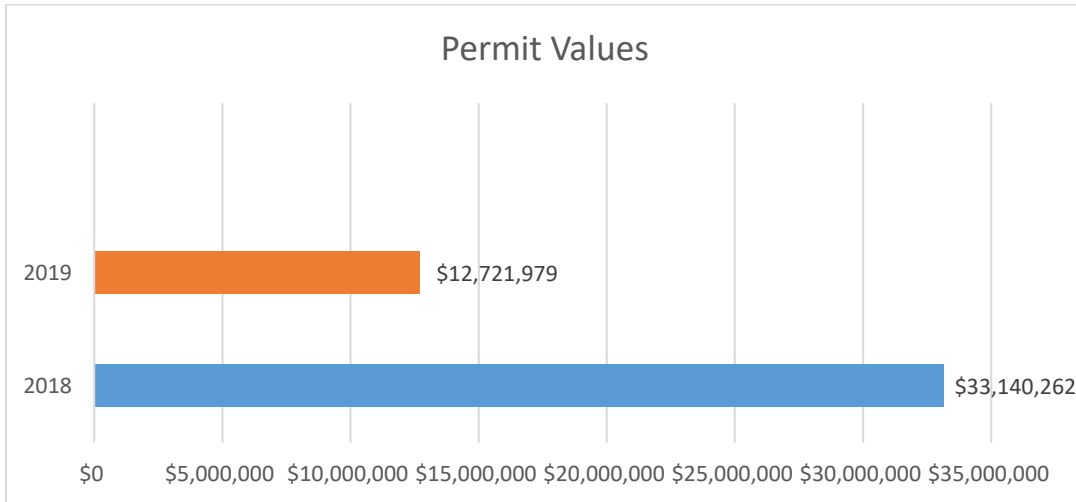


### April Abandoned Vehicle Data



**Building Division:**

*\*Data reflects activity through May 25 of each year.*



**POLICE DEPARTMENT**

**Incidents:**

**Bank Robbery**

On May 23, 2019 at about 9:50 a.m., three suspects wearing hoods and masks entered the San Diego County Credit Union at 1875 S. Centre City Pkwy. At least one of the suspects appeared to be armed with a handgun. The suspects ordered everyone in the bank to lay on the ground, while robbing the business of an undisclosed amount of cash. The suspects fled in a vehicle that was located abandoned in a nearby residential area. The robbery is being investigated by Escondido police detectives and the FBI.

### **Traffic Stop Reveals Unrestrained Child, Gun, and Drugs**

On May 23, 2019 at about 6:30 p.m., an officer made a traffic stop on a car for having unlawful tinted windows. At the time of the traffic stop there were three adults and two small children in the car. A four-year old child was not in a child seat. Two of the adult occupants were on probation. During a search of the car, officers recovered a loaded handgun, and over one gram of methamphetamine. The driver, Misty Padilla (22-year-old resident of Escondido), passenger Korynne Orozco (25-year-old resident of Escondido), and passenger Daniel Perez (26-year-old resident of Escondido) were all arrested on numerous charges including; carrying a loaded firearm in a vehicle, possession of a controlled substance, and child abuse. The children were taken into protective custody.

### **Child Struck by Vehicle**

On May 24, 2019 at 3:58 p.m., the Escondido Police and Fire Communication Center received 911 calls regarding a child that was just struck by a vehicle in the 1900 block of E. Valley Pkwy. Officers arrived and determined that a 2013 Hyundai sedan had struck an 11-year-old child in a business driveway. The child was transported to the hospital with serious, but non-life threatening injuries. The exact cause of the collision is still under investigation. Alcohol is not believed to be a factor.

### **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.

- 1 arrest
- 8 citations
- 45 extra patrols

### **Events:**

Congratulations to Officer Savannah Roberson on her graduation from the police academy on May 24, 2019. Officer Roberson will now begin the required field training program, which typically lasts four to five months.



## FIRE

### News:

Fire Engineer Jeremy Good promoted to Captain effective May 19, 2019, and he is assigned at Fire Station 5.



Firefighter Paramedic Justin McCauley promoted to Engineer effective May 19, 2019, and he is assigned at Fire Station 5.





## 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 the MOU described below is signed by all parties.
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) was approved by the City Council on May 22, 2019, to move the temporary parking lot on the medical building site (above) to another location within ERTC. The SPA includes 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. 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 and a revised MOU is currently being finalized. Final engineering for the temporary parking lot on Lots 10-15 was accepted into plan check on May 8 (prior to the Council hearing) at the applicant's risk. Engineering comments on that plan are expected to be issued this week.

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. Staff-level design review occurred 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. Engineering met with the applicant on April 8, 2019. A fire flow test was performed the week of May 6 to finalize hydrant placements. Engineering is waiting for a revised final site plan. Project review is nearing completion.
4. Ritz Theater “The Grand” (Developer: New Venture Church) 301, 309 E. Grand Avenue – A renovation of the existing Ritz Theater and adjacent commercial building to provide for a variety of assembly uses including performing arts, religious services, café, offices and classroom studios was approved by the City Council on December 5, 2018. Engineering is reviewing improvement plans for the alley. Esgil has completed first check of the building plans on May

10, 2019, and returned comments to the applicant. Design modifications for doorways are being reviewed by Planning. Fire is awaiting submittal of sprinkler plans.

## **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 grading has commenced on the site. The building plans have been approved by Esgil and Fire. Planning is waiting for a plan that ensures rooftop mechanical equipment is appropriately screened.
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 team met with several departments on April 4, 2019, primarily to discuss traffic-related issues.

## **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. 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. A Design Build Agreement was approved by the City Council on April 3, 2019. The Design Build Agreement with Filanc+BC Joint Venture provides for design and pre-construction services. The Design Build team met with Utilities and Planning on May 15, 2019 to discuss design and timeline issues. A rough site plan was presented to the Staff Development Committee on May 21, 2019 for initial feedback.
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 met with the agencies to present the findings. Additional information requested by the agencies is being prepared for submittal.

## **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 25<sup>th</sup> to discuss off-site improvements. Staff, applicant and biological consultant met with the wildlife agencies on April 23, 2019, to discuss the revisions to the project design mentioned above.

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. In response to a follow-up discussion with the applicant, Planning provided additional comments on April 29, 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. Most of the plans are in third or fourth plan check. Engineering comments were returned on March 12, 2019; and the developer team met with Engineering on April 1, 2019, to discuss the comments. A revised Certified Tentative Map for substantial conformance review was submitted on May 23 and includes a proposal to relocate approximately 10 residential lots within the development. The homebuilder met with Building, Engineering and Planning on April 24, 2019 to discuss the building plan check and precise grading plan processes. Grading and improvement plan check for each of the villages is on-hold until the revised Certified Tentative Map is approved.

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. A revised Certified TM was approved on March 14, 2019. A revised Precise Development Plan was submitted on March 14, 2019, and Planning comments were issued on April 11, 2019. Final engineering plans were resubmitted on March 21, 2019. The project engineer, Engineering and County Water Authority staff met on April 2, 2019, to discuss the street and utility crossings over the CWA aqueduct. The applicant’s engineer has indicated agreement has been reached with CWA to resolve the issues. Engineering staff is awaiting documentation and exhibits confirming the terms of the agreement.
5. Aspire (131 apartment 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 for a 106-unit development on June 23, 2017. On March 14, 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 131 units) has been accommodated by eliminating all 3-bedroom units to allow additional studio, one- and two-bedroom units within the same building structure. The project includes 4,289 square feet of commercial space on the ground floor, primarily fronting on Maple Street Plaza. 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. A proposed Development Agreement was submitted for staff review on April 24, 2019. Engineering is completing final review of the traffic study and storm water plans.
6. The Ivy (127 apartment units at 343 E. 2nd) (Developer: Addison Garza, Touchstone Communities) - The apartment 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 nine 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 75 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. The Planning Commission unanimously recommended approval of the project on May 28, 2019. A City Council hearing has tentatively been scheduled for June 19, 2019.
7. 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. 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. Utilities is requesting an upsizing to the water line in Quince Street to 8". Traffic engineering received revised traffic counts on April 19, 2019. The applicant submitted revised plans on May 3, 2019. Public review of the Draft Mitigated Negative Declaration is expected to commence early next month.

8. 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. On April 5, 2019, the applicant provided a letter response with alternative compliance proposals to address some of the fire-related issues. On May 14, 2019 the applicant provided additional fire-related information requested by Fire and Planning. Fire, Planning, and Engineering staff met with the applicant team on May 29, 2019 to discuss the fire-related information.

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](#)

9. 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 Availability for the Draft EIR was issued May 7, 2019, announcing a 45-day public review period from May 10, 2019 to June 24, 2019. Fire has indicated the Fire Protection Plan is incomplete and needs a maintenance agreement with CalTrans for the fuel modification zones.
10. Oak Creek (Builder: KB Homes) 65 single-family residential lots on approximately 44 acres at Felicita Road and Hamilton Lane – The Zoning Administrator approved a modification to the Precise Development Plan to revise the architecture on October 25, 2018. On-site remediation of hazardous materials has been completed and DTSC has issued a clearance letter. On-site improvement plans have been approved. The rough grading permit was issued on April 18, 2019, and grading has commenced on the site. The Precise Grading Plan for the model homes has been approved and "foundation only" permits were issued on May 16, 2019 for the model homes because Fire does not allow lumber on site until water and paved access are provided. A Model Home Permit was submitted to Planning on May 14, 2019, for the sales office and

temporary improvements. A second plan check submittal for the final map was received the week of May 13.

11. Mercado 3-Story Mixed Use Building (Developer: Curtis Lively) 5 residences and 2 commercial suites on 0.14-acre at 510 W. 2<sup>nd</sup> 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. A Conditional Letter of Approval was issued on May 24, 2019.
12. 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 and Fire are coordinating fire flow and hydrant locations with the applicant. It is anticipated that water lines will need to be upsized on Quince and Grand. The applicant submitted a parking study on May 13, 2019, to support the proposed reduction in the number of parking spaces. The applicant met with Engineering and Planning staff on May 22, 2019 to discuss the driveway location and Development Agreement terms.
13. 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. Utilities has requested a sewer study to assess potential impacts to the nearby Lift Station 2.
14. Palomar Heights (Developer: Ninia Hammond, Integral Communities) Demolition and redevelopment of the old Palomar Hospital site with 510 multi-family units – 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. 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 and again on April 24, 2019 to go through proposed revisions to the site plan and building designs. The applicant revised the plans to increase the unit count from 424 units to 510 units. A Notice of Preparation (NOP) for the Draft EIR was issued on May 3, 2019 and a public scoping meeting took place on May 20, 2019. The public comment period for the NOP closes on June 3, 2019. Staff is awaiting a complete submittal of the redesign package which is expected in a few weeks.

15. 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. Final Map, grading plans and improvement plans were submitted for initial review on February 12, 2019. A demolition permit for the former packinghouse structures was submitted on February 14, 2019 and only needs utility shutoff before work starts. 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. The second submittal of final engineering was received on April 22, 2019. Utilities has identified conflicts with drainage facilities in the second plan check. Fire and Engineering provided comments on the third submittal of final engineering plans on May 22, 2019. The applicant is working with staff to resolve final boundary adjustment issues to satisfy the title company. A conditional letter of approval for the boundary adjustment was issued on May 22, 2019.
  
16. Del Prado (Developer: Kerry Garza, Touchstone Communities) – An approved 113-unit townhome-style Planned Development located at the southwestern corner of Brotherton Road and the Centre City Parkway frontage road - The Del Prado project was approved by the City Council in May of 2016. The project site is separated into two parcels by an SDGE parcel. Engineering and Planning are reviewing third plan check for final map, grading and improvement plans for Del Prado South. Del Prado North is in second plan check for the same plans. No building plans have been submitted into plan check. Planning has provided comments for the North landscape plans. An extension of time for both the North and South tentative maps was approved by the Zoning Administrator last week. The applicant is attempting to resolve sewer issues with the Regional Water Quality Control Board because sewer lines are proposed to cross over water lines.
  
17. Accessory Dwelling Units – Planning staff is currently working on 10 applications for accessory dwelling units. Seven 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 75 permits (including 34 solar photovoltaic) with a total valuation of \$319,762.
2. Our building inspectors responded to 163 inspection requests. 165 customers visited the Building counter during the week.
3. The Meadowbrook three-story apartment building with underground garage at 2081 Garden Valley Glen has received final Fire inspection approval and partial final building inspection approvals on the first and second floors. It is expected they will be calling for third floor inspection this week.
4. The Latitude 2 apartment project at 650 N. Center City Pkwy has received building final approvals and Temporary Certificates of Occupancy for Buildings 1-5. Final inspection and

department approvals for Building 6 are pending. Foundation inspection for the Building 6 carport was provided on May 30.

5. *No change from the previous.* The new two story church sanctuary building at 1864 N. Broadway is progressing toward final inspection. Partial drywall approval has been granted at the first floor only.
6. *No change from the previous.* The Citron multifamily project at 2516 S. Escondido Blvd has received final Fire approval and gas meter release for Buildings 6, 7, and 8. Final inspection has also been approved for these last buildings in the project. Final inspection of Building 1 is on-hold pending conversion of the sales office back to a garage.
7. The new 105-room hotel at 200 La Terraza Blvd is open for business under a Temporary Certificate of Occupancy while they work through Engineering and Building inspection corrections. Final inspection of outstanding conditions has been scheduled for June 3.
8. The new five-story self-storage building at 852 Metcalf St. has completed rough framing and drywall installation is on-going. The installation of air conditioning ducting is also underway.
9. The Gateway Grand 126-unit apartment project at 700 W. Grand Ave has third floor walls under construction for Buildings A and B. Building C foundation has been approved and concrete poured.
10. *No change from the previous.* The new nine-unit apartments at 917 W. Lincoln Ave have received partial inspection approval for exterior framing for buildings B and C. During the course of construction, our inspectors identified deficiencies that will require the architect to submit revised plans with corrective procedures. Building staff recently met with the developer and owner to discuss the issues and offer guidance. Staff is awaiting a response and continues to monitor the situation. In the meantime, progress on construction is limited.
11. The two-story, 20,000 square foot office building for Superior Ready Mix at 1564 W. Mission has received underground plumbing and foundation inspection approvals. Framing is ongoing and tilt-up panels 1 through 18 have been approved. Once the concrete has cured, cranes will lift those panels into place.

## **ENGINEERING DEPARTMENT**

### **Capital Improvements**

1. 2018 Street Rehabilitation and Maintenance Project – This year's program will focus on 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 pavement restoration of Centre City Parkway between Felicita Avenue and Citracado Parkway is underway this week along South bound Centre City Parkway. The slurry portion of the contract began last Friday and will continue for the next 35 days. The ARAM portion of the project began on May 29 and be competed in 7 days. 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– Portions of the roadway surface will be replaced on Valley Parkway between Beven Drive and Lake Wohlford Road on Thursday of this week. This will be one of the last punch list items to be addressed prior the project being presented at council next month.
3. Transit Center Pedestrian Bridge Project – The preconstruction meeting for the project was held on Wednesday, April 24, 2019. The contractor is currently working on the required NCTD access permit which must be in place to the start of construction. The Notice to Proceed for the contract is Monday, May 20, 2019. Submittals and construction schedules are the first order of work this week.
4. Missing Link Project – The project nearing completion. All punch list items are now complete. The City will close out the project once we receive final billing. The damaged traffic signal pole at the pedestrian signal crossing was repaired within 4 days by the Public Works staff and private contractor this past week.
5. HSIP Traffic Signal Project – 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 contractor has constructed the traffic signal foundation for the El Norte Parkway/ Fig Street intersection this week.
6. Tulip Street Improvements Phase IV – The construction of retaining walls is continuing along Tulip Street. The construction of the new sidewalk is proceeding. The roadway section is continuing to be constructed along the project limits.
7. Multi Neighborhood Street Light L.E.D. Retrofit Project – 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, 13<sup>th</sup> 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 installation of the new light fixtures is set to begin on June 3.
8. Storm Drain Pipe Lining and Rehabilitation Project Phase1 – 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 Notice to Proceed has been issued and the contractor is on day 26 of the contract. The low bidder was Sancon Engineering Inc. with a bid of \$841,310.00. The Engineers estimate for the project was \$746,734.00.

### **Private Development**

1. Tract 932 - Canyon Grove Shea Homes Community – *No changes from that reported last week:* The developer is reconstructing a water quality basin within the development that failed to perform during last winter’s rain season. When completed the basin resembles a park with grass for neighborhood activities.
2. Latitude II Condominiums by a Lyon Homes Partnership: Washington Avenue @ Centre City Parkway – Construction of the onsite bio retention facility is ongoing along Centre City Parkway.

3. Tract 934 – Is a 5 lot subdivision located at 1207 Gamble Street. *No changes from that reported last week:* The water line construction is currently under pretest procedures. The sewer manhole located in Gamble Street has been constructed.
4. Veterans Village – *No changes from that reported last week:* The project has been walked and a punch list has been provided. The remaining buildings were released for occupancy this week.
5. KB Homes Oak Creek Project - The grading operation is in full swing again this week. Over the course of the grading operation, 5,920 cubic yards of dirt will be delivered to the site. The grading contractor has two drop tanks for filling 4 water trucks which are on site. The onsite improvement plans have been signed and work has begun on the water and storm drain connection in Felicita Avenue.
6. 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.
7. Citron Development – *No changes from that reported last week: The project has received its punch list and is currently being completed.*
8. ATT Facility Tank Relocation – The fuel line from the tank to the building are the order of work again this week.
9. North American Self Storage – The project is located at 852 Metcalf Street. The construction of the new mainline has restarted along the project frontage. The redesign in the intersection crossing is still being developed.

## GRANT APPLICATIONS

None this week.

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